AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
July 17, 2003 - 7:30 p.m.

CALL TO ORDER - Mayor Steenrod

PLEDGE OF ALLEGIANCE

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 minutes from the special and regular meetings of June 26 and the special meeting of July 7, 2003.
2. Motion is to purchase a permanent slope easement of 9,157 square feet from Robert G. and Anna M. Bjorneby in the amount of $14,021.00 plus closing costs and to authorize the City Manager to sign the Purchase and Sale Agreement substantially in the form as submitted.
3. Motion is to enter into an agreement with the City of Kent for their participation in the construction and maintenance of the Joint Use Stormwater Detention/Treatment Facility improvements for the Pacific Highway South Redevelopment Project and to authorize the City Manager to sign said agreement substantially in the form as submitted.
4. Motion is to confirm Mayor Steenrod's appointment of Debbie Hickman to a vacant position on the Des Moines' Human Services Advisory Board, term to expire December 31, 2003.
5. Motion is to approve the agreement with Moffatt & Nichol Engineers to provide consulting and preliminary design services for the Dry Stack Boat Storage Project in the Marina, in the amount of $58,422, plus a budget of $6,000 for architectural renderings, plus a contingency of $2,920, for a total authorization of $67,342 and authorize the City Manager to sign the agreement substantially in the form as submitted.
6. Draft Ordinance No. 03-193 - Title: An Ordinance of the City of Des Moines, Washington related to monetary penalties for civil infractions, and amending DMMC 1.24.190.

    TWO MOTIONS: First motion is to suspend Council Rule 26(b). Second motion is to approve Draft ordinance No. 03-193.

*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. 03-177 Amending 2003 Budget to Re-program MCI Funds
   SUMMARY: The purpose of this agenda item is to request Council's approval of Draft Ordinance No. 03-177 amending the 2003 budget by authorizing appropriations to complete the Steven J. Underwood Memorial Sports Park Phase I and Activity Center, and to authorize appropriations from Senior Services Donations and Special Events Revenues, and from available unreserved ending fund balance of $49,418.

2. Cingular Wireless Lease Agreement - Des Moines Field House Park — co-location check code
   SUMMARY: The purpose of this agenda item is to transmit the request by Cingular Wireless LLC to enter into a Lease Agreement with the City for the use of a portion of Des Moines Field House Park for the purpose of installing, maintaining and operating, at its expense a facility for an antenna and equipment storage. Cingular Wireless LLC must have an approved Lease for the site prior to initiating plans for permit review.

NEW BUSINESS

final agreement

1. Draft Resolution No. 03-181- Sole Source Procurement for Redondo Boat Launch
   SUMMARY: The purpose of this Agenda item is to seek Council approval for the sole source purchase of a floating breakwater system for the Redondo Boat Launching Ramp, as part of the Boat Launch Improvement Project.

2. Draft Resolution No. 03-193 - Sole Source Procurement for Redondo Boat Launch
   SUMMARY: The purpose of this agenda item is to seek Council approval for the sole source purchase of an anchoring system for the floating breakwater at the Redondo Boat Launching Ramp, as part of the Boat Launch Improvement Project.

Larry

3. Agreement with Comcast Regarding the Pacific Highway South Redevelopment Project
   SUMMARY:

public hrg. 7/31

4. Draft Ordinance No. 03-032 Comcast Cable TV Franchise - Briefing
   SUMMARY: The purpose of this agenda item is to provide a briefing to the City Council on Comcast's proposal to renew the franchise for cable TV service. A public hearing must be scheduled and held before final action may be taken on the renewal.

NEXT MEETING DATE - Regular Meeting July 31, 2003

ADJOURNMENT

OLD BUSINESS
Item #2

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Cingular Wireless Lease Agreement- Des Moines Field House Park

ATTACHMENTS:
A. Draft Lease Agreement
B. Proposed Site Construction Plan
C. DMMC 18.32.030 Conditional Uses
D. Proposed Field House Park Master Plan

FOR AGENDA OF: July 17, 2003

DEPT. OF ORIGIN: Parks, Recreation and Senior Services

DATE SUBMITTED: July 7, 2003

CLEARANCES:
[x] Park & Recreation Director
[x] Community Development Director
[x] City Attorney

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

Purpose and Recommendation
The purpose of this agenda item is to transmit the request by Cingular Wireless LLC to enter into a Lease Agreement with the City of Des Moines for the use of a portion of Des Moines Field House Park for the purpose of installing, maintaining and operating, at its expense a facility for an antenna and equipment storage. Cingular Wireless LLC must have an approved Lease for the site prior to initiating plans for permit review.

Motion is "to approve the Lease of a location in Des Moines Field House Park for installation of a wireless antenna tower and an equipment storage area to Cingular Wireless LLC and to authorize the City Manager to sign the Lease substantially in the form as submitted."

Background
Cingular Wireless LLC approached the City of Des Moines as required by the City's telecommunications code to install a cell tower at Des Moines Field House Park. Prior to project permit review, Cingular Wireless LLC must enter into a Lease Agreement for the use of a portion of Des Moines Field House Park for the purpose of installing, maintaining and operating, at its expense a facility for an antenna and equipment storage. Cingular Wireless LLC proposes that a facility would be installed in 2003.

Discussion
Staff has been working with Cingular Wireless LLC to locate an appropriate site within Field House Park for its cell tower and antenna and support equipment area to minimize impacts to potential future park uses based on the current park master plan. If approved, the antenna would be co-located on a new ballfield light pole to be installed approximately 30 feet to the

east of Field No. 1, outside of the in-play area. The location is within a fenced area formerly used for park maintenance and storage.

The Lease specifies that the new pole would be installed by Cingular Wireless LLC at its expense and would be required to provide for as good or better ballfield lighting to replace existing lighting as specified by the Des Moines Parks, Recreation and Senior Services Director. The replacement light pole and required lighting fixtures would become the property of the city of Des Moines upon agreement termination. The existing light pole to be replaced by the cell tower would be removed from service and delivered to a location specified by the city at Cingular Wireless LLC's expense. Light pole installation and de-installation would be scheduled in a manner to provide seamless operation of the park's ballfields and would not impact field use.

The placement of the cell tower and ballfield lighting system at the new location would allow the city to expand the stadium ballfield's outfield (field one) to 325 feet as identified in the proposed Park Master Plan. Expanding the outfield to 325 feet would make the park playable for baseball teams with player 14 years of age and over. The area surround the facility would be regarded and improved so that usable park space is enhanced.

The Lease also agrees that the city would reserve the right to access the light pole to repair city-owned ballfield lighting fixtures. The city would retain the right of entrance to all city-owned property for access to city-owned facility equipment, repairs, restoration and co-location of additional utility services as needed. And, Cingular Wireless LLC agrees to comply with all City of Des Moines codes. Staff has reviewed the codes and proposed site for compliance with zoning conditions while retaining optimal use of the park.

<u>Alternative</u>
Authorize Cingular Wireless LLC's request to enter into a Lease Agreement with the City of Des Moines.

Do not authorize Cingular Wireless LLC's request to enter into a Lease Agreement with the City of Des Moines.

<u>Financial Impact</u>
The Lease would be in effect for one five year term with the right to extend the Term of the Lease for five (5) additional Terms. Within thirty (30) days prior to the expiration of the first five year Term and each additional five year Term, the city has the right to notify the Lessee of its intention not to extend the Lease Term. The facility Lease amount begins at $1,200 per month, $14,400.00 annually. Additionally, Cingular Wireless LLC will pay leasehold tax as applicable. The Lease includes an annual escalation clause of CPI up to 3% beginning on the anniversary of the first year.

<u>Recommendation</u>
Staff recommends approval of a Lease between the city of Des Moines and Cingular Wireless LLC for the use of a portion of Des Moines Field House Park for a wireless antenna and area for support equipment. If Council authorizes the Lease, the Community Development Department will process the required permits and approvals consistent with a Type III land use action. Type III land use actions require SEPA review and a public hearing before the Hearing

Examiner. As part of this process, adjacent property owners within 300 feet of the site will receive public notice and have an opportunity to comment on the proposal.

Concurrence

City Council discussed this issue at its meeting on and recommended reducing the Lease to five year terms and required that the Leased area not impact future uses planned at the park. Parks, Recreation and Senior Services, Community Development and Legal Departments have worked with Cingular Wireless LLC to incorporate those requirements into the Draft Lease (attachment A) and Proposed Site Construction Plan (attachment B). The proposed Field House Park Master Plan is provided for reference (attachment D).

Attachment A

COMMUNICATIONS SITE LEASE AGREEMENT

THIS COMMUNICATIONS SITE LEASE AGREEMENT ("Lease") dated as of ______________, 2003, is between Pacific Bell Wireless Northwest, LLC, a Delaware limited liability company, d/b/a Cingular Wireless ("Lessee"), whose address is 2445 – 140th Avenue, NE, Suite 202, Bellevue, WA 98005, and City of Des Moines, a municipal corporation ("Lessor"), whose address is 21630 11th Avenue South, Des Moines WA 98198.

The parties hereto agree as follows:

1. Premises. Lessor represents that Lessor owns the real property legally described in Exhibit "A" commonly known as 1000 S. 220th Street, Des Moines WA 98198 (Assessor's Parcel Number 082204903403). Subject to the following terms and conditions, Lessor leases to Lessee that portion of Lessor's property ("Lessor's Property") approximately TBD square feet of space as depicted in Exhibit "B", including any applicable easements for access and utilities (the "Premises").

2. Use. The Premises may be used by Lessee for any lawful activity in connection with the provision of mobile/wireless communications services, including without limitation, the transmission and the reception of radio communication signals on various frequencies and the construction, maintenance and operation of related communications facilities. Lessor agrees, at no expense to Lessor, to cooperate with Lessee in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.

3. Condition Precedent. This Lease is conditioned upon Lessee, or Lessee's assigns, obtaining, at Lessee's sole cost and expense, all governmental licenses, permits and approvals enabling Lessee, or its assigns, to construct and operate mobile/wireless communications facilities on the Premises.

4. Term. The term of this Lease ("Term") shall be five (5) years commencing with the date Lessee commences construction of its mobile/wireless communications facilities on the Premises, excluding preliminary testing, survey and utilities work (the "Commencement Date"). Lessee shall have the right to extend the Term of this Lease for five (5) additional Terms ("Renewal Term") of five (5) years each. Each Renewal Term shall be on the same terms and conditions as set forth herein. This Lease shall automatically be extended for each successive five (5) year Renewal Term unless Lessee notifies Lessor in writing of Lessee's intention not to extend this Lease at least thirty (30) days prior to the expiration of the first five year Term or any Renewal Term.

5. Rent.

(a) Upon the Commencement Date, Lessee shall pay Lessor, as rent, the sum of Twelve Hundred Dollars ($1,200.00) ("Rent") per month. Rent shall be payable on the 1st day of each month, in advance, to Lessor at Lessor's address specified at the beginning of this Lease. Rent shall be adjusted annually as of the anniversary of the Commencement Date to the extent of any percentage change which occurred in the Consumer Price Index (All Items, Base 1982-84 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics for All Consumers for the Seattle Metropolitan area (hereinafter "CPI"). The rental adjustment shall be calculated by multiplying the Rent then in effect by a fraction, the denominator of which is the CPI in effect as of the calendar month fourteen full months prior to the anniversary date, and the numerator of which is the CPI in effect two full months prior to the anniversary date. Notwithstanding the foregoing, in no event shall Rent be increased by more then 3% of the Rent paid during the previous year.

(b) Market Rent. If Lessor feels that Rent is not equal to market rent for similar sites in similar geographic areas ("Market Rent"), then at the beginning of each five-year term, Lessor can require that Rent be increased to the then-current market rent for similar sites in similar geographic areas. If Lessor and Lessee cannot agree upon Market Rent within thirty (30) days after Lessor presents its proposal for Market Rent, then the matter shall be settled by binding arbitration by a single arbitrator who has experience in real estate leasing matters. The arbitration will be administered by the American Arbitration Association in accordance with its Commercial Arbitration rules if the parties have not otherwise agreed to use a different arbitrator or arbitration process. At least ten (10) days in advance of the hearing, each party will submit to the arbitrator and to each other their best offers of

Market Rent. The arbitrator shall be limited to choosing one of the two proposed Market Rent figures, and the arbitrator shall award the Market Rent figure that is closest to the true Market Rent. The costs of the arbitration, expert witnesses and attorney's fees shall be borne by the party whose Market Rent figure was not selected by the arbitrator.

(c) If the Commencement Date is other than the first day of a calendar month, Lessee may pay on the first day of the Term the prorated Rent for the remainder of the calendar month in which the Term commences, and thereafter, Lessee shall pay a full month's Rent on the first day of each calendar month, except that payment shall be prorated for the final fractional month of this Lease, or if this Lease is terminated before the expiration of any month.

6. Improvements; Access.

(a) Lessee shall have the right (but not the obligation) at any time following the full execution of this Lease and prior to the Commencement Date, to enter the Premises for the purpose of making necessary inspections and engineering surveys (and soil tests where applicable) and other reasonably necessary tests (collectively "Tests") to determine the suitability of the Premises for Lessee's Facilities (as defined herein) and for the purpose of preparing for the construction of Lessee's Facilities. During any Tests or pre-construction work, Lessee will have insurance as set forth in Section 14, Insurance. Lessee will notify Lessor of any proposed Tests or pre-construction work and will coordinate the scheduling of same with Lessor. If Lessee determines that the Premises are unsuitable for Lessee's contemplated use, then Lessee will notify Lessor and this Lease will terminate.

(b) Lessee has the right to construct, maintain, install, repair and operate on the Premises radio communications facilities, including but not limited to, radio frequency transmitting and receiving equipment, batteries, utility lines, transmission lines, radio frequency transmitting and receiving antennae and supporting structures and improvements ("Lessee's Facilities"). In connection therewith, Lessee has the right to do all work necessary to prepare, add, maintain and alter the Premises for Lessee's communications operations and to install utility lines and transmission lines connecting antennas to transmitters and receivers. All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Title to Lessee's Facilities and any equipment placed on the Premises by Lessee shall be held by Lessee or its equipment lessors or assigns. Lessee's Facilities shall not be considered fixtures. Lessee has the right to remove any or all of Lessee's Facilities at its sole expense on or before the expiration or termination of this Lease. Lessee will make the improvements and follow the procedures set forth in Exhibit B1 to this Agreement.

(c) Lessor shall provide Lessee, Lessee's employees, agents, contractors, subcontractors and assigns with access to the Premises twenty-four (24) hours a day, seven (7) days a week, at no charge to Lessee. Lessor represents and warrants that it has full rights of ingress to and egress from the Premises, and hereby grants such rights to Lessee to the extent required to construct, maintain, install and operate Lessee's Facilities on the Premises, and to remove them therefrom. Lessee's exercise of such rights shall not cause undue inconvenience to Lessor.

(d) Lessor shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow reasonable access. Lessor shall be responsible for maintaining and repairing such roadways, at its sole expense, except for any damage caused by Lessee's use of such roadways. If Lessee causes any such damage, it shall promptly repair same.

(e) Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on or near the Premises (including, but not limited to the installation of emergency back-up power). Subject to Lessor's approval of the location, which approval shall not be unreasonably withheld, Lessee shall have the right to place utilities on (or to bring utilities across) Lessor's Property in order to service the Premises and Lessee's Facilities. Upon Lessee's request, Lessor shall execute recordable easement(s) evidencing this right.

(f) Lessee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Lessee's Facilities.

(g) Upon the expiration, cancellation or termination of this Lease, Lessee shall surrender the Premises to Lessor in good condition, less ordinary wear and tear.

7. Interference with Communications.

(a) Lessor acknowledges and agrees that it will not permit the installation of any additional antennas or equipment on the property, if such installation or relocation would adversely affect Lessee's space on the property or Lessee's operation, use or enjoyment of its Lessee Facilities, taking into account customary and commercially reasonable practices for multi-tenant wireless communication sites and towers thereon

(b) Lessor shall not, and shall not permit any licensee, tenant, subtenant or other user of the property for wireless communications purposes (collectively, other than Tenant, "Other Tenants") to, (i) install or change, alter or improve the frequency, power, or type of any communications equipment that interferes with the operation of Lessee's Facilities or is not authorized by, or violates, applicable Laws or is not made or installed in accordance with good engineering practices, or (ii) implement a configuration which interferes with the operation of Lessee's Facilities.

(c) In the event of any interference occurring at the property as a result of any actions of Lessor or any Other Tenants described in Section 7(b) above, Lessor shall be responsible for coordinating and resolving any such interference problems caused by Lessor or such Other Tenants, including, without limitation, using its best efforts to correct and eliminate the interference within forty-eight (48) hours of receipt of notification from Lessee and, if appropriate, performing an interference study in accordance with industry-standard procedures and practices. If the interference cannot be corrected or eliminated within such 48-hour period, Lessor shall cause, at Lessor's option, any of Lessor's or its Other Tenants' communications equipment that interferes with the operation of Lessee's Facilities or Lessee's authorized frequency spectrum or signal strength, to be immediately powered down or turned off, with the right to turn such interfering equipment back up or on only during off-peak hours specified by Lessee in order to determine whether such interference continues or has been eliminated; provided, however, that if any interference continues at the time the interfering equipment is powered down, the communications equipment that interferes with the operation of Lessee's Facilities shall be turned off. If Lessor or any such Other Tenant cannot correct or eliminate, to the satisfaction of Lessee, such interference within twenty (20) days of receipt of written notice from Lessee, Lessor shall or shall cause such Other Tenant to cease the operations of the objectionable communications equipment and to stop providing services from the property until the interference problems are resolved. In no event will Lessor be liable for any consequential damages (including, without limitation, lost profits) arising from any such interference.

(d) Lessee shall not (i) install or change, alter or improve the frequency, power, or type of any communications equipment that interferes with the operation of Lessor's or any Other Tenant's communications equipment installed at the property or in the vicinity, or is not authorized by, or violates, applicable Laws or is not made or installed in accordance with good engineering practices, or (ii) implement a configuration which interferes with the operation of Lessor's or any Other Tenant's communications equipment installed at the property or in the vicinity.

(e) In the event of any interference occurring at the property or in the vicinity as a result of any actions of Lessee described in Section 7(d) above, including but not limited to interference with radio, television, telephone or public safety communications, Lessee shall be responsible for coordinating and resolving any such interference problems caused by Lessee, including, without limitation, using its best efforts to correct and eliminate the interference within forty-eight (48) hours of receipt of notification from Lessor. If the interference cannot be corrected or eliminated within such 48-hour period, Lessee shall cause any of Lessee's communications equipment that interferes with the operation of Lessor's or any Other Tenant's communications equipment or their authorized frequency spectrum or signal strength, to be immediately powered down or turned off, with the right to turn such interfering equipment back up or on only during off-peak hours specified by Lessor in order to determine whether such interference continues or has been eliminated; provided, however, that if any interference continues at the time the interfering equipment is powered down, the communications equipment that interferes with the operation of Lessor's or any Other Tenant's communications equipment shall be turned off. If Lessee cannot correct or eliminate, to the satisfaction of Lessor, such interference within twenty (20) days of receipt of written notice from Lessor, Lessee shall cease the operations of the objectionable communications equipment and stop providing services from its Facilities until the interference problems are resolved. In no event will Lessee be liable for any consequential damages (including, without limitation, lost profits) arising from any such interference.

8. Taxes.

(a) Lessee shall pay all personal property taxes assessed against Lessee's Facilities and shall pay, if applicable, the leasehold tax levied by Chapter 82.29A RCW.

(b) Lessor shall pay all real property taxes and all other taxes, fees and assessments attributable to the Premises or this Lease.

9. Termination.

(a) This Lease, in addition to any other remedies which may be pursued in law or in equity, may be terminated by either party upon a material default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default. This Lease may be terminated by Lessee without further liability for any reason or for no reason, provided Lessee delivers written notice of termination to Lessor prior to the Commencement Date.

(b) This Lease may also be terminated by Lessee without further liability on thirty (30) days prior written notice (i) if Lessee is unable to reasonably obtain or maintain any certificate, license, permit, authority or approval from any governmental authority, thus, restricting Lessee from installing, removing, replacing, maintaining or operating Lessee's Facilities or using the Premises in the manner described in Paragraph 2 above; or (ii) if Lessee determines that the Premises are not appropriate for its operations for environmental reasons.

(c) This Lease may be terminated by Lessee upon thirty (30) days written notice for economic or technological reasons, including without limitation, signal strength, coverage or interference, so long as Lessee pays Lessor a termination fee equal to six (6) months Rent, at the then current rate.

10. Redevelopment. Subject to the other provisions of this Lease, in the event Lessor desires to redevelop, modify, remodel or in any way alter its property and any improvements thereon ("Redevelopment"), Lessor shall in good faith use its best effort to fully accommodate Lessee's continuing use of the Premises. Should any proposed Redevelopment necessitate the relocation of the Premises or Lessee's Facilities, and/or any alterations to Lessee's Facilities (subject to Lessee's prior written consent, which consent may be withheld in Lessee's discretion), Lessee shall relocate or make the necessary alterations, at Lessor's sole cost, expense and risk; provided however, that Lessor has provided Lessee with no less than one year prior written notice of Lessor's proposed Redevelopment. Upon demand from Lessee, Lessor shall reimburse Lessee for any costs or expenses arising out of, or associated with, such relocation or alteration. Lessor shall only be entitled to relocate Lessee's Facilities as set forth above following the expiration of the second (2nd) renewal term. Lessor shall not be entitled to relocate Lessee more than one (1) time during the term of this Lease.

11. Destruction of Premises. If the Premises or Lessor's Property is destroyed or damaged so as in Lessee's judgment, to hinder its effective use of Lessor's Property, Lessee may elect to terminate this Lease as of the date of the damage or destruction by so notifying Lessor no more than 30 days following the date of damage or destruction.

12. Condemnation. If a condemning authority takes all or a portion of Lessor's Property, which in Lessee's opinion is sufficient to render the Premises unsuitable for Lessee's use, then Lessee may terminate this Lease as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make a claim against the condemning authority for just compensation (which for Lessee shall include, the value of Lessee's Facilities, moving expenses, prepaid rent, business dislocation expenses, bonus value of the lease and any other amounts recoverable under condemnation law). Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain, shall be treated as a taking by a condemning authority.

13. Indemnification.

(a) Lessee agrees to indemnify, defend and hold Lessor harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly out of the installation, use, maintenance, repair or removal of the Communication Facility or Lessee's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Lessor, its employees, agents or independent contractors.

(b) Lessor agrees to indemnify, defend and hold Lessee harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly out of the actions or failure to act of Lessor or its employees or agents, or Lessor's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Lessee, its employees, agents or independent contractors

14. Insurance. Lessee shall maintain the following insurance: (1) Commercial General Liability with limits of $5,000,000.00 per occurrence, covering Lessee's use, occupancy and operations on the Premises; (2) Automobile Liability with a combined single limit of $1,000,000.00 per accident; (3) Workers Compensation as required by law; and (4) Employer's Liability with limits of $1,000,000.00 per occurrence. Each party to this Lease shall each maintain standard form property insurance ("All Risk" coverage) equal to at least 90% of the replacement cost covering their respective property. Each party waives any rights of recovery against the other for damages or loss due to hazards covered by their property insurance and each party shall require such insurance policies to contain a waiver of recovery against the other. Lessee shall name Lessor as an additional insured with respect to the above Commercial General Liability insurance. Lessee shall have the right to self-insure with respect to any of the above insurance.

15. Assignment/Sublease/Additional Users.

(a) Lessee may assign or sublet this Lease at any time to any of Lessee's partners or affiliates. Any other assignment or sublease requires Lessor's prior written approval.

(b) Approval by Lessor of an assignment or sublease shall not be unreasonably withheld, however it shall not be deemed unreasonable for Lessor to refuse to consent to an assignment or sublease without reasonable additional compensation to Lessor for additional users of the premises and/or facilities.

(c) Lessee shall, to the extent technology and space permit and to the extent that it does not interfere with Lessee's operations or other rights herein, make the facility available for joint use by existing or future users of the property, including Lessor or other lessees of Lessor. Lessee shall be permitted to charge reasonable value to any joint user, other than Lessor, for use of Lessee's facilities or structures

16. Title and Quiet Enjoyment.

(a) Lessor represents and warrants that it has full right, power, and authority to execute this Lease. Lessor further warrants that Lessee shall have quiet enjoyment of the Premises during the Term of this Lease or any Renewal Term. Lessor hereby represents and warrants that it has obtained all necessary approvals and consents, and has taken all necessary action to enable Lessor to enter into this Lease and allow Lessee to install and operate Lessee's Facilities on the Premises, including without limitation, approvals and consents as may be necessary from other tenants, licensees and occupants of Lessor's Property.

(b) Lessee has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If, in the opinion of Lessee, such title report shows any defects of title or any liens or encumbrances which may adversely affect Lessee's use of the Premises, Lessee shall have the right to terminate this Lease immediately upon written notice to Lessor.

17. Repairs/Removal/Restoration.

(a) All portions of the Communication Facility brought onto the property by Lessee will be and remain Lessee's personal property and Lessee shall properly maintain and repair all of its property in a timely and workmanlike manner, however, the light standard structure will become property of Lessor upon completion of construction of the Communication Facility, Lessee shall be responsible for maintenance of the light standard structure. Lessor's lighting equipment and associated wiring and cables shall be maintained by Lessor.

(b) Lessee shall not be required to make any repairs to the Premises except for damages to the Premises caused by Lessee, its employees, agents, contractors or subcontractors

(c) Within sixty (60) days of the termination of this Agreement, Lessee will remove all Lessee improvements, with the exception of the light standard structure, and will restore the property to its original conditions, less ordinary wear and tear.

18. Environmental. Lessor represents that the Premises have not been used for the generation, storage, treatment or disposal of hazardous materials, hazardous substances or hazardous wastes. In addition, Lessor represents that no hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof) or underground storage tanks are located on or near the Premises. Notwithstanding any other provision of this Lease, Lessee relies upon the representations stated herein as a material inducement for entering into this Lease.

19. Mediation/Arbitration.

(a) If a dispute, other than a disagreement regarding "market rent," arises from or relates to this Agreement or the breach thereof, and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's 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 Contract 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.

(b) Any dispute regarding "market rent" for the premises shall be resolved in accordance with Section 5 (b), above.

20. Miscellaneous.

(a) Notices shall be in writing and shall be delivered to:

Lessee:	with a copy to:	and with a copy to:
Cingular Wireless Lease Administration	Counsel - West Region	Cingular Wireless
6100 Atlantic Boulevard	Cingular Wireless	2445 – 140th Avenue NE
1st Floor	3345 Michelson Drive	Suite 202
Mail Code: GAN02	Suite 100	Bellevue, WA 98005
Norcross, GA 30071	Irvine, CA 92612	Attn: Property Manager

and to Lessor, Attn: City Manager, to the address given at the beginning of this Lease, or to the address specified in the most recent written notice of any change in address. Delivery of notices shall be made by hand, U.S. mail return receipt requested or reliable overnight courier.

(b) If Lessee is to pay Rent to a payee other than the Lessor, Lessor shall notify Lessee in advance in writing of the payee's name and address.

(c) The substantially prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

(d) Subordination. Lessor shall obtain for the benefit of LESSEE a commercially reasonable subordination, non-disturbance and attornment agreement (a "Non-Disturbance Agreement") from each holder of a mortgage, deed of trust, deed to secure debt or other similar instrument now or hereafter encumbering the Leased Property (a "Mortgage"), confirming that Lessee's right to quiet possession of the Leased Property during the term of this Agreement (including any extensions thereof) shall not be disturbed as long as LESSEE is not in default hereunder. No such subordination shall be effective unless the holder of such Mortgage shall, either in the Mortgage itself or in a separate agreement with LESSEE, agree that in the event of a foreclosure, or conveyance in lieu of foreclosure, of Lessor's interest in the Leased Property, such holder shall recognize and confirm the validity and existence of this Agreement and the rights of Lessee hereunder, and this Agreement shall continue in full force and effect and Lessee shall have the right to continue its use and occupancy of the Leased Property in accordance with the provisions of this Agreement as long as Lessee is not in default of this Agreement beyond applicable notice and cure periods. Lessee shall execute in a timely manner whatever instruments may reasonably be required to evidence the provisions of this paragraph. In the event the Leased Property is encumbered by one or more Mortgages on the Commencement Date, Lessor, no later than thirty (30) days after the Commencement Date, shall obtain and furnish to Lessee a Non-Disturbance Agreement in recordable form from the holder of each such Mortgage.

(e) If any provision of the Lease is invalid or unenforceable with respect to any party, the remainder of this Lease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

(f) Terms and conditions of this Lease, which by their sense and context survive the termination, cancellation or expiration of this Lease, will so survive.

(g) This Lease shall be governed under Washington law, and be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(h) Upon request, either party may require that a Memorandum of Lease attached as Exhibit C be recorded confirming the (i) Lease commencement, (ii) expiration date of the Term, and (iii) the duration of any Renewal Terms.

(i) This Lease constitutes the entire Lease between the parties, and supersedes all understandings, offers, negotiations and other leases concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments, modifications or waivers of any of the terms and conditions of this Lease must be in writing and executed by both parties.

IN WITNESS WHEREOF, the parties have entered into this Lease effective as of the date first above written.

LESSOR:	**LESSEE:**
CITY OF DES MOINES, a Washington Municipal Corporation	**PACIFIC BELL WIRELESS NORTHWEST, LLC,** a Delaware limited liability company, d/b/a CINGULAR WIRELESS
By: ______________________	By: ______________________
Anthony Piasecki, City Manager City of Des Moines	E. Don MacLeod Seattle Network Director

LESSOR'S ACKNOWLEDMENT:

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that **Anthony Piasecki** is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the City Manager of the **City of Des Moines**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: ______________________________.

Notary Seal

____
(Signature of Notary)

____
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: ____________________

CINGULAR'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that **E. Don MacLeod** is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Seattle Network Director of **Cingular Wireless**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: ______________________________.

Notary Seal

____
(Signature of Notary)

____
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: ________________

EXHIBIT A

LEGAL DESCRIPTION OF LESSOR'S PROPERTY

Lessor's Property, situated in the County of King, State of Washington, of which the Premises are a part, is legally described as follows:

Legal Description:
(Type or copy the full legal description from the title report, or check here ☐ and attach survey as Exhibit A, Page 2.)

EXHIBIT B

DESCRIPTION OF PREMISES

The Premises consist of those areas described/shown below and where Lessee's communications antennae, equipment, cables and utilities occupy Lessor's Property. The Premises and the associated utility connections and access, including easements, ingress, egress, dimensions, and locations as described/shown below, are approximate only and may be adjusted or changed by Lessee at the time of construction to reasonably accommodate sound engineering criteria and the physical features of Lessor's Property.

(Insert drawing of Site below, or check here ☐ and attach drawing as Exhibit B, Page 2.)

A final drawing, Site Plan, or copy of a property survey substantially depicting the above will replace this Exhibit "B" when initialed by Lessor.

Notes

1. This Exhibit may be replaced by a land survey or Site Plan of the Premises once it is received by Lessee.
2. Setback of the Premises from the Lessor's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers, mounting positions may vary from what is shown above.
5. Exhibit B1, SCOPE OF WORK, attached and incorporated herein by this reference, is a part of this agreement, however the list of responsibilities included on Exhibit B1 are not exclusive of other responsibilities of the parties hereto as set forth in the Lease Agreement.

EHIBIT B1

SCOPE OF WORK

Cingular Wireless Construction at Des Moines Field House Park

General

A. Per § 3 of the Lease, Tenant is preparing, executing, filing, and complying with all required Governmental Approvals and Regulations.

B. Tenant to clean site daily during construction. At end of each day, site must be left safe and secured.

C. Tenant understands that this is a public facility, and that it must be in service during most, if not all, hours of construction required by this Contract. Tenant to ensure that construction will not interfere with the Americans with Disabilities Act (ADA) accessible entrance.

Scope of Work

A. Tenant to remove existing left field light pole, which will be retained by Landlord to be used at another ball field. Tenant to replace with new left field light pole to new area agreed upon by Tenant and Landlord as depicted in approved Construction Drawings.

B. Daily removal and disposal of all materials, debris and trash generated by this project.

C. One-year guarantee on all work performed by Tenant.

D. Verify location of all underground utilities before commencement of Work. Remove no utilities, unless depicted on approved Construction Drawings. All utilities to run underground. If unexpected conditions arise, stop work and immediately notify Landlord. In all phases of the work, the Tenant, at no additional cost, shall repair all damage caused by the Tenant to any existing utilities.

Landlord Responsibilities

A. Locate all above-ground utilities

B. On-site Landlord observation and construction supervision.

RECORDING REQUESTED BY, AND
WHEN RECORDED, RETURN TO:

CINGULAR WIRELESS LLC
2445 – 140th Ave. NE, Suite 202
Bellevue, WA 98005

MEMORANDUM OF AGREEMENT

Grantor:	CITY OF DES MOINES, a Washington Municipal Corporation
Grantee:	PACIFIC BELL WIRELESS NORTHWEST, LLC, a Delaware limited liability company, d/b/a Cingular Wireless
Legal Description:	______________________ (abbreviated legal)
	Official legal description attached as Exhibit A
Assessor's Tax Parcel ID No.:	
Site Number & Name:	

This Memorandum of Agreement is made by and between CINGULAR WIRELESS LLC, a Delaware limited liability company, on behalf of Pacific Bell Wireless Northwest, LLC, a Delaware limited liability company, d/b/a Cingular Wireless, whose address is 2445 – 140th Avenue, Ave. NE, Suite 202, Bellevue, WA 98005 (hereinafter referred to as "Lessee"), and CITY OF DES MOINES, a Washington Municipal Corporation, whose address is 21630 – 11th Ave S., Des Moines WA 98198 (hereinafter referred to as "Lessor").

RECITALS

WHEREAS, Lessor and Lessee have executed that certain Communication Site Lease Agreement ("Agreement") dated as of ________________________________, 2003, covering certain premises ("Premises") situated on certain real property located in the County of King, State of Washington, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, Lessor and Lessee desire to record notice of the Agreement in the county's official records;

NOW, THEREFORE, in consideration of the foregoing, Lessor and Lessee hereby declare as follows:

1. **Demise**. Lessor has leased Premises to Lessee (together with access rights), and Lessee has hired the Premises from Lessor, subject to the terms, covenants and conditions contained in the Agreement for the purpose of installing, operating and maintaining a radio communications facility and other improvements. All of the foregoing are set forth in the Agreement.

2. **Expiration Date**. The term of the Agreement is scheduled to commence with the issuance of a local building permit and shall expire five (5) years thereafter, subject to Lessee's option to extend the term for five (5) additional terms of five (5) successive years each.

3. **Agreement Controlling**. This Memorandum is solely for the purpose of giving constructive notice of the Agreement. In the event of conflict between the terms of the Agreement and this Memorandum, the terms of the Agreement shall control.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

LESSOR:

CITY OF DES MOINES, a Washington Municipal Corporation

By: ______________________________
Anthony Piasecki
City Manager

____
________________________ (print name)

LESSEE:

PACIFIC BELL WIRELESS NORTHWEST, LLC, a Delaware limited liability company, d/b/a CINGULAR WIRELESS

By: ______________________________
E. Don MacLeod
Seattle Network Director

LESSOR'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
) ss.
COUNTY OF __________)

I certify that I know or have satisfactory evidence that **Anthony Piasecki** is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the City Manager of the **City of Des Moines** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: ______________________________.

Notary Seal

____
(Signature of Notary)

____
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: ______________________

CINGULAR'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that **E. Don MacLeod** is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Seattle Network Director of **Cingular Wireless**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: ______________________________.

Notary Seal

____
(Signature of Notary)

____
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: ______________________

EXHIBIT A
LEGAL DESCRIPTION

Site Number: ___________ **Site Name:** ________

Lessor's Property, situated in the County of _______________, State of Washington, of which the Premises are a part, is legally described as follows:

Legal Description:
(Type or copy the full legal description from the title report, or check here ☐ and attach survey as Exhibit A, Page 2.)

Attachment B

cingular℠ WIRELESS

WFI

DT DES MOINES

1000 S. 220TH STREET
DES MOINES, WASHINGTON 98198

WA-455-01

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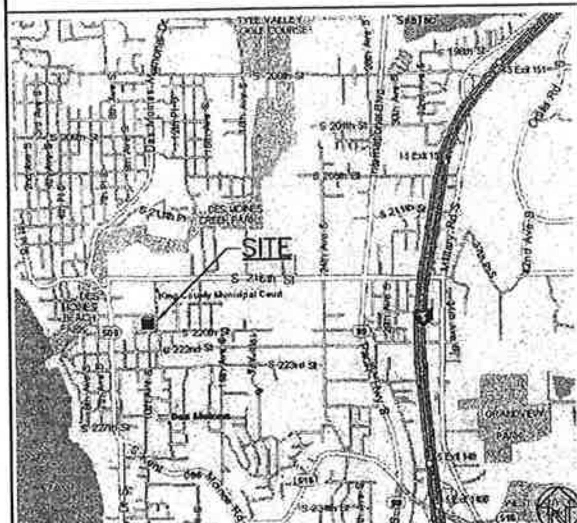
VICINITY MAP



GENERAL LOCATION MAP

DRIVING DIRECTIONS: FROM BELLEVUE, TAKE I-90 TO SEATTLE. PROCEED ON I-5 SOUTH TOWARDS DES MOINES. TAKE HWY 516 EXIT AND PROCEED WEST INTO DES MOINES. 516 WILL HEAD WEST AND THEN HEAD NORTH THROUGH DOWNTOWN. AT THE INTERSECTION WITH SOUTH 219TH STREET, BEAR RIGHT TOWARDS INTERSECTION WITH 11TH AVE SOUTH. PARK WILL BE ON LEFT (SOUTH) SIDE OF 219TH JUST BEFORE INTERSECTION WITH 11TH AVE SOUTH. SITE WILL BE LOCATED AT NE CORNER OF PARK JUST WEST OF THE CONRETE SKATE BOARD PARK.

APPROVAL/SIGN OFF OF PLANNING/ZONING DRAWINGS

CONSULTANT GROUP SIGNOFF	DATE	SIGNATURE	CINGULAR SIGNOFF	DATE	
LANDLORD'S REP			RF ENGINEER		
ZONING			RF ENGINEER MANAGER		
SITE AQUISITION			INTERCONNECT		
CONSTRUCTION COORDINATOR			EQUIPMENT ENGINEER		
			OPERATIONS		
			CONSTRUCTION MANAGER		
			DEPLOYMENT MANAGER		
			A&E COORDINATOR		
			COMPLIANCE		
			SITE ACQUISITION MANAGER		

REVIEWERS SHALL CLEARLY PLACE INITIALS ADJACENT EACH REDLINE NOTE AS DRAWINGS ARE BEING REVIEWED

PROJECT INFORMATION

APPLICANT:
CINGULAR WIRELESS, LLC.
ON BEHALF OF PACIFIC BELL
WIRELESS, NORTHWEST, LLC.
2445 140TH AVE. N.E. SUITE #202
BELLEVUE, WA. 98005
CONTACT: JOE MORFFI

PROJECT ARCHITECT:
W. KNOX FITZPATRICK III,
ARCHITECT & ASSOCIATES
12810 N.E. 178TH ST., SUITE 234
WOODINVILLE, WA. 98072
OFFICE: (425) 415-0746
CONTACT: RICH HALL
MOBILE: (425) 802-1219

STRUCTURAL ENGINEER:
N/A

CODE INFORMATION:

ZONING CLASSIFICATION:	RM2400
BUILDING CODE:	1997 UBC
CONSTRUCTION TYPE:	TELECOMMUNICATIONS FACILITY
OCCUPANCY:	U-2
JURISDICTION:	CITY OF DES MOINES
PROPOSED BUILDING USE:	TELECOMMUNICATIONS

SITE LOCATION: (BASED ON NAD 83)
LATITUDE: 47°24'20" N
LONGITUDE: 122°19'16" W
TOP OF STRUCTURE AGL: 93'
BASE OF STRUCTURE AMSL: 160'

PROJECT AREA:
±405 S.F.

GENERAL INFORMATION:
1. PARKING REQUIREMENTS ARE UNCHANGED.
2. TRAFFIC IS UNAFFECTED.
3. SIGNAGE IS PROPOSED.

PROJECT DESCRIPTION:
CINGULAR WIRELESS LLC. PROPOSES TO CONSTRUCT AN UNSTAFFED RADIO TELECOMMUNICATIONS FACILITY CONSISTING OF A THREE-SECTOR ANTENNA ARRAY WITH (1) ANTENNA PER SECTOR, (3 ANTENNAS TOTAL) MOUNTED ON A REPLACEMENT LIGHT STANDARD, WITH RADIO EQUIPMENT ON CONCRETE SLAB-ON-GRADE.

LAND OWNER:
CITY OF DES MOINES
1000 S. 220TH ST.
DES MOINES, WA 98198
CONTACT: PATRICE THORREL
PH: (206) 870-6527

TOWER OWNER:
SAME AS LAND OWNER

PROJECT CONSULTANTS:
WIRELESS FACILITIES INC.
575 ANDOVER PARK WEST
STE. 201 TUKWILA, WA 98188
PH: (206) 574-6331
FAX: (206) 574-6333

TEAM LEAD:
TONY ZARAGOZA
PH: (206) 427-1310

SITE AQUISITION
LIZ CARRASQUERO
PH: (206) 574-6337

ZONING AGENT:
TONY ZARAGOZA
PH: (206) 427-1310

CONSTRUCTION COORDINATOR:
TODD VORHIES
PH: (206) 427-9527

SITE MANAGER
PATRICE THORREL
PH: (206) 870-6527

PARCEL NUMBER(S):
082204903403

AREA OF PARCEL:
±0.18 ACRES

NEW IMPERVIOUS AREA
±405 S.F. LEASE AREA

1-1 T
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GENERAL NOTES

1. DRAWINGS ARE NOT TO BE SCALED, WRITTEN DIMENSIONS TAKE PRECEDENCE. THIS SET OF DOCUMENTS IS INTENDED TO BE USED FOR DIAGRAMMATIC PURPOSES ONLY, UNLESS NOTED OTHERWISE. THE GENERAL CONTRACTOR'S SCOPE OF WORK SHALL INCLUDE FURNISHING ALL MATERIALS, EQUIPMENT, LABOR, AND ANY REQUIREMENTS DEEMED NECESSARY TO COMPLETE INSTALLATION AS DESCRIBED IN THE DRAWINGS AND OWNER'S PROJECT MANUAL.

2. DRAWINGS WERE PREPARED FROM STANDARDIZED DETAILS DEVELOPED AND PROVIDED BY W. KNOX FITZPATRICK III AND ASSOCIATES, AND CINGULAR WIRELESS, LLC.. STANDARDIZED DETAILS ARE TO BE CONFIRMED AND CORRELATED AT THE SITE BY THE CONTRACTOR. THE CONTRACTOR IS RESPONSIBLE FOR ALL DIMENSIONS. STANDARDIZED DETAILS THAT REQUIRE MODIFICATIONS DUE TO ACTUAL FIELD CONDITIONS AND REQUIREMENTS MUST BE SUBMITTED TO, AND APPROVED BY, CINGULAR WIRELESS, LLC. PRIOR TO START OF WORK.

3. PRIOR TO THE SUBMISSION OF BIDS, CONTRACTORS INVOLVED SHALL VISIT THE JOB SITE TO FAMILIARIZE THEMSELVES WITH ALL CONDITIONS AFFECTING THE PROPOSED PROJECT. CONTRACTORS SHALL VISIT THE CONSTRUCTION SITE WITH THE CONSTRUCTION/CONTRACT DOCUMENTS TO VERIFY FIELD CONDITIONS AND CONFIRM THAT THE PROJECT WILL BE ACCOMPLISHED AS SHOWN. PRIOR TO PROCEEDING WITH CONSTRUCTION, ANY ERRORS, OMISSIONS, OR DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT/ENGINEER VERBALLY AND IN WRITING.

4. THE GENERAL CONTRACTOR SHALL RECEIVE WRITTEN AUTHORIZATION TO PROCEED WITH CONSTRUCTION PRIOR TO STARTING WORK ON ANY ITEM NOT CLEARLY DEFINED BY THE CONSTRUCTION DRAWINGS/CONTRACT DOCUMENTS.

5. THE CONTRACTOR SHALL SUPERVISE AND DIRECT THE PROJECT DESCRIBED IN THE CONTRACT DOCUMENTS. THE CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR ALL CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES, AND PROCEDURES FOR COORDINATING ALL PORTIONS OF THE WORK UNDER THE CONTRACT.

6. THE CONTRACTOR SHALL INSTALL ALL EQUIPMENT AND MATERIALS ACCORDING TO MANUFACTURER'S/VENDOR'S SPECIFICATIONS UNLESS NOTED OTHERWISE OR WHERE LOCAL CODES OR ORDINANCES TAKE PRECEDENCE.

7. ALL WORK PERFORMED ON THE PROJECT AND MATERIALS INSTALLED SHALL BE IN STRICT ACCORDANCE WITH ALL APPLICABLE CODES, REGULATIONS, AND ORDINANCES. CONTRACTOR SHALL GIVE ALL NOTICES AND COMPLY WITH ALL LAWS, ORDINANCES, RULES, REGULATIONS AND LAWFUL ORDERS OF ANY PUBLIC AUTHORITY, MUNICIPAL AND UTILITY COMPANY SPECIFICATIONS, AND LOCAL AND STATE JURISDICTIONAL CODES BEARING ON THE PERFORMANCE OF THE WORK.

8. GENERAL CONTRACTOR SHALL PROVIDE, AT THE PROJECT SITE, A FULL SET OF CONSTRUCTION DOCUMENTS UPDATED WITH THE LATEST REVISIONS AND ADDENDA OR CLARIFICATIONS FOR USE BY ALL PERSONNEL INVOLVED WITH THE PROJECT. THIS SET IS A VALID CONTRACT DOCUMENT ONLY IF THE TITLE SHEET IS STAMPED "FOR CONSTRUCTION" AND EACH SUCCESSIVE SHEET BEARS THE ARCHITECT'S SIGNED WET STAMP.

9. THE STRUCTURAL COMPONENTS OF ADJACENT CONSTRUCTION OR FACILITIES ARE NOT TO BE ALTERED BY THIS CONSTRUCTION PROJECT UNLESS NOTED OTHERWISE.

10. SEAL ALL PENETRATIONS THROUGH FIRE-RATED AREAS WITH U.L. LISTED OR FIRE MARSHALL APPROVED MATERIALS IF APPLICABLE TO THIS FACILITY AND OR PROJECT SITE.

11. CONTRACTOR TO PROVIDE A PORTABLE FIRE EXTINGUISHER WITH A RATING OF NOT LESS THAN 2-A OR 2-A10BC WITHIN 75 FEET TRAVEL DISTANCE TO ALL PORTIONS OF PROJECT AREA DURING CONSTRUCTION.

12. CONTRACTOR SHALL MAKE NECESSARY PROVISIONS TO PROTECT EXISTING IMPROVEMENTS, EASEMENTS, PAVING, CURBING, ETC. DURING CONSTRUCTION. UPON COMPLETION OF WORK, CONTRACTOR SHALL REPAIR ANY DAMAGE THAT MAY HAVE OCCURRED DUE TO CONSTRUCTION ON OR ABOUT THE PROPERTY.

13. CONTRACTOR SHALL KEEP GENERAL WORK AREA CLEAN AND HAZARD FREE DURING CONSTRUCTION AND DISPOSE OF ALL DIRT, DEBRIS, AND RUBBISH. CONTRACTOR SHALL REMOVE EQUIPMENT NOT SPECIFIED AS REMAINING ON THE PROPERTY OR PREMISES. SITE SHALL BE LEFT IN CLEAN CONDITION AND FREE FROM PAINT SPOTS, DUST, OR SMUDGES OF ANY NATURE.

14. THE ARCHITECTS/ENGINEERS HAVE MADE EVERY EFFORT TO SET FORTH IN THE CONSTRUCTION AND CONTRACT DOCUMENTS THE COMPLETE SCOPE OF WORK. CONTRACTORS BIDDING THE JOB ARE NEVERTHELESS CAUTIONED THAT MINOR OMISSIONS OR ERRORS IN THE DRAWINGS AND OR SPECIFICATIONS SHALL NOT EXCUSE SAID CONTRACTOR FROM COMPLETING THE PROJECT AND IMPROVEMENTS IN ACCORDANCE WITH THE INTENT OF THESE DOCUMENTS. THE BIDDER SHALL BEAR THE RESPONSIBILITY OF NOTIFYING (IN WRITING) THE ARCHITECT/ENGINEER OF ANY CONFLICTS, ERRORS, OR OMISSIONS PRIOR TO SUBMISSION OF CONTRACTOR'S PROPOSAL. IN THE EVENT OF DISCREPANCIES THE CONTRACTOR SHALL PRICE THE MORE COSTLY OR EXTENSIVE WORK, UNLESS DIRECTED OTHERWISE.

15. THE CONTRACTOR SHALL PERFORM WORK DURING OWNER'S PREFERRED HOURS TO AVOID DISTURBING NORMAL BUSINESS.

16. THE CONTRACTOR SHALL PROVIDE CINGULAR WIRELESS, LLC. PROPER INSURANCE CERTIFICATES NAMING CINGULAR WIRELESS, LLC. AS ADDITIONAL INSURED, AND CINGULAR WIRELESS, LLC. PROOF OF LICENSE(S) AND PE & PD INSURANCE.

17. CONTRACTOR SHALL BE RESPONSIBLE FOR SCHEDULING AND COORDINATING ALL INSPECTIONS.

18. CAUTION! CALL BEFORE YOU DIG! BURIED UTILITIES EXIST IN THE AREA AND UTILITY INFORMATION SHOWN MAY NOT BE COMPLETE. CONTACT THE ONE-CALL UTILITY LOCATE SERVICE A MINIMUM OF 48 HOURS PRIOR TO CONSTRUCTION. 1-800-424-5555

19. CONTRACTOR TO DOCUMENT ALL WORK PERFORMED WITH PHOTOGRAPHS AND SUBMIT TO CINGULAR WIRELESS, LLC. ALONG WITH REDLINED CONSTRUCTION SET.

20. CONTRACTOR TO DOCUMENT ALL CHANGES MADE IN THE FIELD BY MARKING UP (REDLINING) THE APPROVED CONSTRUCTION SET AND SUBMITTING THE REDLINED SET TO CINGULAR WIRELESS, LLC. UPON COMPLETION.

21. FOR COLLOCATION SITES: CONTACT TOWER OWNER REPRESENTATIVE FOR PARTICIPATION IN BID WALK.

22. GENERAL CONTRACTOR IS TO COORDINATE ALL POWER INSTALLATION WITH POWER COMPANY AS REQUIRED. CONTRACTOR TO REPORT POWER INSTALLATION COORDINATION SOLUTION(S) TO NETWORK CARRIER REPRESENTATIVE, PROJECT CONSTRUCTION MANAGER AND ARCHITECT.

23. ANY SUBSTITUTIONS OF MATERIALS AND/OR EQUIPMENT, MUST BE APPROVED BY CINGULAR CONSTRUCTION MANAGER.

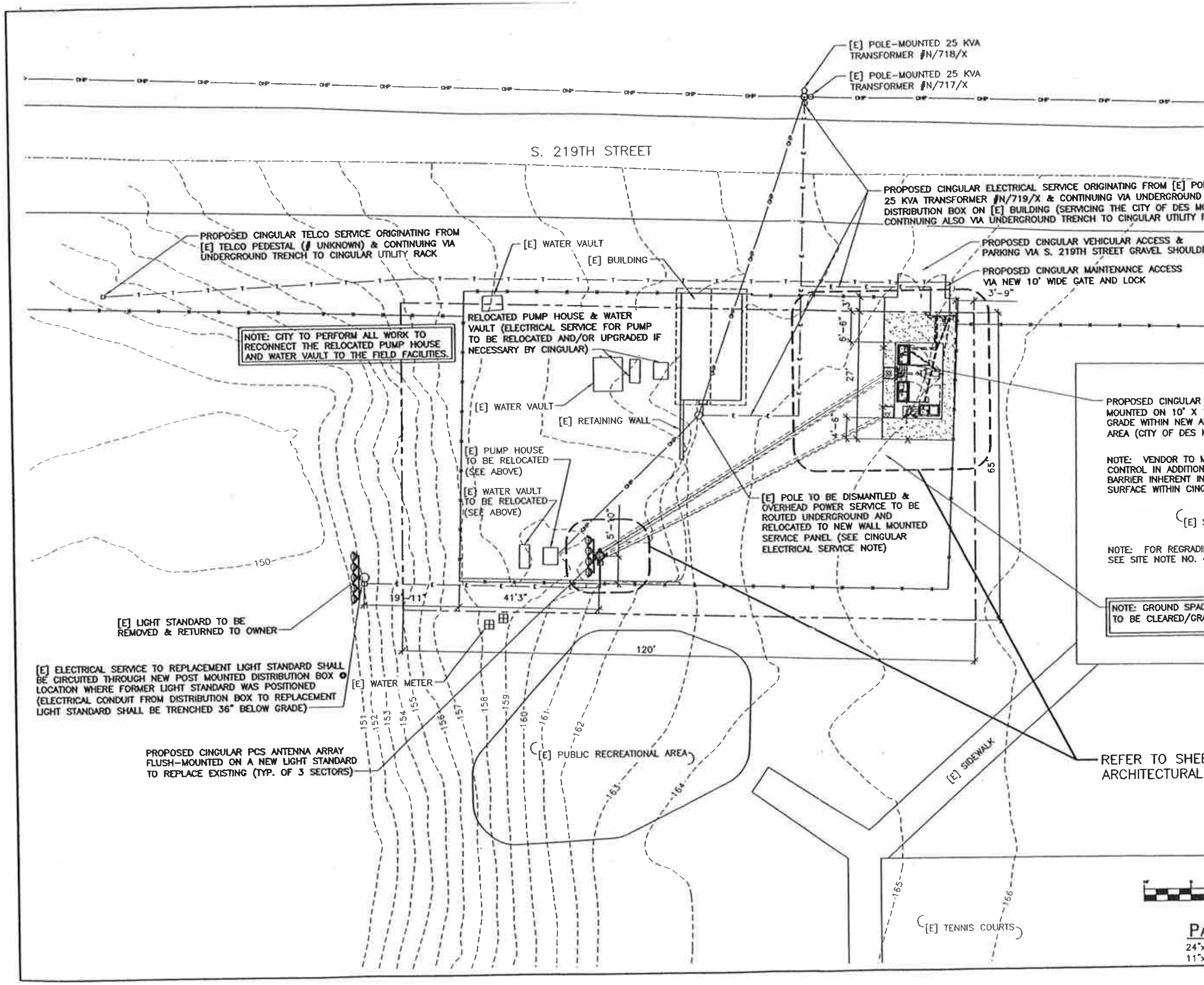
24. IN THE CASE OF ROOFTOP SOLUTIONS FOR EQUIPMENT AND/OR ANTENNA FRAMES WHERE PENETRATION OF EXISTING ROOFING MATERIALS OCCURE, THE GENERAL CONTRACTOR SHALL COORDINATE WITH BUILDING OWNER AND BUILDING ROOFING CONTRACTOR OF RECORD FOR INSTALLATION, PATCH, REPAIR OR ANY AUGMENTATION TO THE ROOF, AND HAVE THE WORK GUARANTEED UNDER ROOFING CONTRACTORS WARRANTY FOR MOISTURE PENETRATION OR AND OTHER FUTURE BREACH OF ROOFING INTEGRITY.

25. IN THE CASE OF ROOFTOP SOLUTIONS WITH THE INSTALLATION OF ANTENNAS WITHIN CONCEALED (SHROUDED) SUPPORT FRAMES OR TRIPODS, THE GENERAL CONTRACTOR SHALL COORDINATE WITH THE FRP DESIGNER/FABRICATOR TO ENSURE THAT THE FINAL FRP SHROUD IS SIMULATING (IN APPEARANCE) DESIGNATED EXISTING EXTERIOR BUILDING FACADE MATERIALS, TEXTURES, AND COLORS. THE CONTRACTOR SHALL FURTHERMORE ENSURE THE USE OF COUNTERSUNK FASTENERS IN ALL FRP CONSTRUCTION. WHEN PHOTOSIMULATIONS ARE PROVIDED, THE CONTRACTOR SHALL ENSURE THAT FINAL CONSTRUCTION REPRESENTS WHAT IS INDICATED IN PHOTOSIMULATION. SHOP DRAWINGS SHALL BE PROVIDED TO THE GENERAL CONTRACTOR, CONSTRUCTION COORDINATOR, AND ARCHITECT PRIOR TO FABRICATION AND CONSTRUCTION.

26. IN THE CASE OF ROOFTOP SOLUTIONS FOR EQUIPMENT AND/OR ANTENNA FRAMES WHERE ANCHORING TO A CONCRETE ROOF SLAB IS REQUIRED, CONTRACTORS SHALL CONFIRM (PRIOR TO SUBMITTING BID) WITH CONSULTING CONSTRUCTION COORDINATOR AND ARCHITECT THE PRESENCE OF POST TENSION TENDONS WITHIN THE ROOF SLAB – RESULTING FROM AN UNDOCUMENTED DESIGN CHANGE IN THE EXISTING BUILDING "AS-BUILT DRAWING SET" – HAVING INDICATED AN ORIGINAL DESIGN SOLUTION OF REINFORCED CONCRETE W/ EMBEDDED STEEL REBAR. IN THE EVENT POST TENSION SLAB SOLUTION IS PRESENT, CONTRACTOR SHALL INCLUDE PROVISIONS FOR X-RAY PROCEDURES (INCLUDED IN BID) FOR ALL PENETRATION AREAS WHERE ANCHORING OCCURS.

SYMBOLS & ABBREVIATIONS

———	POWER & TELCO LINE
—— T ——	TELEPHONE
—— E ——	POWER
——X——	CHAINLINK FENCE
——□——	WOOD FENCE
	ANTENNA
A1	ANTENNA MARK NO.
℄	CENTERLINE
[E]	EXISTING
[N]	NEW
W/	WITH
PBO	PROVIDED BY OWNER
X / X-X	DETAIL NUMBER / SHEET NUMBER
V.I.F.	VERIFY IN FIELD



[E] POLE-MOUNTED 25 KVA TRANSFORMER #N/718/X
[E] POLE-MOUNTED 25 KVA TRANSFORMER #N/717/X
S. 219TH STREET
PROPOSED CINGULAR ELECTRICAL SERVICE ORIGINATING FROM [E] PO 25 KVA TRANSFORMER #N/719/X & CONTINUING VIA UNDERGROUND DISTRIBUTION BOX ON [E] BUILDING (SERVICING THE CITY OF DES M CONTINUING ALSO VIA UNDERGROUND TRENCH TO CINGULAR UTILITY
PROPOSED CINGULAR TELCO SERVICE ORIGINATING FROM [E] TELCO PEDESTAL (# UNKNOWN) & CONTINUING VIA UNDERGROUND TRENCH TO CINGULAR UTILITY RACK
[E] WATER VAULT
[E] BUILDING
PROPOSED CINGULAR VEHICULAR ACCESS & PARKING VIA S. 219TH STREET GRAVEL SHOULD
PROPOSED CINGULAR MAINTENANCE ACCESS VIA NEW 10' WIDE GATE AND LOCK
3'-9"
NOTE: CITY TO PERFORM ALL WORK TO RECONNECT THE RELOCATED PUMP HOUSE AND WATER VAULT TO THE FIELD FACILITIES.
RELOCATED PUMP HOUSE & WATER VAULT (ELECTRICAL SERVICE FOR PUMP TO BE RELOCATED AND/OR UPGRADED IF NECESSARY BY CINGULAR)
[E] WATER VAULT
[E] RETAINING WALL
[E] PUMP HOUSE TO BE RELOCATED (SEE ABOVE)
[E] WATER VAULT TO BE RELOCATED (SEE ABOVE)
[E] POLE TO BE DISMANTLED & OVERHEAD POWER SERVICE TO BE ROUTED UNDERGROUND AND RELOCATED TO NEW WALL MOUNTED SERVICE PANEL (SEE CINGULAR ELECTRICAL SERVICE NOTE)
6'-6"
27'
4'-6"
65'
5'-0"
150
19'
11'
41'3"
120'
[E] LIGHT STANDARD TO BE REMOVED & RETURNED TO OWNER
[E] ELECTRICAL SERVICE TO REPLACEMENT LIGHT STANDARD SHALL BE CIRCUITED THROUGH NEW POST MOUNTED DISTRIBUTION BOX @ LOCATION WHERE FORMER LIGHT STANDARD WAS POSITIONED (ELECTRICAL CONDUIT FROM DISTRIBUTION BOX TO REPLACEMENT LIGHT STANDARD SHALL BE TRENCHED 36" BELOW GRADE)
[E] WATER METER
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166
PROPOSED CINGULAR PCS ANTENNA ARRAY FLUSH-MOUNTED ON A NEW LIGHT STANDARD TO REPLACE EXISTING (TYP. OF 3 SECTORS)
[E] PUBLIC RECREATIONAL AREA
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NOTE: VENDOR TO CONTROL IN ADDITION BARRIER INHERENT IN SURFACE WITHIN CIN
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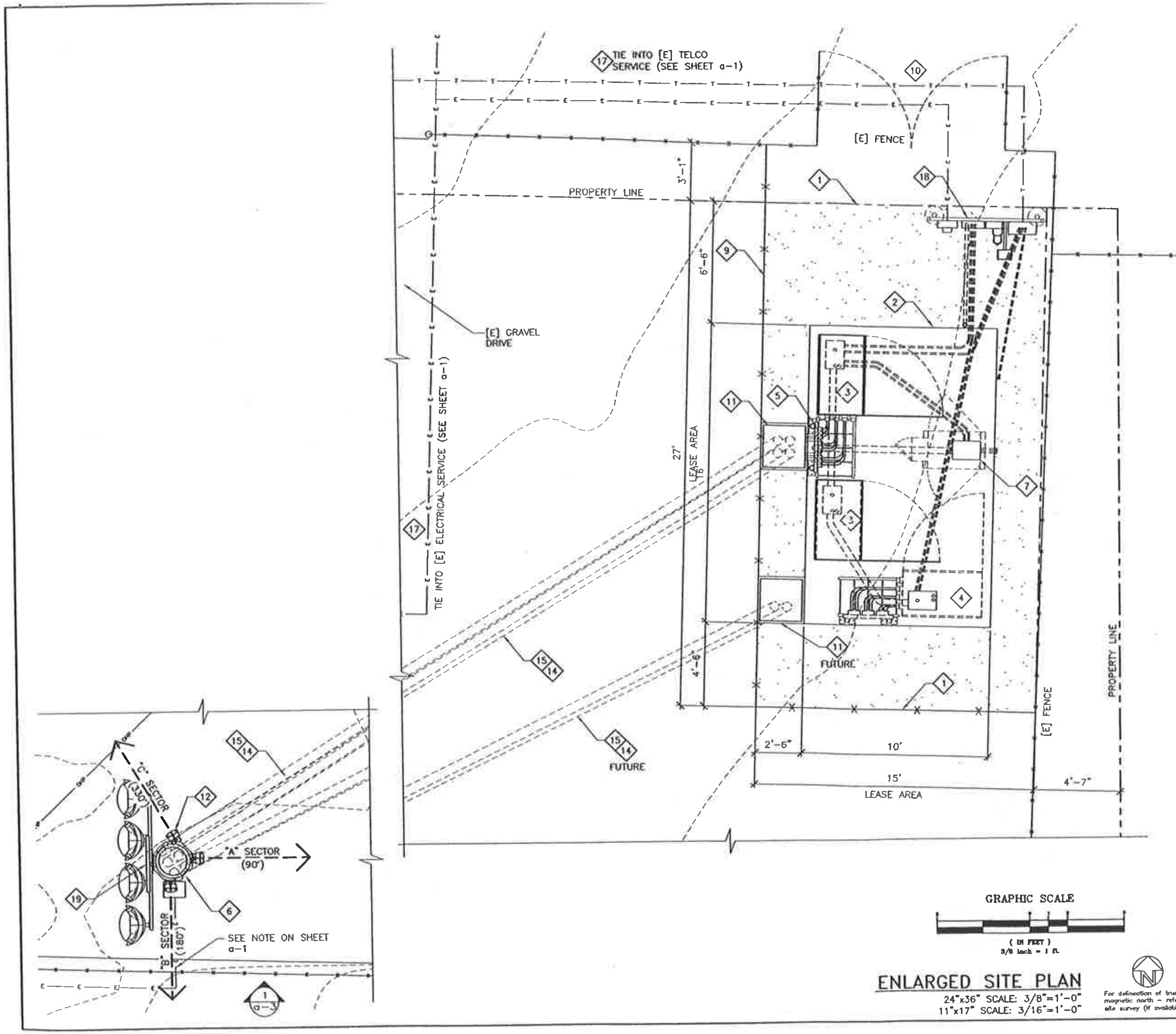

ENLARGED SITE PLAN

24"x36" SCALE: 3/8"=1'-0"
11"x17" SCALE: 3/16"=1'-0"

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17. NEW POWER &
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19. 2'ø FLAT PAN

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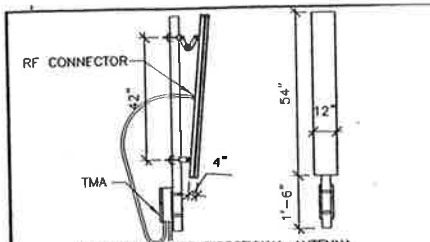
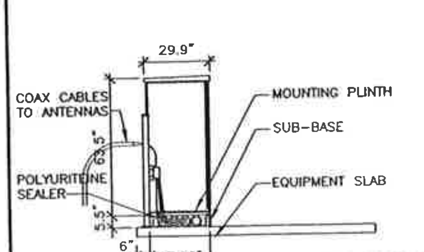
SECTOR "C



FLAT PANEL PCS DIRECTIONAL ANTENNA
FREQUENCY:1850-1990 MHz
WEIGHT: 18 LBS.
WIND SURVIVAL: 150 MPH

ANTENNA DETAIL 5

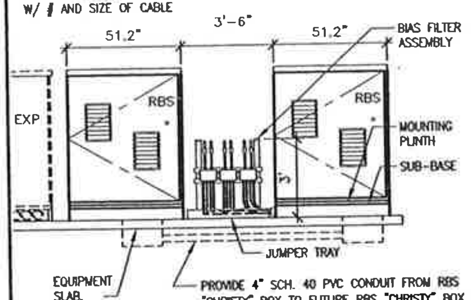
24"x36" SCALE: 1/2"=1'-0"
11"x17" SCALE: 1/4"=1'-0"



EQUIPMENT SIDE ELEVATION 4

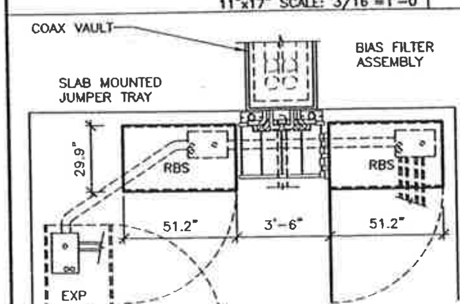
24"x36" SCALE: 3/8"=1'-0"
11"x17" SCALE: 3/16"=1'-0"

NOTE: VERIFY # OF CABLE SUPPORT BLOCKS NEEDED W/ # AND SIZE OF CABLE



EQUIPMENT ELEVATION 3

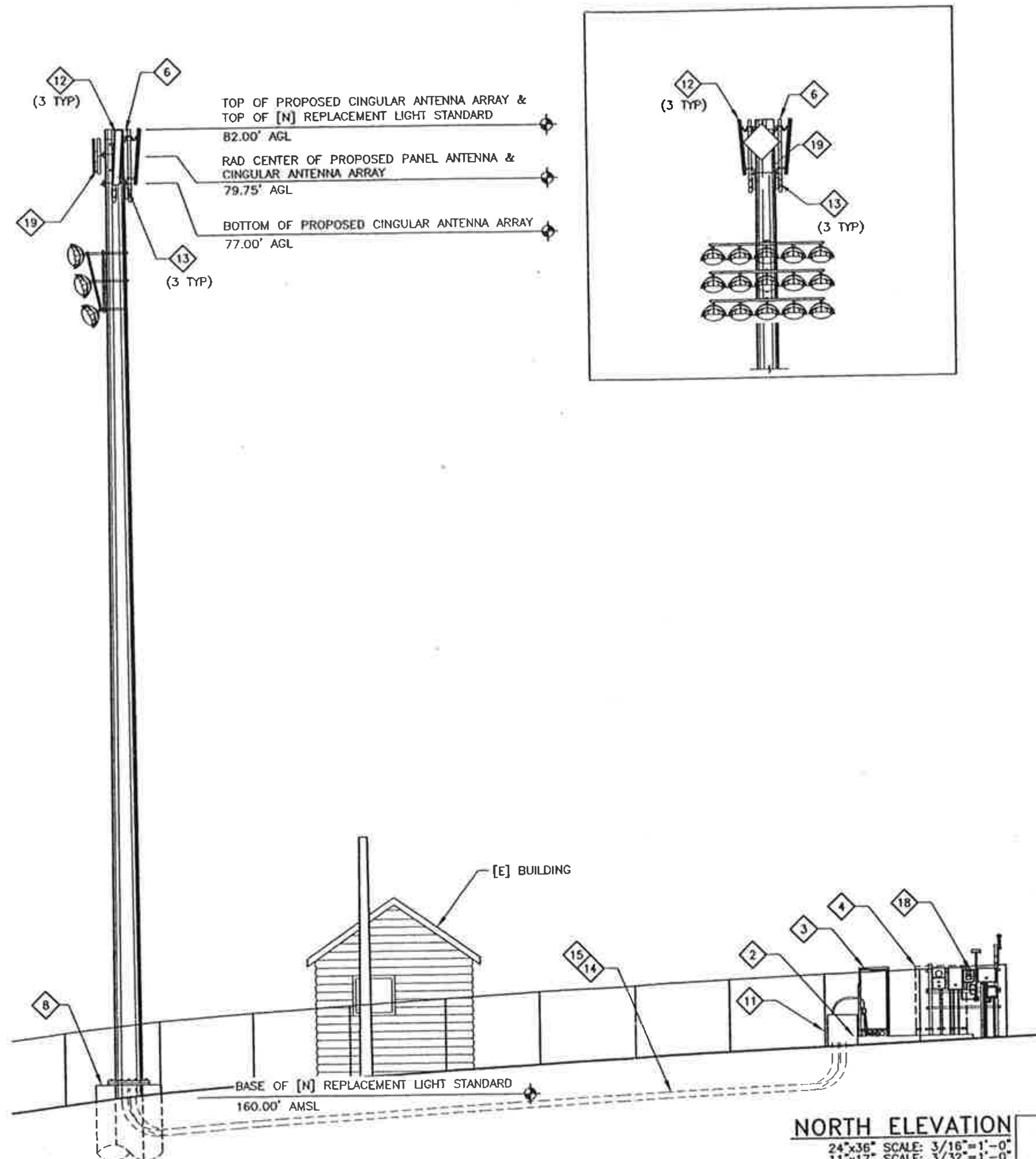
24"x36" SCALE: 3/8"=1'-0"
11"x17" SCALE: 3/16"=1'-0"



APPROX. CABINET WEIGHTS
(MAX. OPERATIONAL)
RBS: 1212 LBS.
EXPANSION: 1212 LBS.

EQUIPMENT PLAN 2

24"x36" SCALE: 3/8"=1'-0"
11"x17" SCALE: 3/16"=1'-0"



NORTH ELEVATION 1

24"x36" SCALE: 3/16"=1'-0"
11"x17" SCALE: 3/32"=1'-0"

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unclassified use permit as provided in chapter 18.32 DMMC;

(b) Secure community transition facilities as defined by RCW 71.09.020, as presently constituted or as may be subsequently amended, may be permitted in the PR-C2 zone when all of the following conditions are satisfied:

(i) All requirements of chapter 71.09 RCW as presently constituted or as may be subsequently amended;

(ii) The city council finds that the application conforms to the equitable distribution goals, objectives, and requirements of chapter 71.09 RCW. If the city council finds that the application raises public safety concerns that outweigh equitable distribution objectives, the city council may assign greater weight to public safety concerns than to equitable distribution;

(iii) All requirements of "Policy Guidelines: The Siting and Operation of Secure Community Transition Facilities" published by the Washington State Department of Social and Health Services as presently constituted or as may be subsequently amended;

(iv) All goals, policies, and strategies of the Greater Des Moines Comprehensive Plan;

(v) All requirements of the Des Moines Municipal Code;

(vi) All requirements of the contract and mitigation agreements authorized by chapter 71.09 RCW between the city and the Washington State Department of Social and Health Services;

(vii) All conditions of approval deemed necessary by the city council and allowed by law to mitigate potential adverse impacts and to preserve public health, safety and welfare. If the city council finds that potential adverse impacts cannot be mitigated, the city council may deny the permit;

(14) Unless authorized by other provisions of Title 18 DMMC, essential public facilities as defined by RCW 36.70A.200, as presently constituted or as may subsequently be amended. [Ord. 1306 § 1, 2002: Ord. 1267 § 3, 2000: Ord. 1237 §§ 2, 3, 1999; Ord. 1199 § 3, 1997: Ord. 1170 § 5, 1996; Ord. 1140 § 6, 1995; Ord. 1104 § 16, 1994; Ord. 693 §§ 3, 4, 1987; Ord. 674 § 1, 1986; Ord. 645 § 1, 1985; Ord. 617 § 2, 1985; Ord. 588 § 1, 1984; Ord. 575 § 1, 1983; Ord. 527 § 1, 1981; Ord. 175 § 1(24.44.020), 1964.]

18.32.030 Uses requiring conditional use permit.

The following uses may locate subject to the issuance of a conditional use permit processed as provided in the hearing examiner code:

(1) Cemeteries; provided:

(a) No building shall be located closer than 100 feet from a boundary line;

(b) A protective fence and a landscaped strip of evergreen trees and shrubs at least 10 feet in width shall be installed on all common boundary lines with residential zoned property;

(2) Columbariums, crematories, and mausoleums; provided, these uses are specifically excluded from all residential zones unless inside a cemetery;

(3) Commercial establishments or enterprises involving large assemblages of people or automobiles as follows; provided, these uses are specifically excluded from all residential zones:

(a) Amusement parks;

(b) Boxing and wrestling arenas;

(c) Ballparks;

(d) Fairgrounds and rodeos;

(e) Golf driving ranges;

(f) Labor camps (transient);

(g) Open-air theaters;

(h) Race tracks, drag strips, motorcycle hills, and Go-Kart tracks;

(i) Stadiums;

(4) Fire stations and public works maintenance and storage facility buildings when located in any residential zone; provided, the following conditions shall be conformed to:

(a) All buildings and structures shall maintain a distance of not less than 20 feet from any property line that is a common property line with residential zoned property; and

(b) A building from which firefighting equipment emerges onto a street shall maintain a distance of 35 feet from such street.

(5) Hospitals, mental and alcoholic; provided, they are specifically excluded from all single-family residential, RA, RM-2,400 and RM-1,800 zones;

(6) Institutions for training of religious orders;

(7) Antenna systems which:

(a) Are not within the limitation of DMMC 18.08.020(2)(h) or DMMC 18.20.020(8); or

(b) Consist of parabolic antennas such as microwave dishes; or

(c) Consist of broadcasting or communication stations which transmit electromagnetic radiation;

(8) Recreational areas, commercial, including yacht clubs, beach clubs, tennis clubs, parks, ski areas, marinas, and similar activities;

(9) Universities and colleges, including dormitories and fraternity and sorority houses when on campus;

(10) Fraternal societies as approved by the planning agency when located in an single-family residential zone;

(11) Day day carecare centers, but excluding family day care providers subject to the following minimum conditions:

(a) A play yard or equipment yard shall not be located in any required side or front yard;

(b) All buildings and structures on the lot shall maintain a distance of not less than 20 feet from any property line that is common property line with single-family residential property. If a greater setback is specified in a particular zone then the setback requirements of the particular zone shall prevail over the minimum setback set forth in this subsection;

(c) No day care center shall be located within 150 feet of a highway commercial zone;

(d) State licensing standards for such facilities, chapter 388-73 WAC, shall be met;

(e) Such uses shall comply with the parking code requirements of chapter 18.44 DMMC.

(12) Telecommunication facilities as described in the provisions of Title 20 DMMC. [Ord. 1237 § 4, 1999; Ord. 1200 § 123, 1997: Ord. 1197 § 27, 1997; Ord. 1106 § 7, 1994: Ord. 793 § 4, 1989; Ord. 445 § 5, 1978; Ord. 391 § 1, 1976; Ord. 248 § 8, 1969; Ord. 175 §§ 1(24.44.030), 28, 1964.]

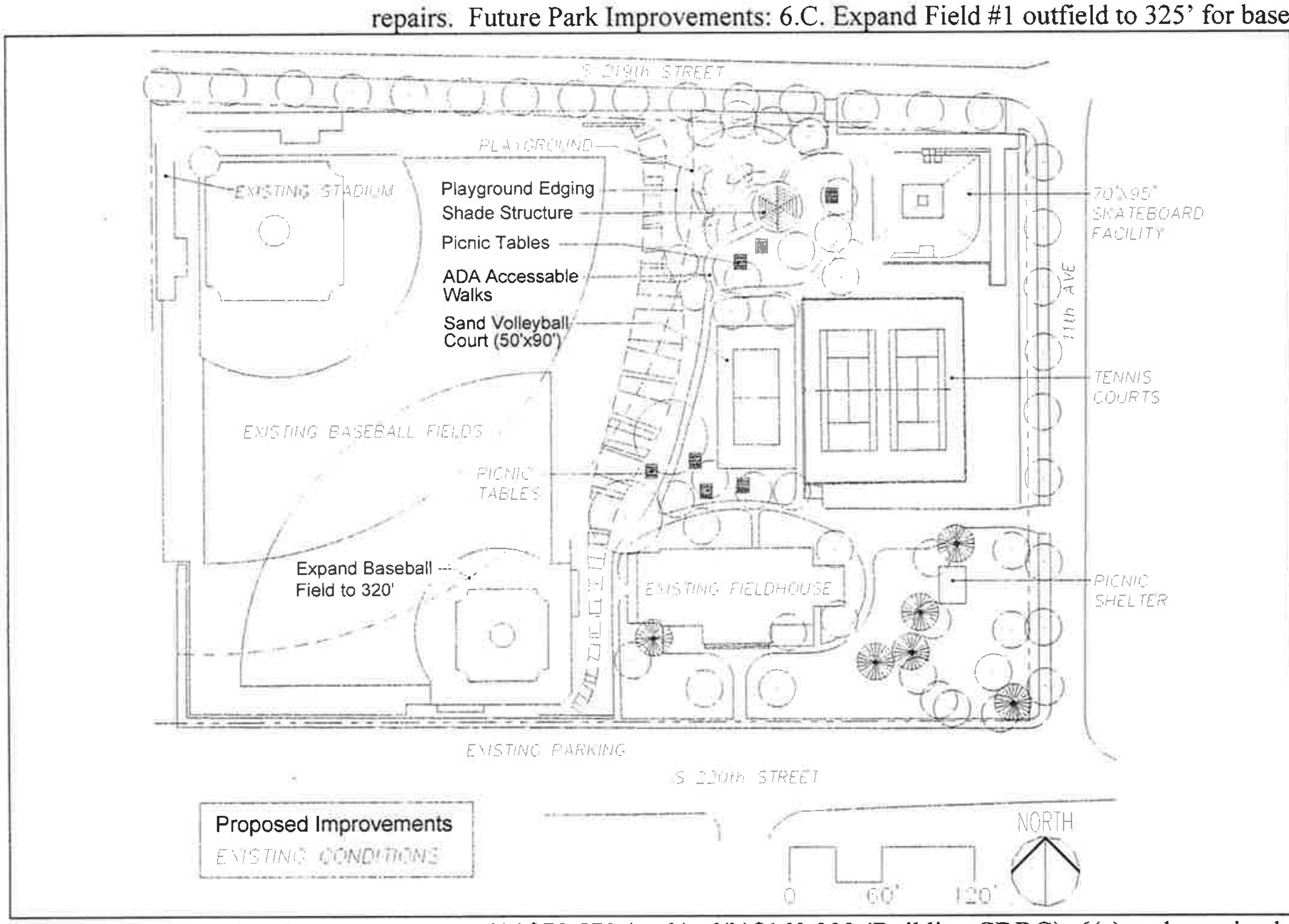
18.32.040 Yard requirements.

The requirements for front and side yards and open spaces applicable to the particular zone in which any such use is proposed to be located shall prevail, unless in the findings and conditions recited in the action dealing with each such matter, specific additions are made with respect thereto. [Ord. 175 § 1(24.44.040), 1964.]

Des Moines Parks, Recreation and Senior Services Master Plan

Des Moines Field House Park

Address:	1000 South 220th Street
Size:	5.2 acres
Zoning:	Residential; Suburban Estates
Park Classification:	Community Park
Description:	The Des Moines Field House is the only city-owned indoor activity facility/gymnasium. The WPA-built log field house has been designated a King County Historic Landmark. The City of Des Moines Park and Recreation Department administrative offices are located in the Field House.
Goal:	Community recreation
Existing Facilities:	Historic features: Field House (indoor gym, community rooms and offices), softball stadium and picnic shelter. Other park amenities include: play equipment, skateboard facility, picnic tables. Proposed Park Improvements: 6.A. volleyball court, shade structure, play equipment improvements, and ADA access and pathway improvements. 6.B. Field House interior improvements funded with Community Development Block Grant Funds: Electrical and mechanical upgrades, doors and door hardware and drainage repairs. Future Park Improvements: 6.C. Expand Field #1 outfield to 325' for baseball.



Design & Construction Cost:	6(a)$78,570 (park); 6(b)$160,000 (Building CDBG); 6(c) undetermined
Maintenance Level:	I
Existing Annual Maintenance Cost:	$45,000
Annual Maintenance Cost for Proposed Improvements:	$6,000

Linda ~

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT:
Amendment of Monetary penalties for Civil Infractions

ATTACHMENTS:
Draft Ordinance No 03-192
DMMC 1.24.190

FOR AGENDA OF: July 17, 2003

DEPT. OF ORIGIN: Municipal Court

DATE SUBMITTED: July 7, 2003

CLEARANCES:
[X] Legal (LAM)
[X] Municipal Court

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

PURPOSE AND RECOMMENDED ACTION

The purpose of this agenda item is to request approval of an amendment to DMMC 1.24.190 Monetary Penalty amounts.

The following motion will appear on the Consent Calendar:
"I move to waive Council rule 26 (b) to allow Draft Ordinance 03-192 to be adopted on first reading."
" I move to pass Draft Ordinance No 03-192, amending monetary penalties for civil infractions."

BACKGROUND

A civil infraction is a violation of a state statute or a local municipal ordinance, i.e, failure to stop at a stop sign, no dog license, speeding. When a person is cited for a civil infraction he or she is assessed a fine that includes a base monetary penalty and various "assessments." Assessments are fees that support a variety of programs such as traffic safety education, highway safety, computer replacement for the courts, and judicial education. In 1985, the various assessments were consolidated into one called the Public Safety and Education Assessment (PSEA) equal to sixty (60%) of the total base fine. In 1986, the Legislature increased it to ninety percent (90%). In 2001 the base monetary penalty was increased from $25 to $35. May 2003, the base penalty was increased to $37 and the PSEA was increased to 105%.

When the base fine and PSEA was increased in 2001 and 2003 the AOC (Administrative Office of the Courts) increased the penalty amounts for all traffic infractions listed on the statewide and local law tables but did not increase the fine for non-traffic violations that fall under any cities local ordinances. It was the assumption of many municipal courts, including Des Moines that AOC had updated the local law tables for local city ordinances. It was later discovered however that it was the municipal courts' responsibility to update that information because such changes would have to go before a city council for approval

DISCUSSION

In 2001 before the change by the State, Des Moines' penalty for a non-traffic, class six violation was $47. (Class one violations' carry a $500, class two $250, class three $125, class four 75, class five $50, class six $25). Of that $47 the city kept $18.77 and the state received the rest. The City did not adjust the penalty amount after the change in 2001, and as a result began keeping only $8.80 of the $47. With the recent changes after July 27, 2003, a $47 fine will result in the state taking all of the revenue and the city receiving nothing. In order to allow the City to receive revenue from non-traffic violations, the city must increase its fines for the various classes of civil violations.

ALTERNATIVE

There is no alternative, this penalty increase is mandated by the Washington State Legislation and the Washington State Supreme Court.

FINANCIAL IMPACT

If this ordinance is not passed, the city will see a reduction in the court's revenue. The amount depends upon the number of civil violations filed in the court each year. In 2002, 192 new violations processed through the city's court.

RECOMMENDATION (OR CONCLUSION)

Pass Draft Ordinance No 03-192.

CITY ATTORNEY'S FIRST DRAFT 07/01/03

DRAFT ORDINANCE NO. 03-192

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON related to monetary penalties for civil infractions, and amending DMMC 1.24.190.

WHEREAS, the City Council passed Ordinance No. 1009 on February 11, 1993, establishing rules and procedures for civil infractions, and setting court-imposed penalties for civil infractions committed in the City of Des Moines, and

WHEREAS, on July 22, 2001, the State Legislature increased penalties for civil infractions by ten dollars ($10.00) by passage of Chapter 289, Laws of 2001, and

WHEREAS, by passage of Chapter 380, Laws of 2003, the Washington State Legislature further increased court-imposed assessment and penalty amounts for civil infractions by two dollars ($2.00), effective July 27, 2003, and

WHEREAS, following the July 27, 2003 effective date of Chapter 380, Laws of 2003, civil infraction penalties currently imposed by the Des Moines Municipal Court may result in a revenue loss for the City of Des Moines without an increase of twelve dollars ($12.00) per violation, and

WHEREAS, the Des Moines City Council finds it in the best interest of the City to amend the civil infraction monetary penalty amounts as mandated by the Washington State Legislature and as ordered by the Washington State Supreme Court; now therefore,

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

Sec. 1. DMMC 1.24.190 and section 19 of Ordinance No. 1009 are each amended to read as follows:

Monetary penalties - Amounts. A person found to have committed a civil infraction is assessed a monetary penalty:

(1) The maximum penalty and the default amount for a class 1 civil infraction is ((~~$500.00~~))$512.00, not including statutory assessments;

(2) The maximum penalty and the default amount for a class 2 civil infraction is ((~~$250.00~~))$262.00, not including statutory assessments;

(3) The maximum penalty and the default amount for a class 3 civil infraction is ((~~$125.00~~))$137.00, not including statutory assessments;

(4) The maximum penalty and the default amount for a class 4 civil infraction is ((~~$75.00~~))$87.00, not including statutory assessments;

(5) The maximum penalty and the default amount for a class 5 civil infraction is ((~~$50.00~~))$62.00, not including statutory assessments; and

(6) The maximum penalty and the default amount for a class 6 civil infraction is ((~~$25.00~~))$37.00, not including statutory assessments.

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.

NEW SECTION. Sec. 3. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage and approval 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:03-192

REPLACEMENT FOR
NEW BUSINESS
Item #1

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Authorizing the City Manager to Negotiate a Sole Source Purchase of a Floating Breakwater for the Redondo Boat Launching Ramp.	FOR AGENDA OF: July 17, 2003 DATE SUBMITTED: January 24, 2003 CLEARANCES: [X] Marina ______ [X] Legal ______
ATTACHMENTS: 1. Draft Resolution No. 03-181	APPROVED BY CITY MANAGER FOR SUBMITTAL: ______

A. Purpose & Recommendation

The purpose of this Agenda Item is to seek Council approval for the sole source purchase of a floating breakwater system for the Redondo Boat Launching Ramp, as part of the Boat Launch Improvement Project.

Suggested Motion: "I move to adopt Draft Resolution No. 03-181, waiving the state competitive bidding requirements and allowing the City to enter into a sole source purchase from Wave Dispersion Technologies, Inc. of a WhisprWave floating breakwater, with a purchase price of $186,700, plus WSST."

B. Background

Because of its location, the boat-launching ramp at Redondo is exposed to weather generated waves at all times of the year. Wind speeds of 10 to 15 mph, which are common on the Sound, will generate small waves with periods of 4 seconds or less. These small waves make the ramp unsafe for launching and retrieving boats. Finding a suitable wave-barrier is one of the prime objectives of the Redondo Boat Launch Renovation Project. Typical wave barriers are concrete and/or steel structures because of the weight needed to dampen wave action. These structures can be either floating or stationary.

The beach at Redondo is a spawning area for two important species of fish. Concerns about beach erosion that would degrade spawning habitat and block fish migration preclude the use of a stationary wave barrier in front of the ramp. Environmentally, floating structures are preferred, but massive steel or concrete floats that would take heavy equipment to get in and out of the water and would be expensive for the Marina to maintain.

C. Discussion

The WhisprWave, manufactured by Wave Dispersion Technologies of Summit, New Jersey offers a unique solution to the wave protection problem at Redondo. The WhisprWave is made of durable polyethylene modules. The modules are pre-assembled into sub-units that can be launched with the Marina's equipment and towed to the site for final assembly and anchoring. After the wave barrier is assembled and in place, about two thirds of the modules are flooded with water. The weight of the water in the flooded modules provides the mass needed to dampen short-period waves.

It was always the staff's intention to separate the purchase of the floating breakwater from the contract for the remainder of the Redondo Boat Launch Renovation Project. Each year, the Marina staff will have to install and retrieve whatever system is used, so the staff thought it would be better to have the supplier of the system work directly with the Marina staff on the initial installation. The City's consultants on this project, Reid Middleton, Inc. agreed with the staff on this method of purchasing the breakwater system, especially since the Whisprwave is the only breakwater system on the market that meets the requirements of the project and it's installation is entirely separate from the rest of the project's scope of work.

In summary, the staff recommends purchasing the WhisprWave because:

- It is the only wave barrier on the market that can be assembled and placed on station using existing Marina equipment.
- It can be retrieved at the end of the boating season, disassembled and stored, again using Marina equipment.
- It is acceptable to the State and Federal Environmental agencies.
- When it is assembled and on station, it is massive enough to dampen the short-period waves that make the ramp unsafe or unusable.

D. Alternatives

A concrete or steel floating breakwater would not be feasible because of the long-term costs of annual installation and retrieval of the system and leaving a breakwater in place year round in that location is not as acceptable to the regulatory agencies. It would be possible to publish a request for proposals for building and supplying a breakwater that meets the criteria for this location, but it is unlikely that anyone else will have an "off-the-shelf" system that is as far along in it's development as the WhisprWave.

E. Financial Impact

Wave Dispersion Technologies, Inc. has given the City a quote of $186,700 for a 180-foot floating breakwater at the Redondo Boat Launch site. This price includes shipping but does not include WSST of $16,430. The total cost of the WhisprWave installed would be $203,130. This amount is within the budget allocation for this part of the project.

F. Recommendation

The staff recommends that the Council approve Draft Resolution No. 03-181 and authorize the staff to negotiate a sole source purchase with Wave Technologies, Inc. for a WhisprWave floating breakwater system for the Redondo Launching Ramp.

G. Concurrence

City Attorney
Municipal Facilities Committee

CITY ATTORNEY'S FIRST DRAFT 07/09/03

DRAFT RESOLUTION NO. 03-181

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, waiving the state competitive bidding requirements for the purchase of a WhisprWave Wave Attenuator from Wave Dispersion Technologies, Inc., for the Redondo Boat Ramp Project, pursuant to RCW 39.04.280; and authorizing the purchase of same.

WHEREAS, in *Smith v. Seattle*, Wn.2d 64, 72 P.2d 588 (1947), the Washington Supreme Court held that cities have the right to specify a particular brand of article for purchase by public contract, even where such article is held in a monopoly by a single supplier, and

WHEREAS, the WhisprWave Wave Attenuator has been recommended for the Redondo Boat Ramp Project and the purchase is clearly and legitimately limited to a sole source supplier, and

WHEREAS, a suitable wave-barrier is one of the prime objectives of the Redondo Boat Ramp Improvement Project, and

WHEREAS, the Redondo Boat Ramp is exposed to weather generated waves at all time of the year due to its location, and

WHEREAS, typical concrete and/or steel wave barriers will degrade the spawning habitat and block fish migration at the Redondo Boat Ramp site, and

WHEREAS, the WhisprWave offers a unique solution to the Redondo wave and erosion problems, and

WHEREAS, WhisprWave is the only wave barrier on the market that can be assembled and placed on station using existing Marina equipment, and

WHEREAS, WhisprWave can be retrieved at the end of a boating season, disassembled and stored, again using Marina equipment, and

WHEREAS, WhisprWave is approved by state and federal environmental agencies, and

WHEREAS, the Des Moines Marina has requested that the City Council waive state competitive bidding requirements and authorize the purchase of a WhisprWave Wave Attenuator from Wave Dispersion Technologies, Inc., in Summit, New Jersey, for the Redondo Boat Ramp Improvement Project; now therefore,

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

Sec. 1. Based upon the preceding legislative findings, the City Council hereby declares that the purchase of the WhisprWave Wave Attenuator for the Redondo Boat Ramp Project is clearly and legitimately limited to a single source of supply and that the sole source of supply is Wave Dispersion Technologies, Inc.

Sec. 2. Based upon the preceding legislative findings, the competitive bidding requirements for the City of Des Moines are hereby waived and the City Manager is authorized to execute a contract for the purchase of the WhisprWave Wave Attenuator from Wave Dispersion Technologies, Inc., for the Redondo Boat Ramp Project

Sec. 3. This resolution shall take place immediately.

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:03-181

REPLACEMENT FOR
NEW BUSINESS
Item #2

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Purchase of an anchoring system for the floating breakwater at the Redondo Boat Launching Ramp. ATTACHMENTS: Draft Resolution No. 03-193	FOR AGENDA OF: July 17, 2003 DATE SUBMITTED: July 10, 2003 CLEARANCES: [X] Marina ______ [X] Legal ______ APPROVED BY CITY MANAGER FOR SUBMITTAL: ______

A. Purpose & Recommendation

The purpose of this Agenda Item is to seek Council approval for the sole-source purchase of an anchoring system for the floating breakwater at the Redondo Boat Launching Ramp, as part of the Boat Launch Improvement Project.

Suggested Motion: "I move to adopt Draft Resolution No. 03-193, waiving the sate competitive bidding requirements and allowing the City to enter into a sole-source purchase from Helix Mooring Systems, Inc. for 20 Helix anchors and 20 SeaFlex connectors for $96,740."

B. Background

The floating breakwater system is designed to protect the boat-launching ramp from waves that are 1 to 3 feet high with periods of 4 seconds or less. The breakwater will be most effective if it stays in the "design" location shown on the plans for the Redondo Boat Ramp Renovation Project. To keep the breakwater on location at all tidal stages and in varying wind conditions, the Project Engineers have specified an anchoring system that uses Helix anchors and Seaflex anchor connectors. It has also been determined that the Helix Anchor and the Seaflex anchor connectors are specialized products that are essentially available from one source. When this occurs the normal State bidding requirements do not apply.

C. Discussion

The Helix anchors are "auger-in" type anchors that are drilled into the seabed at the design locations, using a hydraulic powered auguring machine. The design holding strength of 10,000 pounds per anchor is achieved by monitoring the foot-pounds of torque that the machine is delivering to the anchor during the installation process. There are other helical embedment anchors on the market, but only Helix Anchors have an installation process that allows the installer to predict the final holding strength of the anchor with an acceptable degree of accuracy. Another unique characteristic of the Helix Anchor is the marine termination. The marine termination is the top piece of the anchor that serves as the connection point for one end of the Seaflex connectors. The other end of the seaflex connector is attached to the WhisprWave floating breakwater. The marine termination on the Helix Anchor is a proprietary product that is only available on the Helix Anchor and our engineers have advised us that it is the only marine termination that will provide the holding capacity needed.

The Seaflex anchor connectors are a unique product that is manufactured in Sweden, and is used to moor docks and floating breakwaters in many locations worldwide. A Seaflex connector is essentially a heavily reinforced "bungee cord" that can stretch almost twice its original length while maintaining it design strength. As the Seaflex connector stretches, the reinforcement provided progressively greater resistance, which helps dampen movements caused by waves. The Seaflex will be pre-tensioned, so even at the lowest tide level, the breakwater will stay in its optimal design position. Seaflex connectors are relatively simple devices covered by a number of patents; so similar products are not available.

It was always the staff's intention to separate the purchase of the floating breakwater from the contract for the construction of the Redondo Boat Launch Improvement Project. After the first bid, it was apparent to staff and Project Engineers that the anchoring system was a source of some confusion for the contractors, because it required coordination with the installation of the floating breakwater, which was outside the contract.

In summary, the staff recommends purchasing the Helix Anchors and the Seaflex Anchor Connectors because:

- Helix Anchors are the original "auger-in" type anchors and they have a proven performance record. They have an installation process that allows the installer to predict the final holding strength of the anchor with an acceptable degree of accuracy.
- Helix Anchors have a unique installation system and a connecting device that are not available with any other product.
- Helix Anchors create minimal disruption to the seabed and are part of the State's permit approval.
- The Seaflex anchor connectors are the only product on the market that can keep the floating breakwater in the optimum location at all tide levels, while still being relatively maintenance free and easy to install.
- Seaflex anchor connectors are acceptable to the State and Federal Environmental agencies because they eliminate the bottom drag around the anchor that kills sea life.
-

D. <u>Alternatives</u>

There are other alternatives to the Helix/Seaflex anchoring system that would be cheaper initially, but they would be more difficult to install and maintain each year. Also the other systems would more damaging to the environment, and it is likely that the regulatory agencies would impose more restrictive conditions on their use.

E. Financial Impact

Helix Mooring Systems, Inc. has given the City a bid of $88,300 to provide and install the Helix anchors and provide the Seaflex anchor connectors. Helix Mooring Systems will also provide a technician to monitor the installation of anchors and to help the City staff determine the proper installation and tensioning methods for installing the Seaflex anchor Connectors. Washington State Sales tax is not included in the bid. With tax, the total requested expenditure authorization is $96,740. This amount is within the budget allocation for this part of the project.

F. Recommendation

The staff recommends that the Council approve Draft Resolution NO. XXX and authorize the staff to negotiate a sole source purchase from Helix Mooring Systems, Inc. for an anchoring system for the WhisprWave floating breakwater for the Redondo Launching Ramp.

G. Concurrence

City Attorney

CITY ATTORNEY'S FIRST DRAFT 07/09/03

DRAFT RESOLUTION NO. 03-193

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, waiving the state competitive bidding requirements for the purchase and installation of twenty Helix Anchors and Seaflex Anchor Connectors from Helix Mooring Systems, Inc., for the Redondo Boat Ramp Project, pursuant to RCW 39.04.280; and authorizing the purchase of same.

WHEREAS, in *Smith v. Seattle*, Wn.2d 64, 72 P.2d 588 (1947), the Washington Supreme Court held that cities have the right to specify a particular brand of article for purchase by public contract, even where such article is held in a monopoly by a single supplier, and

WHEREAS, Helix Anchors and Seaflex Anchor Connectors have been recommended by project engineers for the Redondo Boat Ramp Project and the purchase is clearly and legitimately limited to a sole source supplier, and

WHEREAS, Seaflex Anchor Connectors are the only product on the market that can keep the proposed floating breakwater in the optimum location at all tide levels, and

WHEREAS, the Helix Anchoring System is manufactured by a unique process and will keep the Redondo floating breakwater in place, regardless of tidal or wave conditions, and

WHEREAS, the Helix Anchoring System and Seaflex Connectors are approved by state and federal environmental agencies, and

WHEREAS, the Des Moines Marina has requested that the City Council waive state competitive bidding requirements and authorize the purchase of the Helix Anchoring System and Seaflex Connectors from Helix Mooring Anchors in Belfast, Maine, for the Redondo Boat Ramp Improvement Project; now therefore,

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

Sec. 1. Based upon the preceding legislative findings, the City Council hereby declares that the purchase of the Helix

Anchoring System and Seaflex Connectors for the Redondo Boat Ramp Project is clearly and legitimately limited to a single source of supply and that the sole source of supply is Helix Mooring Anchors in Belfast, Maine.

Sec. 2. Based upon the preceding legislative findings, and pursuant to RCW 39.04.280, the competitive bidding requirements for the City of Des Moines are hereby waived and the City Manager is authorized to execute a contract for the purchase of the Helix Anchoring System and Seaflex Connectors from Helix Mooring Anchors, Belfast, Maine, for the Redondo Boat Ramp Project

Sec. 3. This resolution shall take place immediately.

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:03-193

NEW BUSINESS
Item #3

AGENDA ITEM

SUBJECT: Joint Trench Agreement with Comcast for Pacific Highway South Redevelopment Project ATTACHMENTS: 1. Joint Trench Agreement with Comcast	AGENDA OF: July 17, 2003 DEPT. OF ORIGIN: Public Works DATE SUBMITTED: July 11, 2003 CLEARANCES: [X] Finance [X] Public Works [X] Legal APPROVED BY CITY MANAGER FOR SUBMITTAL:

Purpose and Recommendation:

The purpose of this item is to enter into a joint trench agreement with Comcast to cover their participation in costs for the utility undergrounding improvements of the Pacific Highway South Redevelopment Project.

Suggested Motions

1) "I move to enter into the attached joint trench agreement with Comcast for their participation in costs for the utility undergrounding improvements of the Pacific Highway South Redevelopment Project and further to authorize the City Manager to sign said agreement substantially in the form as submitted."

Background:

During the early phases of the inception of the Pacific Highway South Redevelopment Project, the City met with all associated utility purveyors to inform them of the City's plans, and to request their input and participation on the project. Early on, Comcast (formerly AT&T Broadband at the time) agreed to participate in the joint utility trench to be shared with the City, Qwest, and Puget Sound Energy. Comcast has agreed to participate in their costs for the utility undergrounding improvements along Pacific Highway South for a total amount of $161,000.00 as part of the Pacific Highway South Redevelopment Project.

The purpose of these funds is to pay for their fair share of the cost of the utility trench and conduit installation. These funds will be combined with the other grants, loans, and contributions to fund the project, which is estimated to cost $22.2 million total. The improvements are included in the completed design for the corridor.

Under this agreement, the City's contractor will install the necessary conduit and vault system furnished by Comcast, and Comcast will be responsible for installing their own wiring within the system and making all wiring connections. The agreement requires Comcast to abide by the City's Contractor's schedule.

Discussion:

The construction work necessary for the City's share of these improvements has been included in the contract plans and specifications. The work includes installation of a conduit and vault system. The attached joint trench agreement provides for the implementation of this work.

The agreement has provisions for Comcast's timely delivery of materials to the project, as well as their timely wiring and connection of the system.

The agreement requires Comcast to meet the City's schedule for completing the work. It also requires Comcast to pay for any delays they cause should they fail to deliver material on schedule, or delay the contractor in any way. It also requires Comcast to pay for any changes they request or changes that are required as a result of errors in Comcast's design.

These utility undergrounding improvements have been envisioned from this project's inception, and Comcast, by their commitment of funds in this joint trench agreement, show that they are onboard with our vision for the improvement of this corridor.

Alternatives:

The City could elect to complete the Pacific Highway South Redevelopment Project without accepting funds from Comcast or entering into an agreement with them. This could potentially cause project delays and would cost the City additional funds to cover the cost of facilities they need for undergrounding their lines.

Financial Impact:

Per this joint trench agreement, Comcast will pay $161,000.00 toward the City's Pacific Highway South Redevelopment Project.

Recommendation/Conclusion:

Staff recommends that we enter into this joint trench agreement with Comcast and accept the funds offered.

Concurrence:

Legal and Finance are in agreement that the City should enter into this agreement with Comcast.

MEMORANDUM OF UNDERSTANDING BETWEEN COMCAST AND THE CITY OF DES MOINES GOVERNING THE PACIFIC HIGHWAY SOUTH IMPROVENM\MENT PROJECT

A. PROJECT DESCRIPTION

The joint trench will be placed along Pacific Highway South between South 216th Street and 520 feet south of Kent Des Moines Road (SR 516), as shown in the incorporated plans and specifications. The joint trench will be constructed to accommodate the facilities of City of Des Moines, Qwest, Comcast, and PSE. The City of Des Moines will send the entire project out for bid, and will enter into a contract that will include construction of the portion of the project designed to accommodate Comcast facilities.

B. INCORPORATED PLANS AND SPECIFICATIONS

The following approved and sealed plans and specifications are hereby incorporated into this Agreement:

A. Bid and Contract Documents and Specifications. Bid and Contract Documents and Specifications for Pacific Highway South, including all addenda, prepared by CH2M Hill. The included drawings prepared by CH2M Hill show in detail the location of the trench and vaults. Comcast Plans are also included in these bound Contract Documents and show quantity and sizes of conduits and vaults. If there is any discrepancy between the CH2M Hill Plans and the Comcast Plans, the CH2M Hill Plans shall govern.

B. General Provisions. Because Comcast has not provided specifications to the City of Des Moines for incorporation into this project, the following General Provisions are hereby incorporated by reference into this agreement: 2002 Standard Specifications for Road, Bridge and Municipal Construction (English), together with the APWA Division 1 Supplement (Division 1-99) as issued by the Washington State Department of Transportation and American Public Works Association, Washington State chapter.

3. RESPONSIBILITIES OF CITY OF DES MOINES

A. Contractor Duties. The City's Contractor shall excavate the trench, accommodate and coordinate the installation of City utilities, install vaults and conduits, furnish and install bedding material, backfill and compact the trench, and perform any restoration required by the City within the right-of-way.

B. Notice of Materials Required. The City, or its contractor, will provide Comcast, or its contractor, not less than five (5) working days notice requesting delivery of necessary conduits, vaults, and other materials.

ATTACHMENT 1

4. **RESPONSIBILITIES OF COMCAST**

A. Comcast Coordination. Comcast shall maintain continued coordination with the City's Contractor regarding installation of Comcast's facilities. This coordination shall include, but not be limited to the following:

1. Comcast shall attend the Preconstruction Meeting.
2. The City's Contractor shall provide Comcast a preliminary project schedule at the Preconstruction Meeting and a final construction schedule within 30 days after the Preconstruction meeting. Comcast shall be responsible for coordinating their work to meet the final construction schedule, which will be incorporated into this Agreement.
3. A weekly meeting will be held in which the City's Contractor will provide a schedule and list of materials needed for the following two weeks. A representative from Comcast shall attend each meeting and provide weekly progress reports. The Comcast representative shall be responsible for coordinating the delivery of materials per the discussion of schedule at these weekly meetings.
4. Comcast shall furnish all materials including vaults, conduits, and all other materials necessary for installation of the vaults and conduits required by the City's Contractor for that week, not less than five (5) working days prior to the date that the work is scheduled based upon the weekly meeting. The City's Contractor shall provide a location to Comcast of where the materials shall be delivered.
5. Comcast will provide an inspector on-site, on 24 hours notice, to inspect the installation of all vault and conduit installation work. Comcast's inspector shall not direct the City's Contractor in any manner; the Comcast inspector shall communicate all requests to the City's inspector.
6. Once sections of vault and conduit installation are completed by the City and accepted by Comcast, Comcast, or its contractor, will complete installation of conductors and equipment within thirty (30) working days and notify the City in writing when the new underground system is energized.
7. Comcast will be responsible for plant installation and wreck-out work associated with the undergrounding. This work shall include, but not be limited to, furnishing and installing all cables, conductors, electrical equipment, and temporary utility poles; conversion to underground; and for the removal of poles, and other equipment no longer needed.
8. Comcast, or its contractor, will perform cut-over and transfer of existing customers and facilities to the new underground system where applicable.
9. Once transfer of existing customers and facilities to the new underground system is complete, Comcast, or its contractor, will remove all overhead systems within fourteen (14) working days.

B. Traffic Control Comcast or its contractor will provide traffic control for installation of new underground conductor and devices along with overhead construction and removal when required. Comcast will coordinate its traffic control with other utilities, the City's Contractor and the City. The City will provide all traffic control required for conduit and vault installation.

C. Work Not in Right of Way. All work that is not in City right of way, including but not limited to trenching, cable, conduit, and pedestal installation, will be the responsibility of Comcast. Comcast shall coordinate with private property owners in order to not delay the City's schedule. Coordination of work, and payment for necessary easements or agreements from private property owners, is the responsibility of Comcast.

5. COST ALLOCATION

A. Lump sum. Comcast agrees to pay a lump sum of $161,000.00 to the City as compensation for its work under this agreement. This compensation covers joint trench costs, installation costs, traffic control costs, contractor project costs, mobilization, and adjustments to grade.

The lump sum shall be paid as follows:

1. 20% of the total lump sum prior to the beginning of construction
2. 30% of the total lump sum after the City's Contractor has completed 50% of the utility undergrounding work
3. The remaining 50% of the total lump sum after the City's Contractor has completed 100%of the utility undergrounding work.

B. Change Orders. Payment for change orders shall be determined based upon the following:

1. By City. Comcast agrees to pay its share, as determined by the City based upon Section 1-09.4, Equitable Adjustments, 2002 Standard Specifications, of any additional expenses incurred in providing the trench due to any overexcavation required or any other unforeseen conditions, including any additional trench width or depth attributable to errors in their design or conflicts not accounted for in their design, as well as additional expenses due to any delays caused by Comcast.
2. By Comcast. Approval of change orders requested by Comcast shall be obtained from the City. Comcast shall submit any changes requested to be performed by the City's Contractor to the City's Inspector. The City's Inspector shall submit change order requests to the City's Contractor; obtain a price from the City's Contractor to perform the work, and notify Comcast of this price. Comcast shall have 24 hours with which to respond. Comcast shall be liable to the City for all additional costs incurred by the City to perform additional work.

C. Claims by City's Contractor. Comcast agrees to pay the entire cost of any claims made by the City's Contractor that are determined by the City to be caused by Comcast. These claims may include claims for delays caused by untimely installation of Comcast facilities, delays caused by Comcast failure to timely provide materials, or any other claims caused by Comcast based upon disputes between the City's Contractor and Comcast's Contractor or Comcast's inspector.

6. SCHEDULE

A. Lane Closures. Should lane closures become necessary, Comcast or its contractor is limited to working between the hours of 8:30 AM to 3:00 PM.

B. Continuous Effort. Once construction crews are mobilized, the conversion will be constructed in one continuous nonstop effort, end to end, until the project is completed.

C. Total Working Days. The City estimates 150 working days for their contractor to install duct and vaults and estimates that the City's Contractor will begin construction of duct and vault on or about August 1, 2003. However, the City's Contractor will be responsible for planning and scheduling their work and will submit a progress schedule to the City and Comcast prior to beginning construction activities.

D. Comcast Working Days. Approximately 30 working days of construction crew time by Comcast or its contractor will be necessary to complete and energize the new underground distribution system. Comcast will coordinate its conductor and equipment installation such that Comcast, or its contractor, will install as much of this equipment as possible prior to completion of the entire vault and conduit system by the City's Contractor.

E. Cut-over. Comcast or its contractor will cut-over or transfer customers already served underground (off the overhead system) where applicable. Comcast or its contractor will notify such customers 48 hours in advance of the pending outage.

F. Overhead Equipment Removal. Once all customer services have been transferred from the overhead system, Comcast or its contractor will remove all Comcast overhead lines, conductors, devices, and equipment.

7. OTHER RIGHTS AND DUTIES CONTROLLED BY FRANCHISE

All other rights and duties of Comcast and the City of Des Moines concerning this Memorandum of Understanding are governed by the franchise between Comcast and the City of Des Moines, as it presently exists and as it may be hereafter amended.

Dated this ________day of July, 2003.

______________________________ ______________________________

City Manager | Comcast

____

City Attorney

NEW BUSINESS
Item #34

AGENDA ITEM

SUBJECT: Briefing: Renewal of Cable TV Franchise.	AGENDA OF: July 17, 2003
	DEPT. OF ORIGIN: Administration
ATTACHMENTS:	DATE SUBMITTED: July 9, 2003
1. Franchise Table of Contents. 2. Draft Ordinance No. 03-032. 3. Summary of legislative history.	CLEARANCES: [X] LEGAL ________
	APPROVED BY THE CITY MANAGER FOR SUBMITTAL

Purpose and Recommendation:

The purpose of this agenda item is to provide a briefing to the City Council on Comcast's proposal to renew the franchise for cable TV service. A public hearing must be scheduled and held before final action may be taken on the renewal.

Administration recommends enactment of Draft Ordinance No. 03-032. A motion to schedule a public hearing is provided below:

> "I move a public hearing be scheduled for a future City Council meeting regarding renewal of Comcast's non-exclusive cable TV franchise."

Background:

Comcast Corporation (formerly TCI Cablevision of Washington and AT&T Broadband) provides cable TV service throughout the City of Des Moines. Infrastructure for cable TV service is located mostly within the Des Moines' rights-of-way. A franchise granted by the City Council is the regulatory tool used to allow Comcast to install and operate cable TV equipment in the right-of-way. The City may grant franchises to more than one provider of cable TV service. To date, no other cable companies have requested permission to serve Des Moines.

The previous franchise (Ordinance No. 844) expired in April of 2000. Several Ordinances extended that franchise through 2002 (see Attachment 3). Administration and Comcast (and its predecessors) have been negotiating the terms of a renewal since the 4th Quarter of 1999. Early in the negotiation process, an ad hoc committee of the City Council (Councilmembers Sheckler, Towe, and Kaplan) provided policy direction to staff regarding franchise issues.

Administration and Comcast have now reached terms that are mutually agreeable.

Discussion:

Cable TV service is heavily regulated by the Federal Government. The City's authority to negotiate many issues is severely limited or preempted by Federal regulations, such as the Communications Act of 1934, Cable Communications Act of 1984, Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996. A significant amount of case law from State and Federal Courts also applies to municipal franchises for cable TV service. Given these constraints, staff has worked to negotiate the most-favorable terms possible.

Major points of this draft franchise (04/30/03 draft) are summarized below:

Issue	Franchise Provision	Ordinance Section	Page
Term	Six-year franchise with possible two-year extension.	3 & 8	8 & 12
Franchise fee	Five percent of gross revenues (no change from previous franchise).	5	8
Street restoration	When altering street pavement, Comcast shall restore streets to original condition.	7 & 13	14 & 17
Relocation	When directed to do so by the City, Comcast shall remove or relocate facilities.	11	14
Outages	Comcast will provide refunds for outages.	25	21
PEG contribution	Comcast will provide $140,000 for capital improvements to the City's public, education, and government (PEG) broadcast system. Des Moines' cable customers will reimburse Comcast over time for this contribution.	28	23
Cable internet service	Cable internet service not regulated by or subject to franchise.	32	25
Revocation	In the event Comcast does not comply with the franchise provisions, the City may revoke the franchise.	43	29
Removal of facilities	Upon termination of franchise, Comcast shall remove all facilities.	46	30
Bond	Comcast shall provide $250,000 performance bond.	53	35

In a separate agreement, Comcast will provide $10,000 to help offset the City's cost of evaluating and negotiating the franchise renewal. The City's direct costs for this project are expected to be $13,400, which is $500 more than was originally budgeted in January of 2000. Indirect costs include the many hours of staff time that have been devoted to this project since early 2000.

A public hearing is required before the City Council takes final action on the renewal. If no major changes are proposed by the City Council at this time, then the hearing can be scheduled.

Alternatives:

1. Schedule a public hearing for the renewal.

2. Direct changes to the draft franchise for Council review.

Financial Impact:

The franchise has several financial implications. Those include:

- $10,000 paid to the City to (partially) offset costs related to evaluation of the franchise renewal.

- $140,000 paid to the City for upgrades to the public, education, and government (PEG) broadcast system. These funds will be used to update the character generator, and upgrades to the lighting, video, audio, and projection systems within the Council Chambers. Cable customers in Des Moines will be assessed a monthly charge to allow Comcast to recoup this expense.

- Continuation of the current five-percent franchise fee. This fee is expected to generate $265,000 in revenue during 2003. The revenue estimate for 2004 is $278,000.

Recommendation/Conclusion:

Schedule the public hearing for the renewal. If no new issues are raised during the hearing process, approve the draft franchise at that time.

Concurrence:

Des Moines's consultant regarding cable services, 3-H Cable Communications Consultants, has participated throughout the negotiation process and recommends approval of the draft franchise.

Des Moines/Comcast Cable Franchise
Table of Contents (4/30/03 draft)

ATTACHMENT 1

CITY ATTORNEY'S FIRST DRAFT 04/30/03

DRAFT ORDINANCE NO. 03-032

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, granting a six (6) year franchise to provide cable television service within the City of Des Moines to Comcast of Washington IV, Inc. (formerly TCI Cablevision of Washington, Inc.); setting forth the terms and conditions of said service, establishing penalties, and fixing an effective date.

WHEREAS, Comcast of Washington IV, Inc., (hereinafter the "Operator") has been operating a cable television system within the City pursuant to an existing cable television Franchise; and

WHEREAS, the Operator has requested that its current cable Franchise be renewed following the expiration of its current Franchise; and

WHEREAS, the City has analyzed and considered the technical ability, financial condition, legal qualification, and general character of the Operator and has determined that it is in the best interest of the City and its residents to renew the cable Franchise; and

WHEREAS, the Operator and the City have agreed to be bound by the conditions hereinafter set forth; 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) "Abandonment" means the disconnection by the Operator of specific Facilities from the cable system.

(3) "Activated" means the status of any capacity or part of the cable system in which any cable Service requiring the use of that capacity or part is available without further installation of cable system equipment other than subscriber premises equipment, whether hardware or software.

ATTACHMENT 2

(4) "Affiliate" when used in connection with the Operator, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, the Operator.

(5) "Applicant" means any Person who files an application for an initial franchise to provide cable services within the City.

(6) "Bad Debt" means amounts lawfully billed to a subscriber and owed by the subscriber for cable service and accrued as revenues on the books of the Operator, but not collected after reasonable efforts have been made by the Operator to collect the charges.

(7) "Basic service" means any cable service tier that includes, at a minimum, the retransmission of local television broadcast signals and local PEG Access Channels.

(8) "Bi-Directional" means that the cable system is capable of providing both Upstream and Downstream transmissions.

(9) "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a cable system by antenna, microwave, satellite dishes or any other means.

(10) "Cable Act" means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and any amendments thereto.

(11) "Cable internet service" means any cable service offered by Operator whereby Persons receive access to the Internet through the cable system.

(12) "Cable Operator" means any Person or groups of Persons, including the Operator, who provide(s) cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a cable system in the City.

(13) "Cable service" means the one-way transmission to subscribers of video programming or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(14) "Cable system" has the meaning specified in section 602 of the Cable Act.

(15) "Channel" means a portion of the frequency band capable of carrying a video programming service or combination of video programming services whether by analog or digital signal.

(16) "City" is the City of Des Moines, a city of the State of Washington, existing pursuant to the Washington State Constitution, and the laws of the State of Washington.

(17) "Council" means the Council of the City of Des Moines or any future board constituting the legislative body of the City of Des Moines.

(18) "Downstream" means carrying a transmission from the Headend to remote points on the cable system or to Interconnection points on the cable system.

(19) "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars.

(20) "Expanded basic service" means the Tier of optional video programming services, which is the level of cable service received by most subscribers above basic service, and does not include Premium Services.

(21) "Facilities" means the component parts of the cable system, including but not limited to coaxial cable, fiber-optic cable, amplifiers, taps, connectors, power supplies, electronics, towers, antennas, satellite dishes and optronics located in the rights-of-way.

(22) "FCC" means the Federal Communications Commission.

(23) "Fiber Optic" means a transmission medium of optical fiber cable, along with all associated optronics and equipment, capable of carrying cable service by means of electric light-wave impulses.

(24) "Franchise" means the document in which this definition appears, i.e., the contractual agreement, executed between the City and the Operator, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

(25) "Franchise area" means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

(26) "Franchise Fee" means any tax, fee or assessment of any kind imposed by the City or other government entity on the Operator or subscriber, or both, solely because of their status as such. Franchise Fees shall not include any tax, fee or assessment of general applicability, capital costs required by this Franchise to be incurred by the Operator for public, educational or governmental access and equipment, or requirements or charges incidental to the awarding or enforcing of the franchise including payments for bonds, insurance, indemnification, penalties or liquidated damages.

(27) "Gross Revenues" means any and all revenues derived by the Operator an Affiliate from the operation of the cable system to provide cable services in the City, other than revenue from transactions related to real property, the Capital Contribution in support of PEG Access Channels, bad debt and any taxes on services furnished by the Operator, imposed on the Operator or any subscriber or used by any governmental unit, agency or instrumentality and collected by the Operator for such entity. However, Gross Revenues shall include Franchise Fee revenue and revenues received by the Operator or an Affiliate from local and national advertising sales, home shopping channels, and similar sources. When the revenue of the Operator includes Gross Revenues from sources outside of the City, the Operator shall allocate the appropriate percentage of Gross Revenues by multiplying the revenues received by a fraction the

numerator of which is the number of Operator's subscribers in the City and the denominator of which is the total number of all subscribers.

(28) "Headend" means the Operator's primary facility for signal reception and dissemination on its cable system, including cables, antennas, wires, satellite dishes, monitors, lasers, switchers, modulators, processors for Broadcast Signals, and all other related equipment and Facilities.

(29) "Installation" means the connection of the cable system by means of a cable drop from feeder cable to subscribers' terminals.

(30) "Institutional Network" or "I-Net" means that part of a cable system's Facilities or capacity designated for non-commercial communications to, from and among the City, fire districts, government agencies, Schools and libraries via fiber-optic cable owned by the Operator.

(31) "Leased Access Channel" means any Channel commercially available for programming for a fee or charge by the Operator to members of the general public in accordance with 47 U.S.C. §522.

(32) "Node" means that portion of the cable system where fiber optic cables and coaxial cables meet. The Node consists of an enclosure housing optronics and electronics that convert light into radio frequency ("RF") signals and RF signals into light necessary for the delivery of bi-directional cable services to subscribers over a hybrid fiber-coaxial cable ("HFC") cable system.

(33) "Operator" means Comcast of Washington IV, Inc., or its lawful successor, transferee or assignee.

(34) "Person" means any individual, sole proprietorship, partnership, association, government or corporation, or any other form of entity or organization.

(35) "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand)

offered to subscribers on a per-Channel, per-program or per-event basis.

(36) "Public, Education and Government (PEG) Access Channels" means channel capacity designated by the Operator for the transmission of public, educational, or government access use in accordance with this Franchise and 47 U.S.C. §521.

(37) "Public ways or rights-of-way" includes the surface of and space above and below any real property in which the City has a regulatory interest, or interest as a trustee for the public including, but not limited to, all public streets, highways, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the City, and any public or utility easements established, dedicated or devoted for public utility purposes. For this Franchise, public ways and rights-of-way are limited to the areas above the ordinary high water mark of Puget Sound.

(38) "Route map" means a geographic representation of the Operator's cable system as it exists within the public right-of-way and within private easements in the Franchise area.

(39) "Subscriber" means any Person who or which elects to subscribe to, for any purpose, cable service provided by the Operator by means of or in connection with the cable system and whose premises are physically wired and lawfully Activated to receive cable service from the Operator's cable system.

(40) "Tier" means a group of channels for which a single periodic subscription fee is charged.

(41) "Upstream" means carrying a transmission to the Headend from remote points on the cable system or from Interconnection points on the cable system.

Sec. 2. Franchise granted.

(1) **Grant.** The City of Des Moines, hereinafter known as the "City", hereby grants to Comcast of Washington IV, Inc., hereinafter known as the "Operator" renewal of its cable system Franchise, in accordance with federal, state and local law, authorizing the Operator to construct, reconstruct, upgrade,

maintain and operate a cable system in, along, among, upon, across, above, over, under, or in any manner connected with the Streets and public rights-of-way within the Franchise area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Street or public rights-of-way such and equipment as may be necessary or appurtenant to the Cable Television System.

(2) **Other ordinances.** This Franchise and all rights and privileges granted hereunder are subject to, and the Operator must exercise all rights in accordance with, applicable law, as amended over the Franchise term. However, this Franchise is a contract, subject only to the City's exercise of its police powers and applicable law, and in case of any conflict between the express terms of this Franchise and any ordinance enacted by the City, this Franchise shall govern. This Franchise does not confer rights or immunities upon the Operator other than as expressly provided herein. The Operator reserves the right to challenge provisions of any ordinance that conflicts with its contractual rights, and does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights.

(3) **Police powers.** In accepting the Franchise, the Operator acknowledges that its rights hereunder are subject to the legitimate rights of the police powers of the City to enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the City pursuant to such power. Additionally the Council expressly reserves unto itself all its police powers to adopt additional ordinances necessary to protect the health, safety and welfare of the general public in relation to the rights granted under this Franchise. The City reserves the right to use, occupy and enjoy any Public rights-of-way or other public places for any purpose, including without limitation, the construction of any water, sewer or storm drainage system, Installation of traffic signals, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, other pedestrian amenities, other City services, or uses not limited to the enumerated items as listed herein, and other public street improvement projects. The

Council reserves the right to delegate its authority for Franchise administration to a designated agent.

Sec. 3. Length of Franchise. The length of this Franchise shall be for a term of six (6) years, unless extended or terminated sooner as hereinafter provided.

Sec. 4. Franchise area. The Operator's service area shall be the entire incorporated area of the City, in its present incorporated form or in any later reorganized, consolidated, enlarged through annexation, or re-incorporated form ("Franchise area").

Sec. 5. Franchise fee.

(1) The Operator shall pay to the City monthly, within thirty (30) days after the end of each month, a Franchise fee in a sum equal to five percent (5%) of Gross Revenues for the preceding calendar month. Revenues that are derived as a portion of a national or regional service shall be computed on a per subscriber basis if such determination cannot be achieved by other means.

(2) The City may modify the Franchise fee if so permitted by federal and state law. Prior to implementation of any modification in Franchise fees the Operator may request a public hearing by the Council to discuss said modification. Following such a hearing the Council may require the implementation of such modification in accordance with the provisions of this Franchise, subject to applicable law.

(a) **Late payment.** Any monthly Franchise fee not paid by the Operator within thirty (30) days of the end of a month shall bear interest at the maximum rate allowed under state law, from the date due until paid.

(b) **Financial reports.** Each Franchise fee payment shall be accompanied by a financial report in a form agreed to by the City and compatible with the Operator's computer system, showing the basis for the Operator's calculations and such other information directly related to confirming the amount of the Operator's Gross Revenues as may be reasonably required by the City.

(c) **Audit by City.** The City may, upon seven (7) days advance notice, inspect the books and records of the Operator during normal business hours, for the purpose of confirming the actual gross revenues collected by the Operator for the previous year. In the event that such audit discloses a discrepancy of more than ten percent (10%) between the financial report submitted by the Operator with a monthly payment and the actual gross revenues collected by the Operator, the Operator agrees to pay to the City the actual cost of the audit. In the event that such audit results in a determination that additional Franchise fees are due the City, the Operator further agrees to pay interest as required for late payments on such additional Franchise fees computed from the date on which such additional Franchise fees were due and payable.

(d) **Non-Waiver.** Acceptance of any Franchise fee payment by the City shall not be construed as an agreement by the City that the Franchise fee paid is in fact the correct amount, nor shall acceptance of payment by the City be construed as a release or waiver of any claim the City may have for further or additional sums payable under the provisions of this Ordinance.

(e) **Taxes.** Nothing in this section shall limit the Operator's obligation to pay applicable local, state, or federal taxes.

Sec. 6. Technical standards and safety requirements.

(1) Subject to federal, state and local law, the Operator shall comply with FCC rules, Part 76, Subpart K, section 76.601 through 76.610 as set forth in Appendix A herein, and as may be hereafter amended by the FCC, and applicable City, state and national/federal codes and ordinances, such as:

(a) Applicable Utility Joint Attachment Practices;

(b) The National Electric Safety Code; ANSI C2;

(c) City Utility Code Requirements;

(d) City Rights-Of-Way Procedures;

The Operator shall notify the City prior to the date of the semi-annual FCC Proof of Performance Test so that the City, as is its right under the pertinent FCC regulations, may, at its option, monitor the taking of such tests. The Operator shall provide a copy of the results of the System evaluation to the City upon request.

(2) The cable system must have back-up power supplies capable of providing power to the System for two hours in the event of an electrical outage.

(3) The Operator shall comply with FCC closed captioning rules and regulations, and shall make available to all subscribers a remote control device.

(4) The Operator must have TDD/TTY (or equivalent) equipment at the company office, and a telephone number listed on subscriber bills, in local telephone directories and with directory assistance for such equipment, that will allow hearing impaired customers to contact the company.

Sec. 7. Technical evaluation.

(1) If deemed necessary by the City, the City may review the cable system's Technical performance. During such evaluations, the Operator shall fully cooperate with the City and shall provide without cost such reasonable information and documents as the City may require to determine the Operator's compliance with this Franchise.

(2) If the City experiences reoccurring problems with the Operator's cable system, the City may retain an independent consultant to conduct an analysis of the cable system and its performance and the City's Consultant shall submit a report of such analysis to the City. The City or it's consultant shall provide thirty (30) days prior written notice to the Operator of any requested testing of the cable system, in accordance with federal law. The Operator shall be required to conduct testing on the thirtieth day, counted from the date of Operator's receipt of the request unless another date is chosen by mutual agreement, and the City has the right to be present during the test. The City shall take into consideration efforts taken by the Operator

to correct deficiencies, if any. The report prepared by the consultant in response to the City's request for a System evaluation shall include:

(a) A description of the technical problem in cable system performance that precipitated the special tests;

(b) Which cable system components were tested;

(c) The equipment used and procedures employed in testing;

(d) The results of the testing and system evaluation, including a description of any problem(s) found;

(e) The method, if any, by which specific performance problems may be resolved;

(f) Any other information pertinent to said tests and analyses that may be required by the City.

(3) If the tests indicate that the cable system is not in compliance with FCC Technical Standards or the requirements of the Franchise or applicable law, the Operator shall reimburse the City for its costs involved in conducting such tests.

Sec. 8. Cable system architecture. Prior to the effective date of this Franchise, the Operator completed a franchise-required upgrade of its cable system. Concurrently, the Operator modified its cable system from a traditional "christmas tree" architecture" to an HFC, fiber-to-the-node system architecture, with fiber-optic cable deployed from the head end to the node and coaxial cable deployed from the node to subscribers' homes. Active and passive devices are capable of passing a minimum of 750 MHz and capable of delivering more than 110 channels of high quality analog or digital video signals meeting, or exceeding, FCC technical quality standards. Cable system nodes are designed for future segmentation as necessary to maximize shared bandwidth. During the term of this Franchise, the Operator agrees to maintain the cable system in a manner consistent with, or in excess of these specifications.

(1) Within six (6) months of the fourth anniversary of the effective date of this Franchise, the City shall conduct a review of the Franchise. The purpose of the review is to ensure that, with the benefit of full opportunity for public comment, the Operator continues to effectively serve the public in light of new developments in cable technology together with related developments in cable law and regulation.

(2) Community needs and interests, with consideration of all financial, technological, and operation impacts that may affect the Operator.

As part of this review the City may request that the Operator participate in and jointly fund a statistically valid telephone survey of subscribers by a third party. Survey topics may include, but are not limited to, programming categories, cable-related community needs and interests, satisfaction with cable services offered and customer service. The City and the Operator will jointly determine the final questions and topics to be covered in the survey. If both parties are unable to agree on the final questions and topics, the City will have the final determination as to what will be included and the Operator will then determine if their participation in the project will continue.

If, after completion of the review and survey, the City and the Operator agree that the public interest is being served by the terms and conditions set forth herein, grant, by ordinance, a two (2) year extension of the term of the Franchise term. If the parties are unable to reach agreement, renewal of this Franchise will proceed in accordance with federal law.

Both the City and the Operator agree to make a full and good faith effort to participate in the review.

Sec. 9. Construction standards. The Operator shall not commence construction, within the City without a valid permit issued in accordance with Des Moines Municipal Codes and City regulations, except as provided in this Franchise.

Sec. 10. Construction in right-of-way.

(1) **Right-of-way permit.** The Operator shall submit an application for, pay the permit fee, and obtain a right-of-way permit to perform construction work in any public rights-of-way in accordance with applicable local regulations. No work, other than emergency repairs, routine aerial maintenance, or standard aerial Installation, shall commence without such a permit. Emergency repairs may be made immediately as provided for in section 19 of this Agreement.

(2) **Issuance of right-of-way permit.** Construction permits shall be approved by the City within forty-five (45) days of receipt of a completed permit application, so long as the permit request complies with the requirements of this Franchise, subject to further conditions, restrictions or regulations affecting the time, place and manner of performing the work. A permit application shall be considered complete when accompanied by all required information, plans and fees.

(3) **Display of right-of-way permit.** The Operator shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Manager or designee at all times when construction work is occurring.

(4) **Construction schedule.** The Operator shall submit a written construction schedule to the City Manager or designee prior to commencing any work in or about the public ways in accordance with City regulations.

(5) **Locator service compliance.** The Operator, before commencing any construction in the public ways, shall call for location in accordance with RCW 19.122.

(6) **Placement.** All transmission lines, equipment, and structures shall be located and placed in accordance with a valid permit so as to cause minimum interference with the rights and reasonable convenience of adjacent property owners. All Facilities shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used during construction activities at such times and places as are reasonably required for the safety

of the public. Any poles or other fixtures placed in any street by the Operator shall be placed in such manner as not to interfere with the usual travel on such public way. Exact placement within the right-of-way shall be coordinated with the City and other utilities in order to provide for maintenance and future expansion, as well as, for the safety of the public. The City reserves the reasonable right as to final placement.

(7) **Interference with use of streets.** When installing, locating, constructing or maintaining Facilities, the Operator shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface of any such street in as good condition as it was prior to performance by the Operator of such work.

(8) **Completion of construction.** The Operator shall promptly complete all construction activities so as to minimize disruption of the public ways and other public and private property. All construction work authorized by a permit within public ways, including restoration, must be completed within 90 days of the date of issuance or at such other interval as the City may specify in writing upon issuance of the permit.

(9) **Non-complying Work.** Upon order of the City Manager or designee, all work which does not comply with the provisions of this Franchise shall be brought into compliance with this Franchise.

Sec. 11. Relocation or removal.

(1) **Relocation or removal at the request of the City.** Upon receipt of thirty (30) days' prior written notice from the City, the Operator, at its own expense, and within the time period prescribed by the City, shall protect, support, temporarily disconnect, relocate, or remove any of its facilities or property within the public rights-of-way when, in the judgment of the City, the same is required for reason of traffic conditions, pubic safety or improvements of that portion of the rights-of-way. In the event such relocation is required due to Emergency repairs, as deemed necessary by the City, such relocation or moving shall be accomplished within twenty-four (24) hours. Nothing herein shall be deemed a taking of the

property of the Operator, and the Operator shall be entitled to no surcharge by reason of this provision.

(2) **Relocation at request of third party.** The Operator shall, on the request of any Person holding a building moving permit issued by the City, temporarily raise or lower its cable system to permit the moving of such building, provided:

(a) The expense of such temporary raising or lowering of the cable system is paid by said Person, including if required by the Operator, making such payment in advance; and

(b) The Operator is given not less than thirty (30) days advance written notice to arrange for such temporary wire changes.

Sec. 12. Documentation of location of facilities.

(1) **Route map.** Upon request, the Operator shall submit a route map to the City Manager or designee that complies with the following provisions:

(a) Certification by an engineer employed by the Operator that the route map accurately depicts, based upon information available, the location of all cable system facilities.

(b) Depiction of drop service lines to individual subscribers is not required.

(c) Identification of facilities as aerial or underground.

(d) A list of any known existing surveys and other existing information that provide more-detailed information regarding the location of underground facilities.

(e) Submittals shall be provided in hardcopy, and if available, electronically as an AutoCAD or ArcView file.

(2) **Report of underground facilities.** In order to efficiently and safely design or construct right-of-way improvements in a specific area, the City Manager or designee may

require the Operator to submit a report of existing system facilities for a specific area of the City that will be impacted as a result of a planned right-of-way improvement. Within sixty (60) days after receipt by the Operator of a request from the City Manager or designee, the Operator shall submit a report of underground system facilities that shall comply with the following provisions:

(a) Certification by an engineer employed by the Operator that the report accurately depicts the location of all underground cable system facilities, including drop service lines to individual subscribers. The accuracy of this report shall be noted based upon the capability of the locating equipment used.

(b) The accurate depth of the underground facility, as may be available based upon the capability of the locating device used. The accuracy of this information shall be noted.

(c) Submittals shall be provided in hardcopy, and if available, electronically as an AutoCAD or ArcView file.

(d) The City and Operator recognize the importance of making best efforts to communicate during the planning and construction phases of right-of-way improvement projects. To that end, the City and Operator agree to work cooperatively and to be reasonable and timely in requesting and providing necessary information. In the event the City reasonably determines that more precise information is needed for a specific aspect of a right-of-way project, the Operator agrees to take the necessary steps to provide such precise information within sixty (60) days of receipt of request. If it is necessary for the Operator to pot-hole or excavate and restore portions of the right-of-way to respond to the City's information request, the Operator agrees to take such steps at its expense, and the City agrees to waive all permitting and inspection fees therefore.

Sec. 13. Restoration of improvements. Upon completion of any construction work, the Operator shall promptly repair, but in no event longer than such time as may be established by the City during permit review, any and all public and private property, improvements, fixtures, structures and facilities which are damaged during the course of construction, restoring the same to their condition before construction commenced.

Sec. 14. Landscape restoration. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair or replacement of the cable system, which is done pursuant to a Franchise, shall be replaced or restored to the condition existing prior to performance of the work in accordance with City landscape regulations.

Sec. 15. Location of facilities. New facilities shall be constructed in accordance with the following terms and conditions:

(1) Facilities shall be installed within the Operator's existing underground duct or conduit whenever excess capacity exists.

(2) Overhead facilities shall be installed on pole attachments to existing utility poles only, and then only if space is available.

(3) Whenever all existing telephone and electric utilities are located underground within public ways, the Operator must also locate its facilities underground.

(4) Whenever all new or existing telephone and electric utilities are located or relocated underground within public ways, the Operator that currently occupies the same public ways shall concurrently relocate its Facilities underground at its expense.

Sec. 16. Conduit occupancy. If the Operator is constructing underground conduit for its own use, the City may require the Operator to construct excess conduit capacity in the public ways, provided that the City enters into a contract with the Operator consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the Operator. (calculated as the difference between what the Operator would have paid for the construction of its conduit and the additional cost only of construction of the excess conduit). If the City makes the additional conduit available to any other entity for the purposes of providing telecommunications service or cable service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the Operator shall recover at least the fully allocated costs of the Operator. The Operator shall state both contract rates in the contract. The City shall inform the Operator of the use, and any change in use, of the requested conduit and related access structures, if any, to determine the applicable rate to be paid by the City.

Sec. 17. Operator occupancy of City-owned conduit. If the City owns or leases conduit in the path of the Operator's proposed facilities, provided it is technologically feasible for the Operator to occupy the conduit owned or leased by City, and further that the City shall provide the Operator with access structure and vaults connecting the additional conduit to the Operator's cable system to be accessed solely by the Operator, the Operator shall be required to occupy the conduit owned or leased by City in order to reduce the necessity to excavate the public way. The Operator shall pay to City a fee for such occupancy which shall be the cost the Operator would have expended to construct its own conduit from the outset, as certified by the Operator's engineer and approved by the City Engineer. City and Operator may agree to amortize the fee through annual payments to City over the term of the Franchise, including the time value of money.

Sec. 18. Notice of work. The City and the Operator agree that it is beneficial for both parties to be aware of any potential impacts due to future construction projects in the City. Therefore, both the City and the Operator agree to make a good faith effort to notify one another of planned construction projects that are of significant size and located in the rights-of-way, as soon as possible. It is hoped that by doing this, both parties may be afforded ample time to prepare and/or participate to any degree necessary.

Sec. 19. Repair and emergency work. In the event of an unexpected repair or emergency, the Operator may commence such repair and emergency response work as required under the circumstances, provided the Operator shall notify the City Manager as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

Sec. 20. Annual reports. On or before the effective date of this Franchise and no later than the first of May each year thereafter, the Operator shall furnish a written report that includes the items listed below. Upon request the Operator shall also appear before the Council on or shortly after submittal of the report each year to provide an oral presentation of and be available to discuss the annual report.

(1) Most recent corporate annual report;

(2) A copy of the 10-K Report, if required;

(3) The number of homes for which cable is available;

(4) The number of subscribers with basic service;

(5) The number of subscribers with expanded basic service;

(6) The number of subscribers with premium services;

(7) The number of pay-per-view purchases;

(8) The number of Installations in the period;

(9) The number of disconnects in the period;

(10) Total number of miles of cable in the City;

(11) Total number and summary of all written complaints received by category, length of time taken to resolve and action taken to provide resolution;

(12) A list of the current programming;

(13) A copy of the most current Proof of Performance Report;

(14) A current copy of its subscriber work order;

(15) A current copy of its installation packet, including a copy of the current billing practices.

(16) Report on operations - Upon reasonable notice, such other reports with respect to its local operation, affairs, transactions or property as necessary to verify compliance with this Franchise and are permitted by law.

Sec. 21. Customer service. The Operator shall at all times be in compliance with FCC Customer Service Standards 76.309, Subpart II (Appendix A), as may be amended, which standards are incorporated into this Franchise by reference ("FCC Customer Service Standards"). The City reserves the right to enact and enforce any customer protection law, containing more stringent standards, to the extent not specifically preempted by applicable law.

Sec. 22. Telephone response. In order that the City may be informed of the Operator's success in achieving satisfactory customer service in its telephone answering functions, the Operator shall, within thirty (30) days of the end of each calendar quarter, provide a summary report of calls handled at the customer sales and service center facility taking calls from City customers. This report will provide the following:

(1) Percentage of calls answered within 30 seconds;

(2) Number of calls received;

(3) Average handle time;

(4) Number of calls abandoned by the caller;

(5) Average speed of answer;

(6) Percentage of time all lines busy.

This data will be compared to minimum customer service standards of the FCC then in effect.

Sec. 23. Failure to improve customer service.

(1) The City or its designee shall review telephone response and customer service information with the Operator. Failure to comply with customer services standards may result in imposition of penalties in accordance with section 41 of this Franchise.

(2) An unsatisfactory record will also result in the hearings being made part of an exhibit under section 626(c)(1)(A) and (B) of the Act alleging that such practices have failed to conform with renewal requirements as stated therein. In addition, the Operator's corporate office shall be advised of the City's findings.

Sec. 24. Periodic meetings. Upon request, and with thirty (30) days prior written notice from the City, the Operator shall meet with designated City officials and/or designated representative(s) to review the performance of the Operator under this Franchise.

Sec. 25. Refunds for outages. After notification from a subscriber of an outage, the Operator will credit the subscriber's account, provided request by the subscriber for such refund is made within thirty (30) days of the reported outage and the length of the outage was in excess of six (6) hours.

Sec. 26. Discounts. The Operator shall offer a discount of thirty percent (30%) from the normal charge for basic service to those individuals age sixty-two (62) or older or handicapped who are the legal owner or lessee/tenant of their residence provided that their combined disposable income from all sources does not exceed income levels used by the City for other utility discounts. The City or its designee shall be responsible for certifying to the Operator that such applicants conform to the specific criteria.

Sec. 27. PEG access channels. Upon the effective date of this Franchise, the Operator shall make or continue to make the following PEG Access Channels available to the City and/or its residents:

(1) **Public access.** One (1) channel for the purpose of cablecasting public access programming.

(2) **Educational access.** One (1) channel upon the request of the Council for the purpose of cablecasting educational programs.

(3) **Local government access.** Two (2) channels, one for the purpose of cablecasting Council hearings, committee and commission meetings as well as community bulletin board announcements.

(4) **Additional channels.** One additional channels each for public, education or government shall be made available when the initial channel required above is used for access purposes with programming (excluding character generated and filler programming, e.g. NASA, AM/FM radio programming) during fifty percent (50%) of the hours between 10:00 am and 10:00 PM, during any consecutive ten (10) week period. Except for character generated announcement, the programming of additional channels required shall be distinct and non-repetitive of the previous channel. Character generated announcements, however, which may be cablecast on additional channels which are duplicative of those on another channel shall not be counted towards the total channel usage. Based upon this criterion the Operator shall, within six (6) months following a written request by the City, provide another designated access channel for this purpose.

(5) **Channel reversion.** If, after one year of operation the channel(s) activated under the terms of section 27(4) is not programmed at least twenty-five percent (25%) of the hours between 10:00 a.m. and 10:00 p.m., the channel shall then revert to the Operator for its unrestricted use within the terms and conditions of this Franchise. The Operator shall give the City a minimum of six (6) months notice of its intention to withdraw any such channels. The channel, however, shall not revert if, during this caution period, the channel fulfills the requirements as discussed above. The reversion will be for a minimum of two (2) years. After this period the City may re-acquire such channel(s) upon demonstrated demand that it will fulfill the conditions of programming usage.

Sec. 28. PEG access capital contribution.

(1) The Operator shall provide, within ninety (90) days of the effective date of this Franchise, for the PEG Access capital requirements of the City, an amount equal to One Hundred Forty Thousand Dollars $140,000.00 (the capital contribution).

(2) The City agrees that all amounts paid by the Operator as the Capital Contribution may be added to the price of cable services and collected from customers, over the life of the Franchise, in accordance with federal law.

Sec. 29. City-wide PEG access interconnection. In the case of multiple cable systems and other video systems operating in the City, the City may request the Operator to begin negotiations with the other Operators to interconnect PEG access channels delivered to subscribers by each of the Operators in the City. Interconnection of PEG access channels may be accomplished by direct cable connection, microwave link, or other technically feasible method.

Upon receiving request of the City to interconnect, the Operator shall commence negotiations and shall report the results of such negotiations no later than (60) days after such initiation.

Sec. 30. Complementary cable service for public buildings. The Operator, upon request, shall provide without charge, a standard installation and one outlet of basic service and expanded basic service to those public buildings identified in Appendix B that are passed by its cable system. The cable service provided shall not be distributed beyond the originally installed outlet without authorization from Operator. The cable service provided shall not be used for commercial purposes. The City shall hold the Operator harmless from any and all liability or claims arising out of the provision and use of cable service required by this section. The Operator shall not be required to provide an outlet to such buildings where a non-standard installation is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary cable system extension and/or non-standard installation.

Sec. 31. Institutional network (I-Net).

(1) At any time during this Franchise agreement, upon receipt of the written notice, the Operator shall meet with the City to discuss the institutional network communications needs of the City and the ability of the Operator to accommodate them. Any preliminary I-Net design discussions shall be based upon the cable system architecture, taking into account the needs of the City and current available technology.

(2) Within two (2) weeks of design determination, the Operator shall provide to the City in writing, a firm estimate of the cost of I-Net construction. If the City accepts the project, the Operator will proceed with construction. At the discretion of the City, these costs may be treated as external costs under 47 CFR 76.922, not to exceed $1.00 per month, per subscriber when aggregated with the PEG Access Captial Contribution.

(3) The City shall have an exclusive right of use of the I-Net capacity for non-commercial private network communications, which right cannot be revoked by the Operator, or successor companies, if any, during the term of this Franchise or any renewals thereof. However, the Operator shall at all times own and maintain the aerial and underground fiber optic cable (fiber backbone) and associated and equipment up to said termination points where physically connected to City-owned electronics.

(4) **Internet alternative.** In lieu of providing the Institutional Network capacity specified above, the City may elect to obtain access to the Internet to accomplish these objectives. In this case the Operator shall provide, without charge, one cable modem per City site listed in Appendix B, or one ethernet card, and any software necessary for access to such service. There shall be no charge for unrestricted usage during business hours. The using facility shall be responsible for the provision, maintenance, updating and replacing as necessary any other hardware such as a personal computers and related equipment required for access to such service, as well as the cost of installing additional outlets if so requested. Further, the Operator shall not be obligated to provide such service to any using facility unless the using facility agrees, on a form as approved by the City, to take reasonable precautions to prevent

any inappropriate or illegal use of such service, and agrees to hold the Operator harmless against and from all claims, demands, costs or liabilities of every kind and nature whatsoever arising out of use of such service within the using facility, including, but not limited to, reasonable attorneys' fees and costs.

Sec. 32. Cable internet service. The Operator and the City agree that cable internet service has been classified by the FCC as an interstate information service and not a cable service under the Communications Act of 1934, as amended. In the event that a final, non-appealable decision by the FCC or a court of competent jurisdiction changes the classification of cable internet service from an interstate information service to a cable service, the City hereby reserves all of the rights it may have to regulate cable internet service, subject to such decision and applicable law. This Franchise, however, shall not be read as a concession by the Operator that the City may in the future lawfully regulate cable internet service.

Sec. 33. Coverage. The City shall be provided with cable service in the entire franchise area. If such a condition does not now exist in its present Franchise area, the Operator shall complete such wiring and be in a position to offer cable service to all residents within six (6) months of the effective date of the franchise. Areas subsequently annexed shall be provided with cable service within six (6) months.

Sec. 34. Office location. So long as a co-location site is reasonably available, The Operator shall maintain a payment center within the City limits of Des Moines where customers may drop off payments and return converters.

Sec. 35. Non-Discrimination. In connection with rates, charges, facilities, rules, regulations and in all Operator's services, programs or activities, and all Operator's hiring and employment made possible by or resulting from this Franchise, there shall be no discrimination by the Operator or by Operator's employees, agents, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, creed, national origin, sexual orientation, marital status or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Operator shall not violate any applicable federal, state or local law or regulation regarding non-discrimination.

Any material violation of this provision shall be grounds for termination of a Franchise by the City and, in the case of the Operator's breach, may result in ineligibility for further City agreements; provided, that nothing in this ordinance shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any subscriber coming within such classification would be entitled, and provided further that connection and/or service charges may be waived or modified during promotional campaigns of an Operator. The Operator will not deny access to cable service to any group of potential residential subscribers because of the income of the residents of the local area in which the group resides.

Sec. 36. Parental control devices. Upon request by a subscriber, the Operator shall make available and may charge the subscriber a fee not to exceed the Operator's actual cost including applicable handling fees, a device by which the subscriber can prohibit viewing and audio reception of a particular cable service or video programming service.

Sec. 37. Devices for the hearing impaired. The Operator shall comply with FCC closed captioning requirements, 47 CFR 76.606, or any successor rules and regulations thereto.

Sec. 38. Rates. At least annually, in accordance with applicable law, or at any time upon written request from the City, the Operator shall file with the City a complete schedule of rates and charges. During the term of this Franchise, and in accordance with applicable law, the Operator shall provide thirty (30) days prior written notice to the City and subscribers of any change in its published rates and charges.

Sec. 39. Continuity of service.

(1) It shall be the right of all subscribers to continue receiving cable service so long as their financial and other obligations to the Operator are fulfilled. In this regard the Operator shall act, so far as it is within its control, to ensure that all subscribers receive continuous uninterrupted service during the term of the Franchise.

(2) In the event the Operator fails to operate a cable system for seventy-two (72) continuous and consecutive hours without prior notification to and approval of the Council or without just cause such as an impossibility to operate the cable system because of the occurrence of an emergency or other circumstances reasonably beyond the Operator's control, the City may, after notice and an opportunity for the Operator to commence operations at its option, operate the cable system or designate someone to operate the cable system until such time as the operator restores cable service or a replacement Operator is selected. If the City is required to fulfill this obligation for the Operator, the Operator shall reimburse the City for all reasonable costs in excess of revenues from the cable system received by the City that are the result of the Operator's failure to perform.

Sec. 40. Extraordinary installation charges. Anyone requesting cable service and living within one hundred twenty-five (125) feet of existing cable distribution or trunk lines shall have the cable installed at the prevailing published installation rate. In the event a request is made for service and the residence is more than one hundred twenty-five (125) feet from an existing cable distribution or trunk line, such installation shall be completed on a time and material cost basis for that portion of the service line extending beyond one hundred twenty-five (125) feet.

Sec. 41. Non-compliance.

(1) In the event the City believes that the Operator has not complied with the terms of the Franchise, the City shall notify the Operator in writing by certified mail. The notice shall state the specific nature of the perceived deficiency in the operation of the cable system, or the Operator's failure to

comply with material conditions of the Franchise, and set forth a cure period of no less than thirty (30) days. During the cure period, the Operator will be allowed to rectify the alleged improper condition, to respond to the City contesting the assertion of noncompliance, or, in the event that by the nature of default such default cannot be cured within the period set by the City, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.

(2) If the Operator fails to respond to the notice of non-compliance from the City in accordance with the procedures set forth above, or in the event that the alleged default is not remedied within the cure period, or the City believes the remedy proposed by the Operator is unreasonable and the City intends to continue its investigation into the default, then the City shall schedule a public hearing. The City shall provide the Operator at least ten (10) days prior written notice of the hearing, which specifies the time, place and purpose of the hearing, and provide the Operator the opportunity to be heard.

Sec. 42. Penalties. If the City determines that the Operator is not in compliance with any material provision of the Franchise, the City may elect to:

(1) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

(2) Impose monetary penalties as specified in Des Moines Municipal Codes (DMMC).

(3) Monetary penalties may be assessed retroactive to the date that notification was provided to the Operator in such cases where the Operator has been non-responsive in correcting the situation or in the case of flagrant violations. If payment of any of these penalties is delinquent by three (3) months or more, the City may require partial or total forfeiture of the performance bond or other surety.

(4) Nothing in this Franchise shall be construed as limiting any remedies that the City may have, at law or in equity, for enforcement of this Franchise.

Sec. 43. Revocation notice and duty to cure. This Franchise may be revoked for a substantial default of a material provision by the Operator. In the event that the City believes that grounds exist for revocation of a Franchise, the City shall informally discuss the matter with the Operator. If these discussions do not lead to resolution of the problem, the Operator shall be given written notice of the apparent violation or noncompliance, including a short and concise statement of the nature and general facts of the violation or noncompliance, and be given thirty (30) days to furnish evidence:

(1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.

(2) That rebuts the alleged violation or noncompliance.

(3) That it would be in the public interest to impose some monetary damages, penalty or sanction less than revocation.

Sec. 44. Hearing. In the event that the Operator fails to provide evidence reasonably satisfactory to the City as provided hereunder, the City Council may seek revocation of the Franchise at a legislative hearing. The City shall give written notice of its intent to revoke the Franchise. The notice shall set forth the exact nature of the noncompliance and specify the time and place of the hearing. The Operator shall be afforded at least forty-five (45) days prior written notice of the hearing.

At the legislative hearing, the Operator shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of the legislative hearing and the cost shall be shared equally between the parties. The City Council shall hear any person interested in the revocation, and shall allow the Operator, in particular, an opportunity to state its position on the matter.

Sec. 45. Standards for revocation or lesser sanctions. Within ninety (90) days after the legislative hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked; or establish monetary damages, penalties, lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation, based upon the record of the legislative hearing.

If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Operator. The Operator shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within thirty (30) days. The Operator shall be entitled to such relief as the Court may deem appropriate.

Sec. 46. Removal and abandonment of facilities. In the event that the use of any part of the cable system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such cable system equipment or facilities have been installed in any public ways or rights-of-way without complying with the requirements of this Franchise or other City ordinances, or the Franchise has been terminated or has expired, upon receiving ten (10) business days prior written demand from the City, the Operator shall promptly remove, at its expense, such affected equipment or Facilities, other than any which the City may permit to be abandoned in place, from the public ways of rights-of-way. Said removal shall be completed within one-hundred eighty (180) days from receipt of the City's written demand. In the event of such removal, the Operator shall promptly restore the public ways or rights-of-way from which such property has been removed to a condition satisfactory to the City. Any affected equipment or facilities of the Operator remaining in place one-hundred eighty-one (181) days after the termination or expiration of the Franchise, and upon written notice from the City, shall be considered permanently abandoned. The City may extend such time not to exceed an additional ninety (90) days with prior written request from the Operator, such request shall not be unreasonably withheld. Any equipment or facilities of the Operator that the City allows to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon permanent abandonment of the equipment or facilities of the Operator in place, the equipment or Facilities shall become that of the City, and the Operator shall submit to the City Clerk an instrument in writing, to be approved by the

City Attorney, transferring to the City the ownership of such equipment or facilities. None of the foregoing affects or limits the Operator's rights to compensation for an involuntary abandonment of its equipment or facilities under state or federal law.

Sec. 47. Independent contractors. This Franchise shall not be construed to provide that the Operator is the agent or legal representative of the City for any purpose whatsoever. The Operator is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner whatsoever.

Sec. 48. Equalization of civic contributions. In the event of one or more Franchises being granted, the City shall require that such subsequent operators pay to the City an amount proportionally equal to costs contributed by the Operator. These costs may include but are not limited to such features as access and Institutional Network costs, bi-directional or equivalent cable installed to municipal buildings and similar expenses.

On the anniversary of the grant of each later awarded franchise, such subsequent operators shall pay to the City an amount proportional to the amount contributed by the Operator, based upon the number of subscribers held by such subsequent operators. Such payments will be based upon incremental increases in subscribers, if any.

Additional operators shall provide all PEG Access Channel(s) currently available to the subscribers of the Operator. In order to provide these access channels, additional operators shall interconnect, at their cost, with the Operator, subject to any reasonable terms and conditions that the Operator, providing the interconnection, may require. These interconnection agreements shall be made directly between the operators. The Council, in such cases of dispute of award, may be called upon to arbitrate regarding these arrangements. Any cost associated with the process shall be borne by the operators.

Sec. 49. External franchising costs. Prior to incurring any expense for any Franchise related requirements that would be treated as an external cost passed through to subscribers under applicable federal law, the Operator shall notify the City of its intent to exercise its right and the amount to be passed through to subscribers. The Operator's annual rate filing with the City shall constitute notice and fulfill this requirement. The City may waive the Franchise related requirement if, in the City's opinion, the increase in rates would be a burden on subscribers.

Sec. 50. Franchise non-transferable.

(1) The cable system and this Franchise shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any person or entity without the prior written consent of the City, which consent shall not be unreasonably withheld.

(2) The Operator shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Operator. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of persons of ten percent (10%) of the shares or the general partnership interest in the Operator, except that this sentence shall not apply in the case of a transfer to any person or group already owning at least a ten percent (10%) interest of the shares or the general partnership interest in the Operator. Every change, transfer or acquisition of control of the Operator shall make this Franchise subject to cancellation unless and until the City shall have consented thereto.

(3) The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish all information required by law and the City.

(4) The City shall render a final written decision on the request within one-hundred twenty (120) days of the request,

provided it has received all requested information. Subject to the foregoing, if the City fails to render a final decision on the request within one-hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(5) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, Operator shall file with the City evidence of completion of such sale or transfer of ownership or control, certified and sworn to as correct by Operator and transferee.

(6) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Operator shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by Operator.

(7) The consent or approval of the City to any transfer by the Operator shall not constitute a waiver or release of any rights of the City, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise.

(8) Notwithstanding anything to the contrary in this section, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or cable system to an entity controlling, controlled by or under the same common control as Operator provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all provisions of the Franchise.

(9) Subject to applicable law the Operator shall reimburse the City for all reasonable out of pocket costs associated with the review of any transfer application.

Sec. 51. Insurance.

(1) **General requirement.** The Operator must have adequate insurance during the entire term of this Agreement to protect against claims for injuries to persons or damages to property which in any way relate to, arise from, or are connected with this Agreement or involve the Operator, its agents, representatives, contractors, subcontractors and their employees.

(2) **Insurance limits.** The Operator must keep insurance in effect during the life of the Franchise in the following insurance limits:

(a) Comprehensive general liability insurance with limits not less than:

(i) Two million dollars ($2,000,000) for bodily injury or death to each person;

(ii) Two million dollars ($2,000,000) for property damage resulting from any one accident; and

(iii) Two million dollars ($2,000,000) for all other types of liability.

(b) Automobile liability for owned, non-owned and hired vehicles with a limit of three million dollars ($3,000,000) for each person and three million dollars ($3,000,000) for each accident.

(c) Employer's liability: two million dollars ($2,000,000).

(d) Workers' compensation within statutory limits.

(3) Each policy shall provide that the insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the City. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this

Franchise, the Operator shall provide a replacement policy. The Operator agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the commercial general liability, for at least one (1) year after expiration of this Franchise.

(4) The insurance obtained by the Operator shall be placed with insurers with a Best's rating of no less than "A" in the latest edition of "Best's Key Rating Guide", published by A.M. Best Guide.

(5) The City shall be named as an additional insured on any policy required pursuant to this section.

Sec. 52. General indemnification. The Operator agrees to indemnify, save and hold harmless, and defend the City, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Operator's construction, reconstruction, repair, upgrade, operation, or maintenance of its cable system, provided that the City shall give the Operator written notice of its obligation to indemnify the City within fourteen (14) days of receipt of a claim or action pursuant to this section. If the City determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the City.

Sec. 53. Franchise performance bond. The Operator shall establish a Franchise performance bond in the amount of $250,000.00 with the City which fund shall be maintained at the sole expense of the Operator so long as any of Operator's facilities are located within the public ways. This Franchise performance bond shall be separate and distinct from any other bond or deposit required.

(1) The Franchise performance bond shall serve as security for the full and complete performance of Operator's obligations under this Franchise, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the Operator to comply with the codes, ordinances, rules, regulations or permits of the City.

(2) Before any draws are made on the Franchise performance bond, the City Manager or designee shall give written notice to the Operator:

(a) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of the Operator's act or default;

(b) Providing a reasonable opportunity for the Operator to first remedy the existing or ongoing default or failure, if applicable;

(c) Providing a reasonable opportunity for the Operator to pay any moneys due the City before the City draws on the Franchise performance bond, if applicable;

(d) That the Operator will be given an opportunity to review the act, default or failure described in the notice with the City Manager or designee.

(3) The Operator shall replace the Franchise performance bond within fourteen (14) days after written notice from the City Manager or designee that there is a deficiency in the amount of the Franchise performance bond.

Sec. 54. General provisions.

(1) **Entire Agreement.** This Franchise contains all of the agreements of the parties with respect to any matter covered or mentioned in this Franchise and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose.

(2) **Modification.** The provisions of this Franchise may be amended or added to by the mutual agreement of both of the parties. Provided, however, that such modifications shall not be effective until approved by the Council via ordinance and such modification is accepted by the Operator.

(3) **Full force and effect.** Any provision of this Franchise which is declared invalid, void or illegal by a court of competent jurisdiction shall in no way affect, impair, or

invalidate any other provision hereof and such other provisions shall remain in full force and effect.

(4) **Attorney fees.** If any suit or other action is instituted in connection with any controversy arising under this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses including such sum as the court may judge reasonable for attorneys fees, including fees upon appeal of any judgment or ruling.

(5) **No waiver.** Failure of the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

(6) **Governing law.** This Franchise shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington. Venue over any dispute arising hereunder shall be in the King County Superior Court or the United States District Court for the Western District of Washington at Seattle.

(7) **Notices.** Any notices required to be given or permitted hereunder shall be delivered to the parties at the following addresses:

OPERATOR:	CITY:
Comcast of Washington IV, Inc.	City Manager
4020 Auburn Way N.	City of Des Moines
Auburn, WA 98002	21630 11th Ave. S.
Attn: General Manager	Des Moines, WA 98198

With a copy to:
Comcast of Washington IV, Inc.
PO Box C-8004
Bothell, WA 98082-8004
Attn: Franchise Department

Notices may be delivered personally, deposited in the United States mail postage prepaid, to the address set forth herein, unless specifically directed otherwise herein. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

(8) **Captions.** The respective captions of the sections of this Franchise are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect in any respect any of the provisions of this Franchise.

(9) **Time of essence.** Time is of the essence of this Franchise and each and all of its provisions in which performance is a factor.

(10) **Remedies not exclusive.** Subject to applicable law any remedies provided for under the terms of this Franchise are not intended to be exclusive but shall be in addition to all other remedies available to the City at law, in equity or by statute.

(11) **Force majeure.** The Operator shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Operator to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Operator's cable system is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary, provided the Operator has made a reasonable effort to obtain the necessary labor and materials. Furthermore, the parties hereby agree that it is not the City's intention to subject the Operator to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the subscribers within the franchise area, or where strict performance would result in practical difficulties and hardship to the Operator which outweigh the benefit to be derived by the City and/or subscribers.

(12) **Severability.** If any section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent

jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

Sec. 55. Successors or assigns. This Franchise, including all Appendices, shall be binding on the Operator, its heirs, successors and assigns.

Sec. 56. Acceptance. This Franchise and its terms and provisions shall be unconditionally accepted by the Operator by the submission of a written instrument, executed and sworn to by a corporate officer of the Operator before a Notary Public, and filed with the City within sixty (60) days after the effective date of this Franchise. Such instrument shall evidence the unconditional acceptance of this Franchise and the promise to comply with and abide by all its provisions, terms and conditions.

Sec. 57. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Sec. 58. 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: ________

Effective Date: ______________

DRAFTORD:03-032FinalDraft

Appendix "A"

FCC Customer Service Standards

Title 47 CFR, Part 76 (Cable Television Service), Subpart H (General Operating Requirements) is amended as follows:

1. The authority citation for Part 76 is revised to read as follows:

AUTHORITY: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308 309; Secs. 612, 614-615, 623, 632 as amended, 106 Stat. 1460; 47 U.S.C. Secs. 532, 533, 535, 543, 552.

2. Section 76.309 will be added to the Commission's Rules and will read as follows:

Section 76.309 Customer Service Obligations

(a) A cable franchise authority may enforce the customer service standards set forth in section (c) of this rule against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in section (c) of this rule;

(2) a franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in section (c) of this rule and are contained in current franchise agreements;

(3) any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) the establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in section (c) of this rule.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability-

(A) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(i) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(ii) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(B) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds.

These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(C) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(D) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(E) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls- Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(A) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations ar those that are located up to 125 feet from the existing distribution system.

(B) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(C) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(D) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(E) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers-

(A) Notifications to subscribers-

(1) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(i) products and services offered;

(ii) prices and options for programming and conditions of subscription to programming and other services;

(iii) installation and service maintenance policies;

(iv) instructions on how to use the cable service;

(v) channel positions of programming carried on the system; and,

(vi) billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(2) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

(B) Billing-

(i) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(ii) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.

(C) Refunds- Refund checks will be issued promptly, but no later than either-

(i) the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii) the return of the equipment supplied by the cable operator if service is terminated.

(D) Credits- Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions-

(A) Normal Business Hours- The term "normal business hours " means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(B) Normal Operating Conditions- The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are <u>not</u> within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which <u>are</u> ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(C) Service Interruption- The term "service interruption" means the loss of pictures or sound on one or more cable channels.

Appendix B

PUBLIC BUILDINGS

City of Des Moines Administrative Offices

Administration Building, 21630 11th Ave. S., Des Moines, WA 98198
Suite A - Suite D

Engineering, 21650 11th Ave. S., Des Moines, WA 98198 (top floor)

Public Works Shop, 21650 11th Ave. S., Des Moines, WA 98198
(lower floor)

Public Works/Parks Service Center, 2255 S. 223rd St., Des Moines, WA 98198

Police Department, 21900 11th Ave. S., Des Moines, WA 98198

Recreation Dept. - Field House, 1000 S. 220th St., Des Moines, WA 98198

Marina, 22307 Dock Avenue S., Des Moines, WA 98198

Senior Services, 22030 Cliff Avenue S., Des Moines, WA 98198

Activities Center, 2045 S. 216TH St., Des Moines, WA 98198

Services Annexed to the City of Des Moines

Fire District 26, 2238 S. 223rd, Des Moines, WA 98198

Fire District 39, Station 66, 27010 15th Ave. S., Des Moines, WA

Woodmont Library, 26454 16th Ave. S., Des Moines, WA 98198

Des Moines Library, 21620 11th Ave. S., Des Moines, WA 98198

Special Purpose Districts

Water District 54, 922 S. 219th, Des Moines, WA 98198

Highline District Schools

Mt. Rainier High School, 22450 19th Ave. S., Des Moines, WA 98198

Pacific Middle School, 22705 24th Pl. S., Des Moines, WA 98198

Parkside Elementary School, 2104 S. 247th, Des Moines, WA 98198

Midway Elementary School, 22447 24th Ave. S., Des Moines, WA 98198

Des Moines Elementary School, 22001 9th Ave. S., Des Moines, WA 98198

Olympic Elementary School, 615 S. 200th St., Des Moines, WA 98148

North Hill Elementary School, 19835 8th Ave. S., Des Moines, WA 98148

Woodmont Elementary School, 26454 16th Ave. S., Des Moines, WA 98198

Colleges

Highline Community College, 2400 S. 240th St., Des Moines, WA 98198

City of Des Moines
LEGISLATIVE HISTORY - CABLE TV FRANCHISE
March 1990 through May 2003

<u>March 22, 1990</u>

- Public Hearing held on draft master ordinance and franchise agreement

<u>April 12, 1990</u>

- Ordinance No. 843 passed establishing the conditions, requirements, obligations, duties of construction, maintenance & operation of a non-exclusive cable communication & distribution system with the City with TCI Cablevision of Washington

- Ordinance No. 844 passed granting a nonexclusive franchise to construction, install & operate, repair, replace & maintain lines, etc.

<u>October 10, 1991</u>

- Ordinance No. 909 establishing procedures and guidelines regulating the use of character generators on City of Des Moines cable television access channels (Pursuant to Sec. 6 of Ord. 844)

<u>July 1, 1993</u>

- Motion to authorize Administration to pursue franchising authority certification & rate approval through 3H Consultants with FCC

<u>November 18, 1993</u>

- Resolution No. 745 declaring City's intent to follow the regulations established by the Federal Communications Commission in adopting rate regulations consistent with the regulations of the Federal Communications Commission for basic cable service.

<u>December 7, 1995</u>

- Motion to direct Administration to prepare draft Resolution stating Council's opposition to removal of the CBUT channel.

<u>December 21, 1995</u>

- Resolution No. 798 requesting TCI Cablevision of Washington, Inc., to retain Vancouver station CBUT.

<u>April 10, 1997</u>

- Motion to accept TCI's proposal for providing cable service at the Marina and approve the broadband easement.

<u>February 4, 1999</u>

- Resolution No. 859 approving the change of control of the cable communications franchise. (To AT&T)

<u>August 5, 1999</u>

- Approved Consultant Services Agreement with 3 H Cable Communications Consultants.

ATTACHMENT 3

<u>April 13, 2000</u>

- Ordinance No. 1259 amending Ord. No. 844 to extend for up to 120 days the non-exclusive franchise currently held by AT&T through Ordinance No. 844, adopted April 12, 1990 to construct, install and operate, repair, etc.

<u>August 10, 2000</u>

- Ordinance No. 1269 amending Ord. No. 844 to extend through December 31, 2000, the non-exclusive franchise currently held by AT&T through Ordinance No. 844, adopted on April 12, 1990 to construct, install and operate, repair, etc.

<u>November 9, 2000</u>

- Ordinance No. 1274 amending Ord. No. 844 to extend through February 28, 2001 the non-exclusive franchise currently held by AT&T through Ord. No. 844, etc.

- Ordinance No. 1275 amending Title 20 of DMMC to include definitions relating to provision of cable television services & establishing the conditions, requirements, obligations, duties of construction, maintenance & operation of cable franchises within the City, etc. . . . **AND** repealing Ord. No. 843.

<u>April 12, 2001</u>

- Ordinance No. 1281 amending Ord. No. 844 to extend through June 30, 2001 the non-exclusive franchise currently held by AT&T through Ord. No. 844, adopted on April 12, 1990, to construct, install and operate, repair, etc.

<u>August 9, 2001</u>

- Ordinance No. 1285 amending Ord. No. 844 to extend through October 31, 2001 the non-exclusive franchise transferred to AT&T pursuant to Res. 859, to construct, install and operate, repair, etc.

<u>February 28, 2002</u>

- Ordinance No. 1300 amending Ord. No. 844 by extending through December 31, 2002 the non-exclusive franchise transferred to AT&T pursuant to Res. No. 859, to construct, install and operate, repair, etc.

<u>July 11, 2002</u>

- Resolution No. 932 relating to cable communication franchises and the merger of cable communications corporations. (AT&T Comcast)

PRELIMINARY

SPECIAL MEETING DES MOINES CITY COUNCIL

MINUTES June 26, 2003

The special meeting of the Des Moines City Council was called to order at 6:50 p.m. by Mayor Pro Tem Benjamin in the City Hall Conference Room, 21630 11th Avenue South, Suite A.

ROLL CALL - Present: Mayor Maggie Steenrod (arrived at 7:03 p.m.), Mayor Pro Tem Richard Benjamin, Councilmembers Bob Sheckler, Dan Sherman, Scott Thomasson and Susan White. Absent: Councilmember Gary Petersen. Also in attendance were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, Assistant City Attorney Richard Brown, Assistant City Attorney Maiya Andrews, and Retained Counsel Duncan Wilson (left at 7:03 p.m.).

Mayor Pro Tem Benjamin announced that the Council would hold an Executive Session for approximately 45 minutes to discuss real estate matters, about which public knowledge might have an adverse impact on price to the detriment of the city.

At 7:03 p.m., Mayor Steenrod arrived and Attorney Wilson left the meeting.

At 7:30 p.m., City Manager Piasecki announced that Council would remain in executive session for approximately another five minutes.

No formal action was taken.

ADJOURNMENT

The Executive Session adjourned at 7:32 p.m.

Respectfully submitted,

Richard S. Brown
Assistant City Attorney

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES June 26, 2003

At 7:30 p.m., City Manager Piasecki announced that the City Council would remain in executive session for an additional five minutes.

The regular meeting of the Des Moines City Council was called to order at 7:42 p.m. by Mayor Steenrod in the City 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 Bob Sheckler, Dan Sherman, Scott Thomasson and Susan White. Absent: Councilmember Gary Petersen (work). Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, Assistant City Attorney Richard Brown, Public Works Director Tim Heydon, Finance Director Paula Henderson, Community Development Director Judith Kilgore, and Deputy City Clerk Angela Chaufty.

Mayor Steenrod announced that Councilmember Petersen would arrive late to the meeting due to work commitments. (*Editor's Note: Councilmember Petersen did not arrive at the meeting prior to the meeting's expiration. There was no motion to excuse his attendance during the June 26, 2003 meeting. A motion to excuse Councilmember Petersen from the June 26, 2003 meeting was approved at the July 10, 2003 Council meeting.*)

COMMENTS FROM THE PUBLIC

Steve Zielinski, Sound Vista Mobile Home Park (Owner), 22018 28th Avenue South
Mr. Zielinski thanked Council for reconsidering the proposed mobile home park regulations. As he did not believe it was feasible for a developer to develop his property now, he wished to stay in business and provide a clean environment for his mobile home park.

Gordon Gray, 21814 Pacific Highway South
As a managing member of Pine Terrace Trailer Village, Mr. Gray urged Council to support Draft Ordinance No. 02-177 regarding mobile home park regulations. He said that the administrative procedures identified in the proposed ordinance were necessary for the management of this type of residential community.

Bob Pond, 23116 30th Avenue South
Mr. Pond asked for a greater police presence in the parking lot of Woodhaven Apartments. He said that the majority of the tenants, owners, and neighbors supported a more intense approach to the problems surrounding the complex.

Mayor Steenrod said that the City Manager would respond to Mr. Pond's concerns during his administration report.

Joe Feuerstein, 702 South 281st
Mr. Feuerstein urged Council to take the following actions:

- Allocate $250,000 to the Airport Communities Coalition;
- Increase cost savings and efficiencies by eliminating the police officer presence at the Council meetings; and
- Restructure or cancel the Finance and Economic Committee.

Mr. Feuerstein said that he had attended eight meetings of the Finance and Economic Committee and felt that most of the time was spent with staff educating Council. He said that staff's time would be better spent doing other tasks.

Scott McFarlane, 26906 10th Avenue South

Mr. McFarlane stated his belief in fair government and that elected officials should listen to the voters and follow the voters' wishes. He said that the voters did not need to be right but needed to be followed. Mr. McFarlane filed an application for an initiative petition and the filing fee with the clerk. The initiative petition asked that the following question be put before the voters:

> "Shall the City of Des Moines be prohibited from spending city taxes or other resources trying to stop the third runway?"

Rick Edwards, 909 South 278th

Mr. Edwards asked Council to reconsider his building permit for a gate. He gave a copy of the Hearing Examiner's findings, conclusions and decision regarding the issue to the clerk for distribution to Council. Mr. Edwards said that he would file an appeal for damages if Council did nothing. He asked Council to review the materials and contact him if they did not agree with his position.

City Manager Piasecki suggested that Council place the item on a future agenda, possibly the agenda of July 17, 2003. He noted that staff was currently developing options and criteria for the issue and identifying associated impacts. City Manager Piasecki informed Council that the City Attorney was attempting to contact Mr. Edwards' attorney. He noted that Council could declare a moratorium to allow them time to develop a thoughtful solution to the issue.

In response to Councilmember Sherman's questioning, Assistant City Attorney Brown confirmed that Mr. Edwards could file a place-holding appeal. He noted that two distinct issues, contractual and legislative, were identified in the Hearing Examiner's findings.

Denny Burhou, 26826 15th Avenue South

Mr. Burhou asked that a fish scale and a board to record the biggest catch of the day be installed on the Marina fuel dock. Mr. Burhou informed Council that individuals had volunteered to provide the scale and the board. The board would generate community spirit and create good will.

City Manager Piasecki asked Mr. Burhou to meet with the Harbormaster to arrange for the installation of the equipment.

Jeanne Moeller, 22211 Cliff Avenue South

Ms. Moeller stated that she was pleased with the manner in which Council had solved problems and encouraged them to continue to work together. In regard to the proposed Waterland Festival resolution, Ms. Moeller asked that the music stage be turned so that the music was projected toward the water rather than toward the residences.

BOARD & COMMITTEE REPORTS

Port of Seattle Commissioners Meeting

Councilmember Sheckler said that tapes of the Port of Seattle Commissioners' meeting were available from Brett Fish. Mr. Fish can be contacted by calling (206) 878-0807. The Port Commissioner's reported that the estimated cost of the third runway was now over $1,000,000,000.

Association of Washington Cities Annual Convention

Councilmember Sheckler stated that the AWC Annual Convention had allowed elected officials to discuss and share creative ideas regarding budget, finance, and the economy.

Councilmember White said that the convention provided valuable networking opportunities to move forward in economic development.

PRESIDING OFFICER'S REPORT

Association of Washington Cities Annual Convention

Mayor Steenrod agreed that the convention was well done and provided valuable information. She announced that staff was working to make the convention's materials available to the public on the city's website.

ADMINISTRATION REPORTS

Update on Highline Community College (HCC) Activities & Projects

City Manager Piasecki introduced Michael Allen, Chairman of HCC's Board of Trustees.

Mr. Allen informed Council of HCC's enrollment demographics. He noted that the renovation of the Redondo Pier had been completed and the facility would be open to the public on weekends. The facility would provide touch tanks, displays and information regarding the marine environment. The college would soon begin construction on a new Early Childhood Development Center, Student Union Building and Higher Education Center. The Higher Education Center project was done in conjunction with Central Washington University. When complete, the center would offer primarily engineering related degree programs. He noted that the college and the Highline School District had received a Gates Grant to develop an information technology high school program. Mr. Allen said that the college was looking forward to collaborating with the City in the redevelopment of the Pacific Ridge Area. He thanked Mayor Pro Tem Benjamin and Councilmembers Sherman and White for their support of the HCC Foundation. Mr. Allen also thanked Park and Recreation Director Thorell and Harbormaster Dusenbury for their support of various programs. Mr. Allen gave HCC's "Report to the Community" to the Clerk for distribution.

Steven J. Underwood Memorial Park – Volunteer Opportunities

City Manager Piasecki announced that volunteers were needed on July 12, 2003 to lay pavers at the Steven J. Underwood Memorial Park.

Des Moines Youth Football

City Manager Piasecki announced that Des Moines Youth Football would use Parkside Elementary School's field this year.

Steven J. Underwood Golf Tournament

City Manager Piasecki reported that the Steven J. Underwood Memorial Golf Tournament would be conducted July 11, 2003.

Response to Comments from the Public – Bob Pond

City Manager Piasecki informed Council that Interim Chief of Police Tucker had met with Mr. Pond regarding his concerns and had discussed the issues with the apartment owners. Interim Chief of Police Tucker would continue addressing the issues.

CONSENT CALENDAR was read by Deputy City Clerk Chaufty.

1. Motion is to approve the special and regular minutes of June 5, the special minutes of June 9, 10 and 11, and the special and regular minutes of June 12, 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 #90000 through #90154 & electronic fund transfers in the total amount of $445,459.62

Payroll fund transfers in the total amount of $369,207.13

~~3. Draft Resolution No. 03-172 - Title: A Resolution of the City Council of the City of Des Moines, Washington, fixing a time for a public hearing to consider vacation of a portion of public right-of-way in the City of Des Moines.~~

~~MOTION is to approve Draft Resolution No. 03-172 setting a Public Hearing for August 14, 2003.~~

4. Motion is to confirm Mayor Steenrod's appointment of Debbie Malo to a vacant position on the Des Moines Senior Services Advisory Committee expiring December 31, 2003.

5. Motion is to approve the Interlocal Cooperative Agreement to Provide Law Enforcement Mutual Aid and Mobilization between the Cities of King County, University of Washington Police and King County, and to authorize the City Manager to finalize and sign the Interlocal Agreement substantially in the form as submitted.

~~6. Motion is to approve the agreement with Wood/Harbinger, Inc. for providing design and engineering services for the Upgrades to the Electric Power Distribution Project, in the amount of $81,995, plus a 5% contingency, and authorize the City Manager to sign the agreement in substantially in the form as approved by the City Attorney.~~

7. Motion is to approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-33124-6 KNT and to authorize the City's retained counsel to approve said Judgment and Decree and present it to the court, for approval and entry, substantially in the form as submitted.

~~8. Motion is to approve an Agreement between the City of Des Moines and William and Caryl Reese regulating the Construction and Use of Pedestrian Overpass Crossing Over Public Air Space dated 2003 and authorize the City Manager to sign the agreement substantially in the form as submitted.~~

Councilmember Thomasson removed Item Nos. 6 and 8. He questioned whether the address for Item No. 3 should be 11th Avenue South rather than Des Moines Memorial Drive.

As there was a question about Item No. 3, Mayor Steenrod removed it.

Councilmember Sherman recused himself from Item No. 3 due to the appearance of fairness doctrine.

Mayor Steenrod recused herself from Item No. 7.

Councilmember Thomasson said that he would support Item No. 5, but asked staff to brief Council regarding indemnity issues in August or September.

City Manager Piasecki said that staff would either brief the Council or distribute a memorandum regarding indemnity issues.

MOTION was made by Councilmember White, seconded by Councilmember Sherman and passed unanimously to approve the consent calendar as amended.

REMOVED CONSENT CALENDAR ITEMS

Draft Resolution No. 03-172 ***[Assigned Res. 957]*** – Street Vacation

Councilmember Thomasson asked that "Des Moines Memorial Drive" be changed to "11th Avenue South" as the right-of-way did not abut Des Moines Memorial Drive.

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sheckler to pass Draft Resolution No. 03-172 with the textual change.

Councilmember Thomasson noted that half of the parcel was in Des Moines while the other half was in SeaTac. He questioned why the east 30 feet of 11th Avenue South was included in the proposal. Councilmember Thomasson asked staff to address these issues during the public hearing process.

VOTE ON MOTION: Motion passed unanimously.

Agreement with Wood/Harbinger, Inc. for Providing Engineering and Design Services for the Marina's Upgrades to the Power Distribution System Project – Phase 1

Councilmember Thomasson said that he was not willing to approve the agreement as he had never been briefed on the subject. As the City would buy power as a wholesaler and then sale it to the tenants, he questioned whether a power utility would need to be formed. Councilmember Thomasson said that Council should discuss this prior to moving forward with the agreement.

At 8:50 p.m., Mayor Steenrod announced a ten-minute break.

Harbormaster Dusenbury informed Council that the goal of the proposed agreement was to identify the future location, projections, and capacity needs of the Marina's electrical system. He displayed a map of the Marina's existing power system and of the proposed system. He explained that the recommendation was to replace the existing system with a loop system. The proposed system would address distribution, fire protection, and capacity concerns as well as allow for future growth. Harbormaster Dusenbury explained that the Marina Electrical Upgrade Study compiled potential projects and provided cost estimates for those improvements. He confirmed that the consultant was qualified to provide power and fire suppression design services.

Councilmember Thomasson questioned whether the power utility should pay for the construction.

City Manager Piasecki said that, if desired, Council could establish a new utility fund and set up the utility during the budget process.

MOTION was made by Councilmember Thomasson and seconded by Mayor Pro Tem Benjamin to table the subject until the July 10, 2003 meeting.

Councilmember Thomasson asked that staff clarify the scope of the package at that time.

VOTE ON MOTION: Motion passed unanimously.

Committee Reports

As she was not comfortable with the current level of communication provided by committee reports, Mayor Steenrod said that she would distribute a memorandum to the Councilmembers recommending that committee meeting be conducted at a time that Councilmembers and the public can attend. She said that the committee chairs needed to do a better job communicating the work of their committees during the Board and Committee Report section of the meeting.

Update Agreement for Use of a Pedestrian Overpass Crossing Public Air Space (Des Moines Square)

Councilmember Thomasson said that he had pulled the item as he felt Sections 11 and 12 needed more work. He recommended that the right-of-way language also be updated. Councilmember Thomasson questioned what assurance Council had that the agreement would be renewed in five years. He asked whether the City could collect a payment for the back fees. Councilmember Thomasson recommended that Council table the issue. He suggested that the item go through the Public Safety and Transportation Committee.

City Manager Piasecki announced that staff would remove the item from the agenda. The Public Works Director and City Attorney were directed to address the identified issues and bring the item back to Council in a few weeks.

OLD BUSINESS

Draft Resolution No. 03-176 Authorizing 2003 Waterland Festival Beer Garden

In keeping with Council's prior direction, City Manager Piasecki stated that the proposed resolution required the Chamber of Commerce to contribute one-third of the net proceeds from the Waterland Pub to the city to help defray the overall costs for policing the event and encouraged them to begin examining alternative events to the beer garden for future festivals.

MOTION was made by Mayor Pro Tem Benjamin and seconded by Councilmember Sheckler to adopt Draft Resolution No. 03-176, amending Resolution No. 951 and permitting the Chamber of Commerce to conduct the "Waterland Pub" during the 2003 Waterland festival, subject to conditions set forth in the resolution; requiring the Chamber to give one-third of the net revenue from the Waterland Pub to the City to cover the City's overall costs; and strongly encouraging the Chamber to seek alternative activities to substitute for the Waterland Pub in future Waterland Festivals.

Councilmember White said that she would not support the motion as she felt the Waterland Festival was a family event and there were better ways for the Chamber of Commerce to earn money.

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sheckler to table the subject until action was taken on New Business, Item No. 2.

VOTE ON MOTION: Motion passed, 4-2, with Mayor Steenrod and Mayor Pro Tem Benjamin opposed.

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

Community Development Director Kilgore introduced the subject. She noted that the site plan due date had been changed from September 2003 to January 2004.

Councilmember Sheckler said that Councilmember Petersen had a strong interest in this subject. In order to allow Councilmember Petersen to participate in the discussion, he recommended that Council postpone discussion of the item until Councilmember Petersen arrived at the meeting or table it to the next meeting.

Mayor Steenrod said that city business could not stop just because a councilmember was not present.

Councilmember White said that she did not wish to perpetuate a use that would impair the vision for the Pacific Ridge area.

Mayor Pro Tem Benjamin said that he understood the long term vision and needs of the community. He said that until it was economically viable for developers to buy property, the mobile home parks provided affordable living in a good environment. He voiced support for the proposed ordinance.

Councilmember Sherman stated that mobile home parks were given the opportunity to register as legal non-conforming uses in 1992 and they did not do so. The proposed ordinance was offering the same opportunity again. Councilmember Sherman said that passage of the ordinance would perpetuate what the city already had in the Pacific Ridge area. He said that he did not want to cut off the possibility of economic growth in the area. Councilmember Sherman proposed that Council limit the number of replacement units by the size of the property. He noted that a replacement for low income housing had been provided for in the Pacific Ridge Plan.

Mayor Steenrod said that the proposed ordinance would allow businesses to operate until there was an opportunity to develop the property. She felt it was important to keep businesses viable and not put them out of business. Mayor Steenrod said that the current development process was too prohibitive.

Councilmember Sherman noted that Council had completed the environmental element of the Pacific Ridge plan to streamline the permitting process.

MOTION was made by Mayor Pro Tem Benjamin and seconded by Mayor Steenrod to adopt Draft Ordinance No. 02-177.

Councilmember Thomasson said that he had asked the Mayor to revise the agenda to allow Council to handle New Business, Item No. 2 first.

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sheckler to table the subject until action was taken on New Business, Item No. 2.

Mayor Pro Tem Benjamin said that New Business, Item No. 2 was important but just one issue before Council. He asked Council to not hold the other business of Council hostage.

Councilmember Thomasson responded that his intent was to insure that the full business of Council was addressed.

VOTE ON MOTION: Motion passed, 4-2, with Mayor Steenrod and Mayor Pro Tem Benjamin opposed.

PUBLIC HEARING

Final Assessment Roll for LID No. 1-97-9 - 4th Place South Right-of-Way

Public Works Director Heydon displayed a map of the LID area.

Assistant City Manager Loch distributed copies of the previous related agenda packets to Council.

Public Works Director Heydon informed Council that the street had been developed under King County. It was a dirt road that experienced considerable flooding during the winter. An LID had been formed to improve the street. The LID included the paving of 28' of the street, the formation of 5' gravel shoulders and the installation of a trunk line to reduce flooding. The cost of the LID improvements was split between twelve properties. The final cost was less than the initial estimate.

Finance Director Henderson informed Council that the City intended to finance the debt internally at approximately a 4.1% interest rate. There was a thirty-day pre-payment period in which owners could pay the total assessment and avoid interest. She noted that three protest letters had been received and staff was seeking resolution to them. She recommended that Council continue the hearing to the July 10, 2003 meeting.

Finance Director Henderson distributed the protest letters.

Mayor Steenrod opened the public hearing and read the rules for conducting a hearing. She noted that the hearing was a quasi-judicial matter and explained that the Appearance of Fairness Doctrine applied. She inquired of Council as to whether any potential conflicts existed.

No potential conflicts were identified.

Mayor Steenrod administered an oath to the speakers to testify to the truth.

SPEAKERS

Alyssa Flores, 20222 4th Place South
Ms. Flores informed Council that she and her husband had purchased their home four years ago. At that time, the road improvements were already complete. They had not been aware of the LID until they received the public hearing notice. Ms. Flores said that they had installed drainage along the front and back of their property to relieve flooding but the residents on the east side of the road still experienced flooding.

Jack Benner, 20209 4th Place South
Mr. Benner stated that he had moved into his house in 1998. He said that he had heard that the City had purchased the street with the promised improvements. He asked Council to research whether the comments were true. Mr. Benner informed Council that the shoulders were beginning to shrink. Mr. Benner said that he enjoys the fact that the street is paved and that he would not protest paying the assessment if it was a correct assessment.

Mayor Steenrod noted that the public hearing would remain open for the next meeting.

Alexandro Flores, 20222 4th Place South
Mr. Flores questioned who owned the street. He stated that his disclosure showed that he had bought the house only, not the street. He noted that he did not own the property when the improvements were done. Mr. Flores asked for clarification of the LID process.

Assistant City Attorney Brown explained that staff was currently checking with the title company regarding the LID notification. He said that he would meet with Mr. Flores privately to explain the LID process.

Councilmember Thomasson suggested that staff distinguish between the LID formation and the final assessment processes.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler and passed unanimously to continue the public hearing to July 10, 2003.

AGENDA REVISION

Mayor Steenrod pulled New Business Item, Nos. 2 and 3 from the agenda as they had not gone through committee.

MOTION was made by Councilmember Sherman and seconded by Councilmember Sheckler to appeal the decision of the chair to pull Item No. 2.

Upon the request of Mayor Steenrod, Assistant City Attorney Brown read section 24 of Roberts Rules of Order which allow for an appeal of the decision of the chair.

Mayor Steenrod said that she was relying on Council Rule 9 when she had pulled the items. She said that councilmembers were holding everything hostage to ACC funding.

Councilmember Sheckler stated that it had become apparent that the issue of ACC funding might not be addressed during the meeting. The motions to table were done in order to bring the ACC issue forward so that it might be addressed with the intention of returning to the tabled items later in the same meeting. Councilmember Sheckler said that the appeal was legitimate. He felt that the issue had been delayed too long. He noted that the first discussion with the Port of Seattle would occur July 9, 2003 and he felt that it was imperative that Des Moines be represented.

Councilmember Thomasson stated that the Council Rules were adopted as a supplement to Roberts Rules of Order. He noted that the Council Rules state that if three Councilmembers desire an issue to be placed on the agenda, it became part of the agenda. Councilmember Thomasson said that his intent was not to stop business but to insure that all business was addressed. He said that he had asked the Mayor prior to the meeting to address the ACC funding issue first in order to avoid a public confrontation.

At 10:15 p.m., **motion** was made by Councilmember Thomasson and seconded by Councilmember Sheckler to extend the meeting to midnight in order to insure New Business, Item No 2 was dealt with.

VOTE ON MOTION: Motion failed, 4 – 2, with Mayor Steenrod and Mayor Pro Tem Benjamin opposed. *(Editor's Note: Motion to extend the meeting requires a ¾ majority.)*

Mayor Pro Tem Benjamin said that the City had a number of issues before them and the proper context was required. As a councilmember, he promised to look out for all issues. He said that the ACC issue has been divisive to Council.

Mayor Steenrod said that when someone tells her to vote for something so that her attorney fees will be paid, it is extortion. She stated that she votes her conscience without regard for personal impacts. Since an initiative regarding the issue had been filed, Mayor Steenrod felt it was premature to take action. Mayor Steenrod said that she had met with the Port and understood that there would be no lawyers present nor any negotiations discussed at the July 9, 2003 meeting. She questioned why the City should be present. Mayor Steenrod said that Council had voted to cut funding, not withdraw from the ACC. She questioned why Des Moines was unable to participate in the ACC since the Highline School District was allowed to. Mayor Steenrod said that the Tukwila City Council had recently turned down a request by ACC for $50,000 of additional funding. *(Editor's Note: On June 27, 2003, Mayor Steenrod provided information stating that Tukwila had in fact approved the request for $50,000. She asked that her misstatement be corrected in the minutes.)*

Mayor Steenrod informed Council that the Port of Seattle had indicated that it was okay for a Des Moines' representative to attend the discussions. She said that a meeting was not a good reason to pass the issue.

Councilmember White said that ACC funding was more than just a political issue as the third runway would affect the quality of life for Des Moines' residents. Councilmember White said that she had ran for office while supporting the efforts of the ACC. She stated her belief that the City should not have broken the coalition and that it was important for Des Moines to be at the negotiation table. Councilmember White voiced support for restoring ACC funding.

VOTE ON MOTION TO APPEAL: Motion passed, 4 – 2, with Mayor Steenrod and Mayor Pro Tem Benjamin opposed.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler to reinstate $150,000 funding to ACC from the general fund ending balance as represented in Exhibit A.

At 10:28 p.m., **motion** was made by Councilmember Thomasson and seconded by Councilmember Sheckler to extend the meeting to 10:45 p.m.

VOTE ON MOTION: Motion failed, 4 – 2, with Mayor Steenrod and Mayor Pro Tem Benjamin opposed. *(Editor's Note: Motion to extend the meeting requires a ¾ majority.)*

Councilmember Thomasson called for the question.

ADJOURNMENT
At 10:30 p.m., the meeting expired.

NEXT MEETING DATE - Regular Meeting July 10, 2003

Respectfully submitted,

Angela M. Chaufty
Deputy City Clerk

ACTION ITEMS FROM 6/26/03 COUNCIL MEETING

- Interlocal Cooperative Agreement to Provide Law Enforcement Mutual Aid and Mobilization
  Prepare a memorandum regarding indemnity issues.

- Draft Resolution No. 03-172 – Street Vacation
  During the public hearing, explain why the east 30 feet of 11th Avenue South was included in the proposal and what the impacts of half of the parcel being in Des Moines while the other half was in SeaTac would be.

- Update Agreement for Use of a Pedestrian Overpass Crossing Public Air Space (Des Moines Square)
  Update the right-of-way language.
  Revise sections 11 and 12.

PRELIMINARY
SPECIAL MEETING DES MOINES CITY COUNCIL

MINUTES July 7, 2003

The special meeting of the Des Moines City Council was called to order at 7:36 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, Councilmembers Gary Petersen, Bob Sheckler, Dan Sherman, Scott Thomasson and Susan White. Absent: Mayor Pro Tem Richard Benjamin. Also in attendance were City Manager Tony Piasecki, City Attorney Linda Marousek, Finance Director Paula Henderson and City Clerk Denis Staab.

MOTION was made by Councilmember Sherman, seconded by Councilmember Sheckler and passed unanimously, to excuse Mayor Pro Tem Benjamin.

ITEMS OF BUSINESS

Airport Communities Coalition Funding

Councilmember Thomasson noted that at the June 26, 2003 regular Council meeting, a motion was on the table regarding this issue and questioned whether that is the point that Council should begin discussion this evening.

City Attorney Marousek stated that Council Rules of Procedure provide that any business that is not concluded at a regular meeting shall be continued to the next regular meeting. She advised that since tonight's meeting is a special meeting it would be best to have a new motion on the agenda item.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sheckler, to approve payment of $150,000.00 to the Airport Communities Coalition as the City of Des Moines contribution to the 3rd runway fight, funding to be provided from the General Fund's ending fund balance.

Mayor Steenrod expressed concern that since this movement of funds will not be done through a formal budget amendment, as recommended by staff, that citizens will not be able to track where this money was spent.

Finance Director Henderson advised that the expenditure can be noted in a separate line item that will denote that the money was allocated specifically to airport defense.

Mayor Steenrod questioned whether the City is still a member of the Airport Communities Coalition (ACC). She noted that her interpretation of the ACC agreement is that the City had to submit a formal written withdrawal request. She further expressed concern over whether the City may be delegating its authority to negotiate with the Port.

City Manager Piasecki noted that our current agreement with ACC specifically notes that the agreement is in effect unless terminated by a separate written agreement. He further advised that other cities made payments at later dates and did not negotiate an amended agreement or adopt a special exhibit to the current agreement.

Stuart Creighton, Chairman of ACC and Normandy Park City Councilmember, informed Council that Des Moines is currently a member of ACC but because of non-payment is a member in suspension. He advised that the ACC Executive Committee took no formal action to remove Des Moines from ACC and has received no formal request from Des Moines to be removed.

Upon questioning by Councilmember Sherman, Mr. Creighton stated that should Des Moines pay the $150,000 to ACC, then Des Moines would be a member of ACC in good standing. He further noted that it is not unusual for member cities to pay late or make payment installments through duly passed motions. He also advised that the $150,000 payment from Des Moines would be enough funding to move forward on the three legal actions currently pending regarding the 3rd runway, and that will run concurrently.

City Attorney Marousek advised that it is her legal opinion that Des Moines is not required to re-sign an agreement with ACC and the current agreement is still in effect.

Mayor Steenrod expressed concern with parts of the agreement as the scope appears to be more than just the 3rd runway and includes regional transportation issues.

Upon questioning, City Attorney Marousek advised that the agreement with ACC cannot be part of tonight's discussion as it was not listed as an agenda item for this special meeting.

VOTE ON MOTION: Motion passed 4 to 2 with Mayor Steenrod and Councilmember Petersen voting NO.

Selection of City Representative to ACC

MOTION was made by councilmember Thomasson, seconded by Councilmember Sherman and passed unanimously, that Councilmember Sheckler be appointed the City's representative to ACC with Councilmember White appointed as alternate.

Selection of City Representative for July 9, 2003 Meeting Between ACC and the Port of Seattle

MOTION was made by Councilmember Sherman, seconded by Councilmember Thomasson, that ACC Representative, Councilmember Sheckler, be appointed to represent the City at a meeting between ACC and the Port of Seattle scheduled for July 9, 2003. Motion passed unanimously.

ADJOURNMENT

At 8:06 p.m. **MOTION** was made by Councilmember Thomasson, seconded by Councilmember Sherman and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab
City Clerk

AGENDA ITEM

SUBJECT: Purchase of Permanent Slope Easement for Pacific Highway Project	AGENDA OF: July 17, 2003
	DEPT. OF ORIGIN: Public Works
ATTACHMENTS:	DATE SUBMITTED: July 3, 2003
A. Purchase & Sale Agreement - (Bjorneby) B. Acquisition Map-Parcel #8B C. Project Map	CLEARANCES: [X] 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 purchase of a permanent slope easement along SR 99 for the Pacific Highway South Redevelopment Project.

Suggested Motion

The following motion will appear on the Consent Calendar:

1) "I move to purchase a permanent slope easement of 9,157 square feet from Robert G. and Anna M. Bjorneby in the amount of $14,021.00 plus closing costs, and further to authorize the City Manager to sign the Purchase and Sale Agreement substantially in the form as submitted."

Background:

The Pacific Highway South Redevelopment Project requires right-of-way purchases along SR 99 from Kent Des Moines Road to South 216th Street as well as three full lots for detention ponds. The City Council has previously approved proceeding with purchasing the required property. Because the project is funded through federal, state and local grants, there are special procedures for obtaining the needed properties. An appraisal is prepared for each property by our consultant appraiser. A state-certified independent review appraiser reviews the appraisal, then offers are made for the appraised value of the property. There are 50 parcels that require purchase of some portion of their right of way. We have successfully closed on all but 4 parcels of property required and they are under mediation and negotiation.

Discussion:

The Pacific Highway South Redevelopment Project has been advertised and we are in the process of awarding the construction contract. Both an Appraisal and an Appraisal Review have been done for this slope easement.

Robert G. and Anna M. Bjorneby are owners of Jackson Business Park at 22201 Pacific Highway South, and have agreed to sell a 9,157 square foot permanent slope easement from their property at a purchase price of $14,021. Upon approval, staff will proceed with closing.

The easement is needed for a slope and retaining wall along the right of way for the Pacific Highway South Project.

Alternatives:

There are no viable alternatives that would not result in considerable alteration to the project design and as well as delay, causing increased costs to the project.

Financial Impact:

The purchase prices are consistent with federal, state and city guidelines regarding appraisals and other pertinent factors involved in valuing property in the affected area. This price is within the current project budget.

Recommendation/Conclusion:

Staff recommends this motion be approved to ensure that the Pacific Highway South project stays on schedule.

Concurrence:

The Legal Department and City Manager are kept apprised of negotiations and approve all paperwork 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.

p:\users\linda\doc\Agenda\2003\Pac Hwy

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into by and between **ROBERT G. BJORNEBY AND ANNA M. BJORNEBY, husband and wife,** as Seller, and the CITY OF DES MOINES, a Washington municipal corporation, as Buyer.

AGREEMENT

FOR AND IN CONSIDERATION of the mutual promises and covenants contained herein, the sufficiency of which is unconditionally acknowledged by Seller and Buyer, the parties hereto agree as follows:

1. The Property. Seller agrees to sell and Buyer agrees to purchase from Seller:

a.) Permanent Slope Easement as set forth in Exhibit "A" which is attached hereto and incorporated by reference on the property located at 22001 PACIFIC HIGHWAY SOUTH.

2. Purchase Price and Payment. The total purchase price is **FOURTEEN THOUSAND TWENTY ONE and NO/100ths Dollars ($14,021.00)** (the "Purchase Price"), payable as follows: **FOURTEEN THOUSAND TWENTY ONE and NO/100ths DOLLARS ($14,021.00)** cash, including earnest money, shall be paid at Closing.

3. Contingencies. This Agreement and the obligations of Buyer hereunder are contingent upon satisfaction or written waiver of all of the conditions as hereinafter set forth.

(a) **Period of Examination.** For a period of Sixty (60) days from Buyer's receipt of a mutually executed copy of this Agreement (the "Period of Examination"), Buyer may examine the Property and conduct such studies of the Property as Buyer shall deem necessary, which shall be conducted at Buyer's sole cost, and which investigations shall include, without limitation, the suitability (economic or otherwise) of the Property in Buyer's sole discretion of the Property for Buyer's intended purposes. Seller, at its expense, shall deliver or cause to be delivered to Buyer true and correct copies of all documents, instruments, and materials relating to the Property including but not limited to any existing surveys, soils reports, and all other leases, contracts, documents, instruments or papers of significance to the Property or which might assist Buyer with its examination of the Property.

(i) **Notice of Intent.** By or before the close of the Period of Examination, Buyer shall provide Seller with Written Notice of Buyer's intent to purchase the Property or terminate this Agreement (the "Notice of Acceptance"). Failure to provide such written Notice of Acceptance as required herein shall be conclusively deemed waiver by Buyer of its right to purchase the Property and this Agreement shall immediately become null and void.

ATTACHMENT A

(ii) **Right of Entry.** Buyer, its agents and its contractors, shall be entitled to reasonable access to the Property at any time during the Period of Examination and, if Buyer decides to purchase the Property, prior to closing, to conduct its studies. Buyer may disturb the Property as may be required for its tests and studies on condition that to the extent possible such tests and studies shall be nondestructive. Buyer shall indemnify and hold Seller harmless from any liability arising out of Buyer's negligent performance of such tests and studies. However, it is specifically agreed that Buyer shall not be responsible for any cleanup costs, claims, liabilities, or obligations relating to any hazardous waste contamination at the Property that Buyer may uncover during its pre-closing inspections, and Sellers shall indemnify and hold Buyer harmless from any such costs, claims, liabilities, or obligations. The obligations set forth in this section shall survive expiration or termination of this Agreement.

(b) **Seller's Warranties.** The continuing truth and correctness of Seller's representations and warranties contained in this Agreement, and the timely performance by Seller of Seller's covenants, and delivery by Seller to Buyer of all documents or instruments required hereunder.

(c) **Title and Survey.** Buyer's acceptance of title and the survey pursuant to section 5 of this Agreement. Buyer, at any time or times on or before Closing, at its sole election, in order to close, may waive any of the conditions to its obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by Buyer and delivered to Seller.

4. <u>Title</u>.

(a) **Title Commitment.** Buyer shall, at Buyer's sole cost and within five (5) days of the mutual execution of this Agreement, order a Preliminary Title Report from Pacific Northwest Title Company, to be delivered directly to Buyer (the "Report"), for the Property together with copies of all documents supporting exceptions (the "Exceptions") set forth in the Report. Buyer may, at Buyer's sole cost and expense, order an ALTA survey of the Property, certified to Buyer and Title Company, having all corners marked and all other easements and utilities delineated in the Survey (the "Survey"). After execution of this Agreement, Seller shall not alter the condition of title except as to remove any defects of title.

(b) **Title Exceptions.** Buyer shall have thirty (30) calendar days from receipt of the Report and any Survey within which to give written notice to Seller of Buyer's disapproval of any Special Exceptions. For purposes of this Agreement, "Special Exceptions" means the special exceptions to title set forth in the Preliminary Title Commitment or the Survey, which relate to restrictions, conditions, defects or other matters, which would interfere with Buyer's intended use of the Property. The written notice shall state with specificity those Special Exceptions to which objection is being made. Buyer's failure to specifically enumerate such Special Exceptions within such written notice or Buyer's failure to provide such written notice shall be conclusively deemed Buyer's waiver and/or approval of all Special Exceptions. Buyer hereby approves those standard exceptions commonly and ordinarily found in commitments or title binders for standard coverage fee owner policies.

(c) **Seller's Cure of Objections.** Seller shall have until closing to cure such objections to Special Exceptions or have the Special Exceptions waived or removed by the Title Company issuing the commitment. If, within such period, Seller fails to cure and/or have waived such objections to Special Exceptions, or within such period Seller delivers written notice to Buyer that it will not so cure, then, within ten (10) days from the delivery of such notice or the end of the period for cure, whichever is first, Buyer shall have the option to:

(i) Agree in writing to extend the period of time in which Seller may cure such Objections and/or Exceptions; or

(ii) Purchase the Property subject to such objections to Special Exceptions with no diminution in the Purchase Price; or

(iii) Terminate this Agreement, in which event all sums paid or deposited by Buyer shall be returned to Buyer. Buyer's failure to respond to Seller in writing shall be conclusively deemed an election of its right to terminate this Agreement.

(d) **Condition of Title.** Seller covenants to convey the Property in a condition to be insured by Pacific Northwest Title Company, (hereinafter "Title Company") as hereinafter provided. Closing shall be conditioned upon Title Company issuing or committing to issue to Buyer a Washington Land Title Association standard or extended form Owner's Policy of Title Insurance in the amount of the Purchase Price insuring a fee interest in the Property in Buyer free and clear of all matters except Special Exceptions permitted or waived by Buyer, the lien of current real property taxes not yet due and payable, and those matters excluded from coverage by the printed exceptions and exclusions in the form of title insurance policy required herein.

5. **Closing.**

(a) **Escrow.** Closing this Purchase and Sale Agreement shall occur through an escrow (the "Escrow") with the Title Company when Title Company is in a position to issue the Title Policy and all documents and funds have been deposited with Title Company.

(b) **Deposit of Closing Documents.**

(i) **Seller.** On or before the Date of Close of Escrow, Seller shall duly execute and deposit into Escrow with Closing Agent:

(A) A Slope Easement Exhibit (the "Deed"), in form and substance acceptable to Buyer for the Property together with an accompanying Real Estate Excise Tax Affidavit; and

(B) Such assignments, bill of sale, and/or other transfer instruments, in form and substance acceptable to Buyer, sufficient to transfer to Buyer all of Seller's right title and interest in any and all leases contracts, licenses, or other documents or instruments relating to the Property.

(C) An Affidavit of Non-Foreign Status required by Title Company in connection with section 1445(e) of the Internal Revenue Code.

(ii) **Buyer.** On or before the Date of Close of Escrow, Buyer shall deposit the following:

(A) FOURTEEN THOUSAND TWENTY ONE AND NO/100ths Dollars ($14,021.00), constituting the Purchase Price of said permanent slope easement.

(B) Additional cash in an amount necessary to pay closing costs, title insurance, and prorations set forth herein.

(c) **Closing Costs and Prorations.** At Closing, Seller shall pay all brokerage commissions. Buyer shall pay all other closing expenses, including Escrow fees and charges, title insurance, and the cost of recording the Easement.

(d) **Procedure.** Closing Agent shall close Escrow as follows:

(i) Prepare a Real Estate Excise Tax Affidavit showing that the sale of the Property is to a governmental entity "made under threat of or exercise of eminent domain", and record the Deed with instructions for the county recorder to deliver the Deed to the Buyer; and

(ii) Pay the Purchase Price to Seller, reduced by prorations; and

(iii) Deliver the executed Affidavit of Non-Foreign Status to Buyer; and

(iv) Forward to Buyer and Seller, in duplicate, a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date endorsed thereon.

(e) **Incorporation of Escrow Instructions.** This Agreement shall serve as escrow instructions, and an executed copy of this Agreement shall be deposited by Buyer with Closing Agent following execution hereof. The parties may execute additional escrow instructions, provided such additional instructions do not change the terms of this Agreement.

6. **Possession.** Buyer is entitled to use, for purpose described in the easement, of the Property on the date of closing.

7. **Seller's Warranties.** Seller represents and warrants the following to Buyer:

(a) Seller has the power, right, and authority to make this Agreement with Buyer;

(b) Seller is not in default and will not during the term of this Agreement default or permit a default to exist on any of its obligations under any real estate contract, lease, mortgage, or deed of trust affecting any portion of the Property;

(c) Seller is and shall be entitled to terminate on or before the date of closing and without breach of any agreement the rights of all parties who are not a party to this Agreement and who are entitled to possession of any part of the Property;

(d) Seller has good and marketable title to all of the Property;

(e) There are no pending zoning changes of the Property or any change to any easements or utilities relating to the Property;

(f) There are no material defects in the Property;

(g) All persons and corporations supplying labor, materials, and equipment to the Property have been paid and there are no claims of liens;

(h) There are no current assessments for public improvements against the Property or any local improvement district or other taxing authority having jurisdiction over the Property in the process of formation;

(i) The property has legal access to all streets adjoining the Property; and

(j) There are no claims, defects, or boundary disputes affecting the Property; and no person claims any right to possession to the Property or any portion thereof adverse to Seller.

The warranties and representations set forth in this section will be deemed to have been made again, on the Date of Closing, and will continue to be true, complete, and correct as of the Closing.

8. **Hazardous Material Provisions.**

(a) **Definition.** The term "hazardous waste or materials or substances" as used in this Agreement is used in its very broadest sense and includes, but is not limited to, materials and substances designated as hazardous under any federal, state, or local act or ordinance.

(b) **Seller's Representations.** Seller represents that it has not received notification of any kind from any agency suggesting that the Property is or may be targeted as a Superfund or clean up site. Seller represents that, Seller does not keep, use, or dispose of, and Seller has not permitted anyone else to keep, use, or dispose of, whether permanently or temporarily, on the Property, any hazardous waste or materials or substances, and has no reason to believe or suspect that Seller or any other person or entity has kept, used, or disposed of, either temporarily or permanently, any hazardous waste or materials or substances on the Property. Except as set forth below in section 9(c), Seller represents that Seller has not conducted any test or studies to specifically determine whether any hazardous waste or materials or substances existed on the Property prior to Seller's ownership or as of the date of this Agreement.

(c) **Fuel Tanks on the Property.** If Sellers or Buyer has determined that various tanks and soil and/or ground water contamination are in existence below ground level on the Property, Sellers agree, at their sole cost and expense, to remove the tanks and provide for all associated remediation of any and all contaminated soils caused by the tanks or any other source to the satisfaction of Buyer and to a level which is acceptable to the appropriate regulating agency which is responsible for such matters. The work shall be completed prior to closing. Sellers shall diligently pursue the completion of such removal of such tanks and the remediation of any soil or ground water contamination. Sellers agree to comply with all applicable laws, statutes, rules, regulations, and ordinances in completing its work under this section. In the event Sellers refuse to perform such removal and remediation, Buyer may terminate this Agreement, in which event all sums paid or deposited by the Buyer shall be returned to the Buyer.

(d) During the period of examination, Buyer shall determine the cost of the remediation of hazardous contaminants on the Property. If Buyer determines that the cost of such remediation is TWENTY THOUSAND AND NO/100 DOLLARS ($20,000.00) or less, Buyer shall be responsible for cleanup and this sale shall close. If Buyer determines that such cost of cleanup exceeds TWENTY THOUSAND AND NO/100 DOLLARS ($20,000.00), Buyer may, at Buyer's option, terminate this Agreement, and the Earnest Money shall be returned to Buyer.

9. <u>Remedies</u>.

(a) **Seller's Default.** In the event Seller defaults in fulfilling its obligations under this Agreement, Buyer shall be entitled to all remedies at law or equity including without limitation the right to enforce specific performance of this Agreement against Seller.

(b) **Buyer's Default.** In the event Buyer fails, without legal excuse, to complete the purchase, or otherwise defaults under the terms of this Agreement, the Deposit shall be forfeited to the Seller as the sole and exclusive remedy available to the Seller for such failure and default.

10. **Eminent Domain.** Buyer confirms that in the event Seller fails or declines to execute this Purchase and Sale Agreement, it will be the intention of Buyer to exercise its rights under the laws of the State of Washington to acquire the Property interest by eminent domain.

11. **Risk of Loss; Insurance.** Risk of loss of or damage to the Property shall be borne by Seller until the date of closing. Thereafter, Buyer shall bear the risk of loss. In the event of material loss of or damage to the Property prior to the date of closing, Seller shall not be obligated to restore the Property nor pay damages to Buyer by reason of such loss or damage, and Buyer may terminate this Agreement by giving notice of such termination to Seller and Closing Agent, and such termination shall be effective and the Deposit shall be refunded ten (10) days thereafter; provided, however, that Buyer may elect to purchase the Property in the condition existing on the date of closing and on closing Seller shall assign to Buyer the proceeds of any policy of insurance carried by or for the benefit of Seller covering any loss or damage to the Property occurring after the date hereof and prior to the closing date. Seller will submit an insurance claim and use its best efforts to obtain insurance proceeds. On closing Seller will pay to Buyer, outside of escrow, the entire amount of insurance proceeds received prior to closing from such claim.

12. **Notices.** Except as specifically set forth herein, any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or when delivered by private courier service (such as Federal

Express), or three days after being deposited in the United States Mail first class, postage prepaid and addressed as follows:

(a) Seller's Addresses:

Mr. and Mrs. Robert G. Bjorneby
1265 South 188th Street
Seattle WA 98148

(b) Buyer's Address:

City of Des Moines
21630 11th Avenue South
Des Moines, WA 98198

The foregoing addresses may be changed by written notices to the other party as provided herein.

13. **Time**. Time is of the essence in every provision herein contained.

14. **Seller's Period of Acceptance**. Seller shall have twenty-one (21) days from the date of delivery of this instrument to Seller's Agent to accept this offer by written signature. In the event Seller does not accept this offer within the 21-day period, the offer will be considered withdrawn, and this Agreement will be null and void. Buyer, and only Buyer, may waive this 21-day limitation.

15. **Approval by the Des Moines City Council**. The parties to this Purchase and Sale Agreement understand that this Agreement shall not be binding on the Buyer until approved by the Des Moines City Council in an open public meeting.

16. **Binding Agreement**. This Agreement shall inure to the benefit of and be binding upon the heirs, personal representative, successors, and assigns of the parties hereto.

17. **Attorneys' Fees**. In the event of any litigation regarding the rights and obligations of the parties under this Agreement, the prevailing party shall recover its costs and attorneys' fees, including such costs and attorneys' fees for appeals.

18. **Survival of Warranties**. The terms, covenants, warranties, and representations contained in this Agreement shall not merge with the deed of conveyance, but shall continue and survive closing.

19. **Entire Agreement**. This Agreement contains the entire understanding between the parties and supersedes any prior understandings and agreements between them regarding the subject matter hereof. There are no other representations, agreements, or understandings, oral or written, between the parties hereto relating to the subject matter of this Agreement. No

amendment of, or supplement to, this Agreement shall be valid or effective unless made in writing and executed by the parties hereto.

20. **<u>Seller's Covenants Pending Closing</u>.** Seller covenants for the benefit of and agrees with Buyer that, pending Closing, Seller shall not do or permit to be done any of the following other than in the ordinary course or operation of the Property and without in each case securing Buyer's prior written consent, which consent shall not be withheld unreasonably; enter into any lease or rental agreement for the Property; make any agreements or commitments relating to the maintenance, repair, replacement or operation of the Property for a period extending beyond Closing; or commence or continue any construction affecting the improvements other than ordinary maintenance and repair. Seller shall cooperate with Buyer in all matters relating to Buyer's intended use of the Property.

IN WITNESS WHEREOF, the parties hereto have executed one or more copies of this Agreement to be effective on the date of final signature.

Dated: July 3-03

SELLERS:

Robert G. Bjorneby

Anna M. Bjorneby

Dated: ________________

BUYER:

CITY OF DES MOINES,
A Washington municipal corporation

By: ____________________________
Anthony A. Piasecki
Its City Manager

APPROVED AS TO FORM:

____
Linda A. Marousek
City Attorney

At the direction of the Des Moines City Council taken at an open public meeting on ______________________.

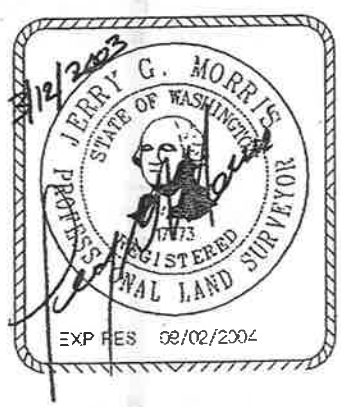
CONTRACT:

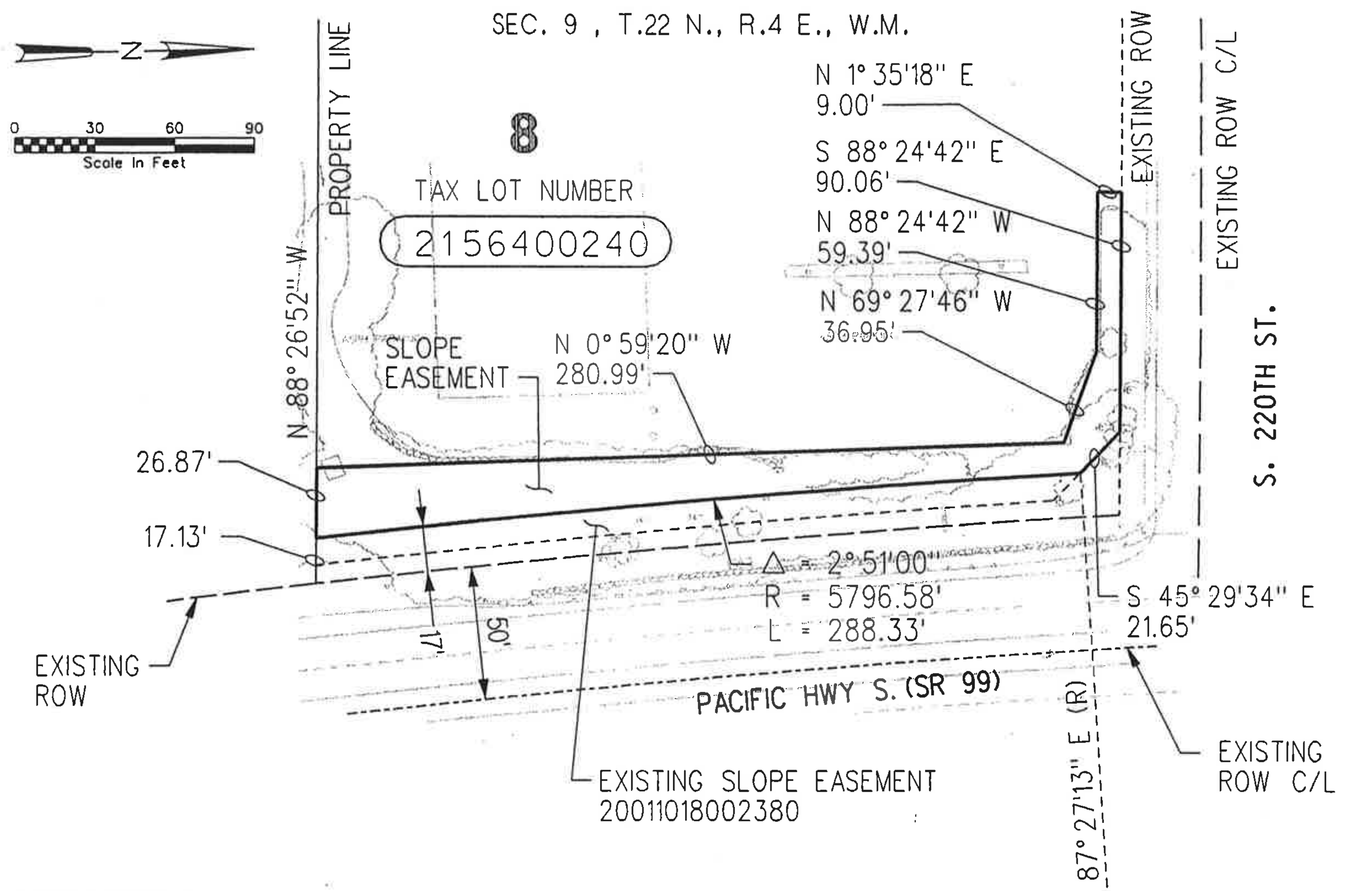
"EXHIBIT A"

EASEMENT FOR PARCEL NO 2156400240

A portion of that property as described in instrument recorded under Recording Number 9609061044 records of King County, Washington, being described as follows:

Beginning at a point on the south property line of the above said parcel, being 67.00 feet when measured at right angles west of the center line of Pacific Hwy South (SR99) and being the southwest corner of the easement as described in instrument recorded under recording number 20011018002380, records of King County, Washington; thence along said south line North 88° 26′ 52″ West 26.87 feet; thence North 0° 59′ 20″ West 280.99 feet; thence North 69° 27′46" West 36.95 feet to a point 9.00 feet south of the north line of said property; thence parallel with said north line North 88° 24' 42" West 59.39 feet; thence North 1° 35' 18" East 9.00 feet to said north line; thence along said north line South 88° 24'42" East 90.06 feet thence south 45° 29' 34" East 21.65 feet to a point 67.00 feet when measured at right angles west of said center line and from which a radius point bears North 87° 27′ 13″ East, also being the northwest corner of said easement as described in instrument recorded under recording number 20011018002380; thence along a 5796.58-foot radius curve to the left with a central angle of 2° 51′ 00″ an arc distance of 288.33 feet to the Point of Beginning, containing 9157 square feet, more or less.





FOR INFORMATION PURPOSES ONLY
THIS DRAWING IS NOT A RECORD OF
SURVEY NOR MEETS MINIMUM STANDARDS

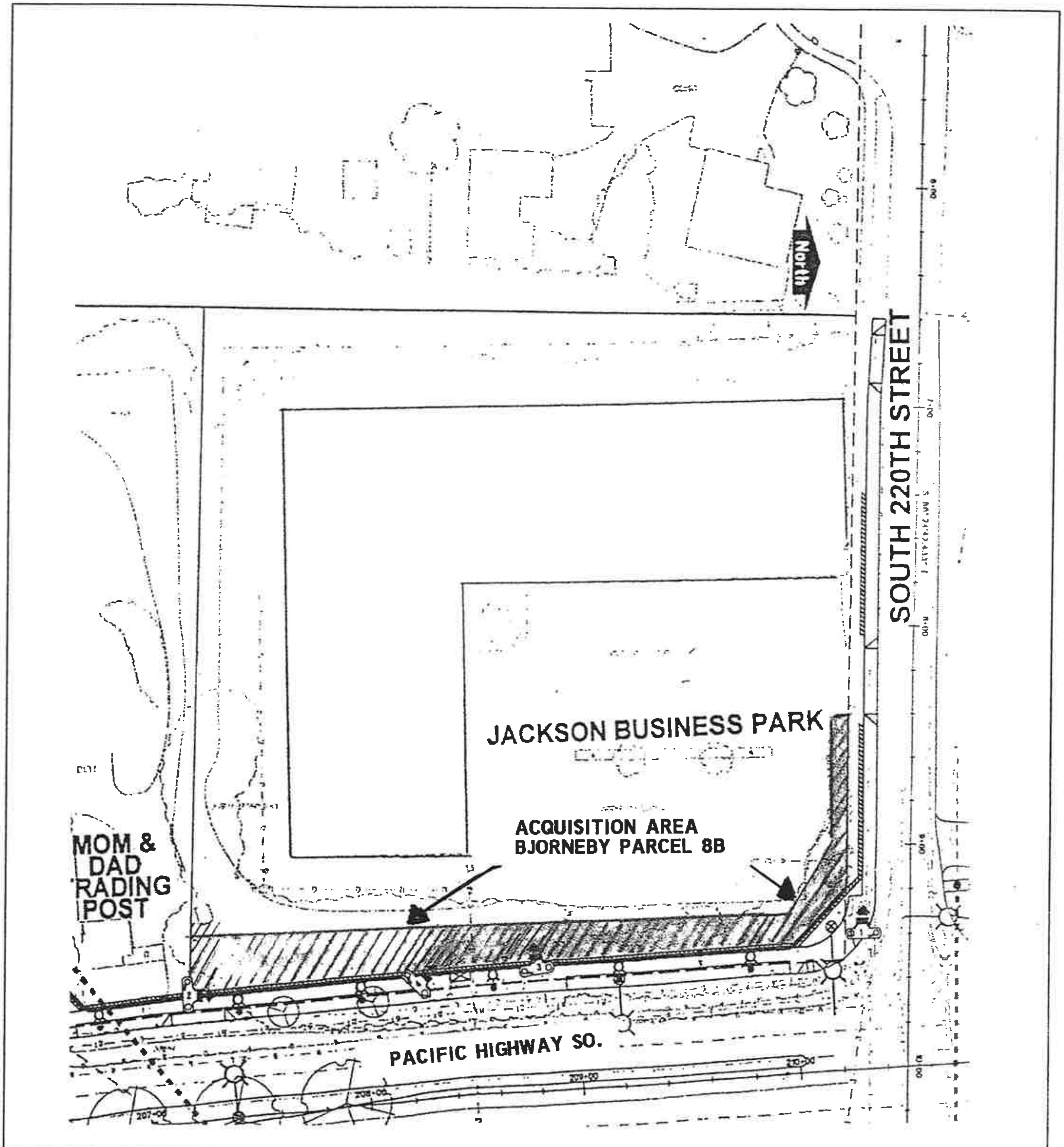
PREPARED BY: EWH DATE 2-28-03
CHECKED BY: JGM DATE 2-28-03
REVISED BY: DATE

EXHIBIT MAP

CH2M HILL

FILE NAME: parc08o2.dlv 03-MAR-2003 14:45:32

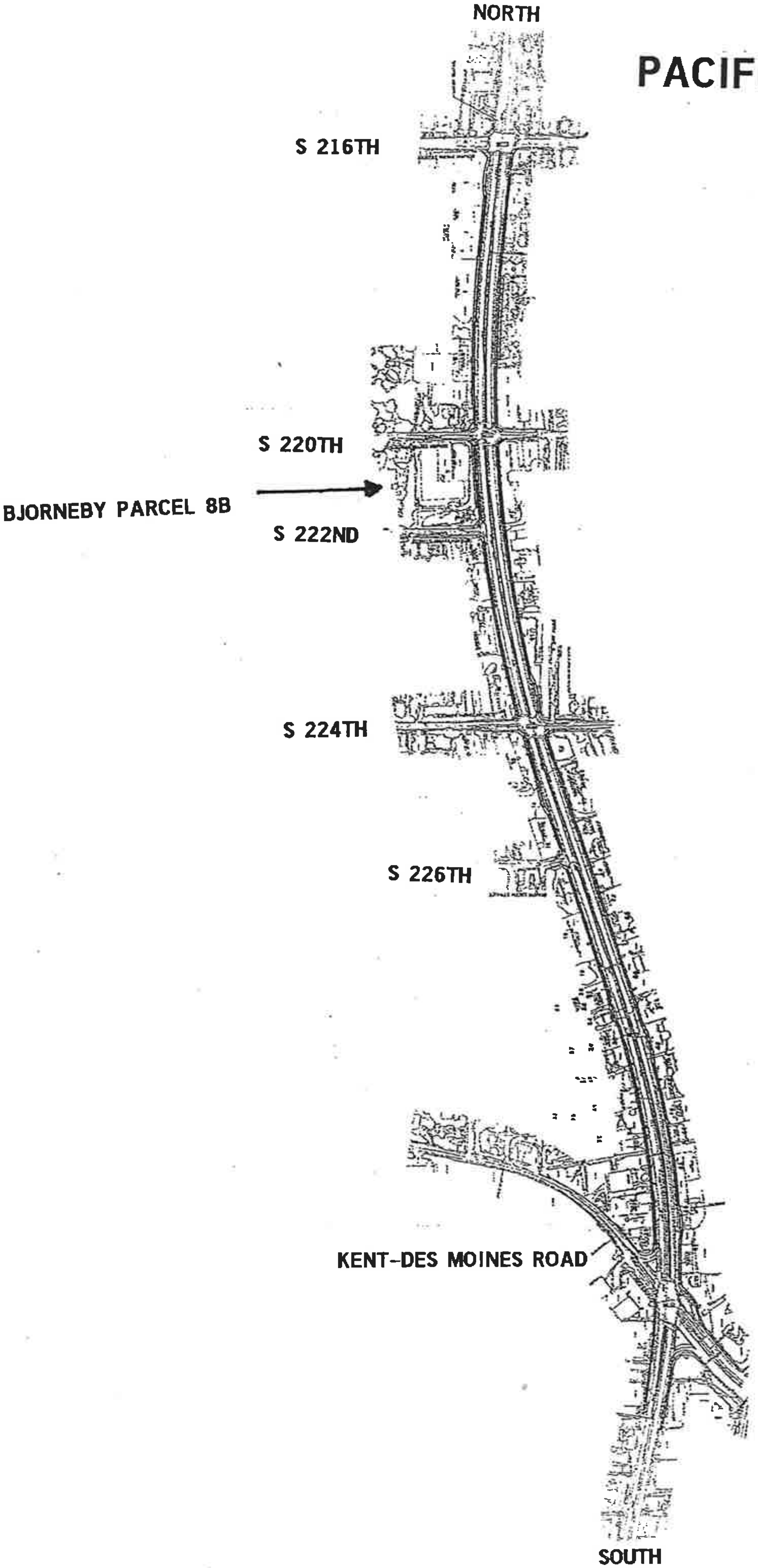
ACQUISITION MAP



Before Area: 89,493 SF	After Area: 89,493 SF	Fee Take: 0 SF
Permanent Easement Take: 3,491 SF		

ATTACHMENT B

PACIFIC HIGHWAY SOUTH
PROJECT MAP



ATTACHMENT C

CONSENT CALENDAR
Item #4

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Mayor's Appointment to a Vacancy - Human Services Advisory Board

ATTACHMENTS:
- Application from Debbie Hickman

FOR AGENDA OF: July 17, 2003

DEPT. OF ORIGIN: Legislative

DATE SUBMITTED: June 23, 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 of Debbie Hickman to a vacant position on the Des Moines' Human Services Advisory Board, term to expire December 31, 2003."

SUMMARY STATEMENT

Currently one vacancy exists on the Human Services Advisory Board. Advertising and posting was done in March and one application has been received. At this time, the Mayor Steenrod and the Human Services Advisory Board is recommending the appointment of Debbie Hickman as an individual who will bring valued experience to the Board.

CITY OF DES MOINES
APPLICATION FOR APPOINTIVE OFFICE

21630 11th Avenue South
Des Moines, WA 98198

Recvd.____________

RECEIVED
03 JUN 20 AM 9:36
CITY Please Check

NAME: Deborah Hickman (Debbie)
ADDRESS: 22700 28th Ave South, Unit 109
CITY, ZIP: Des Moines, WA 98198
PHONE: Home 206 824-7205 Work 206 973-4820
LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 6 1/2 years
REGISTERED VOTER? Yes
EMPLOYMENT SUMMARY LAST FIVE YEARS: Public Service Positions using Communication/Computer Skills to work as A Team Player for Effective Positive Changes in Services.

- [ ] Civil Service Commission
- [ ] Planning Agency
- [ ] Library Board
- [x] Human Services
- [ ] Senior Services

Are you related to anyone presently employed by the City of 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.

1. Why do you wish to serve in this capacity and what can you contribute? I Bring 15 Years of Service working Directly with the Public. I live in Des Moines and want the Best for my Neighbors Citizens of Des Moines. I want to Help people Better themselves By providing a stepping Stone to get them on their feet

2. What problems, programs or improvements are you most interest in? Senior Citizens Activities Program, Food Bank Distribution, Emergency Services for Elderly.

3. Please list any Des Moines elective/appointive offices you have run/applied for previously. ____________

p:\users\denis:apoffice.doc

email address: Debbhickman@hotmail.Com
dhickman@CI. SeaTac. WA.

22700 28th Avenue South Unit 109
206-824-7205
debbhickman@hotmail.com

Deborah Hickman

Objective

To Secure a position utilizing Human Services, Communication and Computer skills for further growth opportunities.

Experience

2002 – Robert Half/Accountemps/Office Team **Federal Way, WA**
2003 to Present **City Of SeaTac** **SeaTac, WA**
Administrative Assistant

- Worked with City and Deputy Manager processing information for the 2002-2003 budgets.
- Created Excel Spreadsheets for Police personnel and staff for emergency use.
- Scheduled electronic meetings processed Mayor and Council member's mail and phone calls.
- Supervised Interns and Volunteers daily.

2001-2002 **Xeta Technologies** **Tukwila, WA**
Project Coordinator

- Dispatching Technicians for Technical Assistance.
- Sales Administrative Assistant to Managers.

1996–2000 **Swedish Medical Center** **Seattle, WA**
Administrative Assistant/Lead Emergency Operator

- Maintained Corporate Directory, AT&T Cell Phone Representative for all employees and billing tenants invoice payments for all telephone lines at First Hill and Ballard campuses.
- Managed 10 operators, providing training, hiring and reviews.
- Excel, Access PowerPoint, spreadsheets. Paging doctors and emergency personal.

1986–1996 **KDIA Radio** **Oakland, CA**
Manager

- Prepared Budget Reports – Corporate Headquarters.
- Awarded District Sales Associate 1995.

1980-1986 **Alameda County Social Services** **Oakland, CA**

- Human Services Coordinator.
- Stenographer III, Safety Committee Minutes.
- Budget Analyst.

Education

1980–1982 **Laney College** **Oakland, CA**

- AA Degree Business Management.
- Course Work, South Seattle Community College.

CONSENT CALENDAR
Item #5

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Agreement with Moffatt & Nichol Engineers for consulting and preliminary design services for the Marina's Dry Stack Boat Storage Project. ATTACHMENTS: Draft Agreement with Moffatt & Nichol Engineers. Minutes of the June 4, 2003 meeting of the Municipal Facilities Committee.	FOR AGENDA OF: July 17, 2003 DATE SUBMITTED: July 7, 2003 CLEARANCES: [X] Marina [X] Legal APPROVED BY CITY MANAGER FOR SUBMITTAL:

A. Purpose & Recommendation

The purpose of this Agenda Item is to seek Council approval for an agreement between the City and Moffatt & Nichol, Engineers for consulting and design services for the Marina's Dry Stack Boat Storage Project.

Suggested motion: "I move that the City Council approve the agreement with Moffatt & Nichol Engineers to provide consulting and preliminary design services for the Dry Stack Boat Storage Project in the Marina, in the amount of $58,422, plus a budget of $6000 for architectural renderings, plus a contingency of $2,920, (5% of $58,422), for a total authorization of $67, 342, and authorize the City Manager to sign the agreement, substantially in the form as submitted."

B. Background

The proposed Dry Stack Boat Storage Facility, which would be located at the site formerly occupied by the Quartermaster store and some residential houses, has been discussed by the City Council on several occasions. The Council discussed the concept of dry stack boat storage in late 2000 when the City was negotiating with the former owners for the purchase of the property where the proposed facility would be located. The former Quartermaster site was designated for use as a dry stack boat storage facility in the Comprehensive Marina Master Plan, which was adopted by the City Council in June of 2001. The adoption of the Master Plan involved several Council presentations and a public hearing. Early this year, the staff briefed the Council on this project again. During that discussion, the Council directed the staff to hire a consultant to prepare a preliminary design for the proposed building and to refine the financial projections for the project, and bring that information back to the Council for a decision on whether to carry on with the project or abandon it.

C. Discussion

In March of this year, the staff published a request for qualifications for a consultant to do the preliminary design work for the Dry Stack Project, and using the normal process, selected the firm of Moffatt & Nichol Engineers. Moffatt & Nichol is a mid-sized firm with extensive marina experience, including dry stack projects.

On June 4, 2003, the staff reviewed the project with the members of the Municipal Facilities Committee. The staff asked for direction regarding pedestrian access in the area of the proposed facility. The Committee asked the staff to include the analysis of pedestrian access on both ends of the building in the Consultant's scope of work. The scope of work for the preliminary design effort includes the requested work on pedestrian access.

At the end of this phase of the design project, the staff expects to have a recommendation for the final footprint of the facility, including the building and the ancillary structures like the wash-down pad and the workstations. In addition, the consultants will analyze and make recommendations regarding the system requirements of the proposed facility like the boat transfer and handling equipment, the wash down equipment, parking and fire suppression. As part of this phase, the consultants will do a functional evaluation of the proposed facility. They have developed a computer simulation model that can help determine the feasibility of dry stack storage projects. The consultants have measured the time it takes to do the various tasks associated with launching and retrieving boats from stack units, and along with local data, they can use the inputs to identify any bottlenecks in the delivery of the service that may impact the overall feasibility of the project. Finally, the consultants and the staff will prepare a preliminary financial evaluation that will include construction cost estimates, equipment cost estimates, operations and maintenance cost estimate and revenue projections.

The consultants and the staff will present the results of the first phase efforts to the City Council. The consultants will produce architectural renderings that will show the Council and the public the details of the proposed building and site development.

D. Alternatives

At this point the Council can:

Approve this agreement and proceed with the preliminary design of the Dry Stack Project, or,
Delay this project until some future time, or,
Abandon the Dry Stack Boat Storage project now

E. Financial Impact

Originally, the cost of the design phase of this project was estimated to be about $80,000. The requested authorization for the First Phase is $67,342, which includes approximately $15,000 for analyzing and preparing cost estimates for two proposed pedestrian access sites. The estimated cost for the remainder of the design effort for the project is $25,000 to $35,000, depending on the amount of geotechnical work that needs to be done. At this point, the total engineering and design of the proposed facility is estimated to be $95,000 to $100,000. The total design and construction budget for this project is approximately $950,000.

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D. Alternatives

At this point the Council can:

- Approve this agreement and proceed with the preliminary design of the Dry Stack Project, or,
- Delay this project until some future time, or,
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CONTRACT FOR DESIGN AND ENGINEERING SERVICES
BETWEEN THE CITY OF DES MOINES AND MOFFATT & NICHOL ENGINEERS

THIS CONTRACT is made and entered into this Xth day of July, 2003, by and between the CITY OF DES MOINES, Washington, hereinafter called the "City", and MOFFATT & NICHOL, ENGINEERS, hereinafter called the "Consultant".

WHEREAS, the City has requested assistance in providing design and engineering services for the MARINA DRY STACK BOAT STORAGE PROJECT, hereinafter called the "Project", including but not limited to charges for, payments received by, and work products prepared by Moffatt & Nichol Engineers, the firm that contracted with the City to serve as "Consultant" on the Project; and

WHEREAS, Consultant has agreed to provide design and engineering services and is qualified to provide and perform the services described in this Agreement;

THEREFORE, in consideration of the mutual promises and covenants herein contained, to be kept, performed, and fulfilled by the parties, and other good and valuable consideration, it is mutually agreed as follows:

1. ***Scope of Service.*** The Consultant shall provide the services identified in the Scope of Work – Phase 1 & Phase 1 Project Budget Estimate both of which are attached to this document as "Exhibit A" and shall be considered part of this contract. All work is to be done in accordance with City of Des Moines, County and State laws, which are by this reference incorporated herein and made part hereof, and Consultant shall perform any additions, as negotiated, to the work provided under this Contract and every part thereof.

2. ***Consultant's Obligations.*** That all labor, materials, tools, software, equipment, utilities, services, and all other things necessary or required in the satisfactory performance of the work shall be furnished by the Consultant and the Contract performed and completed under the supervision of and subject to the approval of the City or its authorized representatives.

3. ***Ownership and Use of Records and Documents.*** Consultant shall provide the City with IBM compatible, compact disc copies of all original text documents and reports using Microsoft Word, drawings and design documents using AutoCAD and cost estimates using Microsoft Excel developed under this Agreement, which shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, Consultant shall bear no responsibility for its disclosure, inadvertent, or otherwise.

All data, documents, and files created by Consultant under this Agreement may be stored at the Consultant's office in Seattle, Washington. Consultant shall make such data, documents, and files available for review by the City upon its request at all reasonable times for the purpose of editing, modifying, and updating as necessary until such time as the City is capable of storing such information in the City's offices. Duplicate copies of this information shall be provided to the City upon its request, and at reasonable cost. Only those documents required under signature and seal of the engineer of record will be available for bid and construction.

Any use or reuse of the documents, data, and files created by Consultant for the City on this project by anyone other than Consultant on any other project shall be without liability or legal exposure to Consultant.

4. ***Compensation.*** In consideration for the complete and faithful performance of the Contract, the Consultant shall be paid as follows: Excepting reimbursables, additional services pre-approved by the City, and/or changes and modifications necessitated or agreed upon as provided in the Contract, the City Council has authorized payment to Consultant of no more than $58,422. The Consultant shall submit invoices in a timely manner, in a form as directed by the City's authorized representative(s). Invoices shall be paid within thirty (30) days of receipt. Invoices left unpaid beyond 30 days of receipt of invoice shall be subject to a monthly interest rate of 1 %. Reimbursables, standard hourly rates, and additional services shall be as outlined in the fee proposal.

5. ***Term.*** The term of this Contract shall be one hundred and eighty, (180), days from the date of execution. This Contract may be extended upon written agreement of both parties. Within 10 days of execution of this contract the City and Consultant will jointly establish and abide by a schedule, under which the work and services described in this Contract will be performed and completed. It is the responsibility of both City and Consultant to maintain the schedule, unless changes are agreed upon by both parties. This Contract may be terminated by the City on thirty (30) days notice for the Consultant's failure to perform services outlined in the schedule.

6. ***Performance Standards.*** Consultant's services, and all duties incidental or necessary thereto, shall be conducted and performed diligently and competently and in accordance with professional standards of conduct and performance.

7. ***Record Keeping.*** 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. All information concerning the City and said project, which is not otherwise a matter of public record or required by law to be made public, is confidential, and the Consultant will not, in whole or in part, now or at any time, disclose that information without the express written consent of the City Attorney.

8. ***Assignment.*** This Contract may not be assigned or otherwise transferred by either party hereto.

9. ***Modification.*** No change, alteration, modification, or addition to this Contract will be effective unless it is in writing and properly signed by both parties.

10. ***Independent Consultant.*** The services provided by the Consultant under this Contract are provided as an independent Consultant. Nothing in this Contract shall be considered to create the relationship of employer and employee between the parties. Neither the Consultant nor any employee of the Consultant shall be entitled to any benefits accorded City employees by virtue of the services provided under this Contract. The City will not be responsible for withholding or otherwise deducting federal income tax or social security payments, or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Consultant.

11. Indemnification / Hold Harmless. Consultant shall indemnify and hold the City, officials, employees and volunteers harmless from any and all damages, including attorney fees, caused by the negligent acts, errors or omissions of the Consultant in performance of the professional services of this Agreement. The City shall hold the Consultant harmless from any and all damages caused by the negligence of the City.

12. 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 the 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 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 required by the Industrial Insurance laws of the state of Washington.

4. *Professional Liability* insurance appropriate to the Consultant's profession.

b) Minimum Amount of Insurance

Consultant shall maintain the following insurance limits:

1. *Automobile Liability* insurance with 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 $100,000 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 as respect 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 Consultants 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.

13. Dispute Resolution Procedures.

a) ***Mediation/Arbitration Clause.*** If a dispute arises from or relates to this Contract 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 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 Contract 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.

b) ***Venue, Applicable Law and Personal Jurisdiction.*** All questions related to this Contract 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 Contract, 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 Contract until the parties have exhausted the mediation and arbitration procedures required by the previous paragraph.

14. ***Severability.*** If any term, provision, covenant, or condition of this Contract is held by a court of competitive jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

15. ***Waiver.*** The waiver by either party of any breach of any term, condition, or provision of the Contract shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Contract.

16. ***Captions.*** The captions used herein are for convenience only and are not a part of this Contract and do not in any way limit or amplify the terms and provisions hereof.

17. ***Time of Essence.*** Time is of the essence for each and all of the terms, covenants, and conditions of this Contract.

18. ***Concurrent Originals.*** This Contract may be signed in counterpart originals.

19. ***Ratification and Confirmation.*** Any acts consistent with the authority and prior to the effective date of this Contract are hereby ratified and confirmed.

IN WITNESS THEREOF, four (4) identical counterparts of this Contract, each of which shall be deemed an original thereof, have been duly executed by the parties herein named, on the day and year first above written.

CITY OF DES MOINES	MOFFATT & NICHOL ENGINEERS
By____________________	By____________________
Its____________________	Its____________________
22307 Dock Ave. South	710 Second Ave, Suite 720
Des Moines, WA 98198	Seattle, WA 98104
Dated____________________	Dated____________________

APPROVED AS TO FORM:

____
City Attorney

Des Moines Dry Stack Boat Storage
Scope Outline

We propose a phased approach in developing a scope and budget for this project:

Phase 1-Concept Refinement
Phase 2-Design Development/Construction Documents
Phase 3-Construction

Phase 1-Concept Refinement

A. Kick-off Meeting (Key City, Marina and Consultant Staff) Introduce all members of team
   1. Define/Confirm roles, responsibilities and boundaries
   2. Verify Critical Success Factors
   3. Confirm project goals and objectives
   4. Confirm Key Issues
   5. Establish how we will work together & make decisions
   6. Exchange information on existing conditions, background, history

B. Functional System Requirements
   1. Review of site constraints/opportunities
   2. Particulars of Boats to be stored (Storage length, beam, height, weight etc) city to provide
   3. Boat transfer/handling equipment (Type, performance requirements etc)
   4. Boat launching equipment (ditto)
   5. Staging docks (location, size etc)
   6. Work/wash down area (location, size etc)
   7. Storage building (location, size, special foundation etc-SW to assist)
   8. Office (location etc)
   9. Parking (location, spaces etc)
   10. Boat transfer area (location, size)
   11. Boat fueling (location, size)
   12. Fire Suppression
   13. Security

C. Conceptual Site Layout
   1. Site survey-utility locations (available from City)
   2. Site plan (include drainage and utility improvements)
   3. Building envelope
   4. Circulation (boats, cars, pedestrians)

D. Functional Evaluation
   1. D/S Simulation (optional)
   2. Equipment and Staffing Requirements
   3. Meet with City Staff/Present Findings
   4. Additional D/S Simulation (one)

E. Other Considerations
   1. Building appearance/View impacts (M&P) w/Renderings(optional)
   2. Public access (Cliff Ave & Promenade-Makers assist)
   3. Stairway access (two locations along bluff – All assist)

4. Comprehensive Marina Master Plan Issues (Makers assist)

F. Preliminary Financial Evaluation
   1. Construction cost estimate-Site improvements
   2. Equipment purchase estimate
   3. Operation and maintenance cost estimate (City assist)
   4. Revenue projections (City)
   5. Financial Performa (City)
   6. Municipal Facilities Committee Meeting/Presentation
   7. City presents to Public
   8. Meet with City Council/Present Findings

G. Permitting Support
   1. SEPA Process
   2. Permit Process

H. Construction Contract Strategy
   1. Scope and form of contracts
   2. Proposed Construction Schedule

I. Summarize Findings in a Report

At the end of Phase 1, the City could then make its Go-No Go decision to proceed with the environmental review and permit process and the Phase 2 Design Development. The biggest item is the Simulation which would be used to confirm the numerous judgments made in the functional design stage. It is optional because if the City is comfortable with its prior decisions and wants to proceed without the added assurance (and cost) of a simulated operation, they could elect to do so. The rendering of the building and/ or the site is also optional due to cost, but can be included if needed to facilitate City review and approval.

Phase 2 – Design Development/Construction Documents

A. Geotechnical field investigation
B. Preliminary plans and sections
C. Coordinate with utility companies
D. Prepare D/B RFP and construction cost estimate
E. Prepare Final D/B RFP and cost estimates

Phase 3 - Bid, Award, and Construction

A. Addendums
B. Review bids
C. Requests for information
D. Review Submittals
E. Periodic site visits
F. Final inspection

MOFFATT & NICHOL ENGINEERS
PROJECT BUDGET ESTIMATE

Project:	Des Moines Dry Stack Boat Storage	Job No:		Amount:	$58,442
Project Manager:	Mike Hemphill	Date:	06/26/03		
Project Director:	Tom McCollough	New:		Revised:	

I. LABOR BUDGET — *CLASSIFICATION / RATES*

	TASK	Sup, Engi $165	Sr. Engr. $152	Engr. III $137	Engr. II $124	Engr. I $105	CAD Designer $95	Drafter $75	Admin $68	Total Hours	Total Fee
	Phase 1 - Concept Refinement										
A.	Kick Off Meeting	6		6						12	$1,812
B.	Functional System Requirements	12		24						36	$5,268
C.	Conceptual Site Layout	2		12			8			22	$2,734
D.	Functional Evaluation	16		112						128	$17,984
E.	Other Considerations	2		12	8					22	$2,966
F.	Preliminary Financial Evaluation	4		20	16					40	$5,384
G.	Permitting Support			16			16			32	$3,712
H.	Construction Contract Schedule	2		4						6	$878
I.	Summarize Findings in Report	2		32			8			42	$5,474
	Subtotal	46		238	24		32			340	
	Phase 2- Design Development/Construction Documents										
	Subtotal										TBN
	Phase 3- Bid, Award, & Construction										
	Subtotal										TBN
	Total Hours	46		238	24		32			340	
II.	*LABOR COST*	$7,590		$32,606	$2,976		$3,040				$46,212

III. OTHER COSTS

A. Subconsultants	Amount	Markup	Total
1. Merritt & Pardini	$3,600	$360	$3,960
2. Wood/Harbinger			
3. Shannon & Wilson	$3,400	$340	$3,740
4. Makers	$3,800	$380	$4,180
Total Subconsultants			$11,880

B. Direct Costs

Computer	
Printing	$50
Travel	$100
Meals	
Reproduction	$25
Telephone	$100
Delivery	$75
Other	
Total Direct Cost	$350

IV. PROJECT SUMMARY

Total Labor Cost	$46,212
Total Subconsultants	$11,880
Total Direct Cost	$350
Total Project Estimate	**$58,442**

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MOFFATT & NICHOL ENGINEERS
PROJECT BUDGET ESTIMATE

Project:	Des Moines Dry Stack Boat Storage	Job No:		Amount:	
Project Manager:	Mike Hemphill	Date:	06/26/03		
Project Director:	Tom McCollough	New:		Revised:	

I. LABOR BUDGET		CLASSIFICATION / RATES									
	TASK	Sup, Engi $165	Sr. Engr. $152	Engr. III $137	Engr. II $124	Engr. I $105	CAD Designer $95	Drafter $75	Admin $68	Total Hours	Total Fee
	Phase 1- Concept Refinement										
A.	**Kick Off Meeting**										
1	Define/Confirm roles & responsibilities	1		1						2	$302
2	Verify Critical Success Factors	1		1						2	$302
3	Confirm project goals and objectives	1		1						2	$302
4	Confirm Key Issues	1		1						2	$302
5	Work plan & decision plan	1		1						2	$302
6	Exchange information	1		1						2	$302
	Total A.	6		6						12	$1,812
B.	**Functional System Requirements**										
1	Site Constraints/ opportunities	2		2						4	$604
2	Particulars of Boat to be stored (from City)	1		2						3	$439
3	Boat Transfer/handling Equipment	1		2						3	$439
4	Boat Launching Equipment	1		2						3	$439
5	Staging Docks	1		2						3	$439
6	Work/Wash down area			4						4	$548
7	Storage Building	2		2						4	$604
8	Office	1		1						2	$302
9	Parking			1						1	$137
10	Boat Transfer Area	1		1						2	$302
11	Boat Fueling			1						1	$137
12	Fire Suppression	1		2						3	$439
13	Security	1		2						3	$439
	Total B.	12		24						36	$5,268
C.	**Conceptual Site Layout**										
1	Site survey-utility locations			4						4	$548
2	Site plan			4			8			12	$1,308
3	Building envelope			2						2	$274
4	Circulation	2		2						4	$604
	Total C.	2		12			8			22	$2,734
D.	**Functional Evaluation**										
1	D/S Simulation	8		88						96	$13,376

2	Equipment and Staffing Requirements	2	4			6	$878
3	Meet with City Staff/Present Findings	4	4			8	$1,208
4	Additional D/S Simulation (one)	2	16			18	$2,522
	Total D.	16	112			128	$17,984
E.	**Other Considerations**						
1	Building Appearance/View Impacts with		4			4	$548
2	Public Access		4			4	$548
3	Stairway Options behind Structure			8		8	$992
4	Comprehensive Marina Master Plan Issues	2	4			6	$878
	Total E.	2	12	8		22	$2,966
F.	**Preliminary Financial Evaluation**						
1	Construction cost estimate-Site Improvements	1	4	16		21	$2,697
2	Equipment purchase estimate	1	4			5	$713
3	Operation and maintenance cost estimate	2	4			6	$878
4	Revenue projections						
5	Financial Performa						
6	Municipal Facilities Committee Mtg/Present		4			4	$548
7	City presents to Public						
8	Meet with City Council/Present Findings		4			4	$548
	Total F.	4	20	16		40	$5,384
G.	**Permitting Support**						
1	SEPA Process		8		8	16	$1,856
2	Permit Process		8		8	16	$1,856
	Total G.		16		16	32	$3,712
H.	**Construction Contract Schedule**						
1	Scope and form of contracts	1	2			3	$439
2	Proposed Construction Schedule	1	2			3	$439
	Total H.	2	4			6	$878
I.	**Summarize Findings in Report**						
1	Write/Review/Edit Report	2	32		8	42	$5,474
	Total I.	2	32		8	42	$5,474
	Total Hours	46	238	24	32	340	

	$7,590	$32,606	$2,976	$3,040				$46,212

MINUTES

For
The Municipal Facilities Committee Meeting
June 4, 2003

Chairperson Maggie Steenrod called the Municipal Facilities Committee meeting to order at 3:00 pm. The purpose of the meeting was to get an update from the staff about the capital improvement projects planned for the Marina. The meeting was held in the South Wing Conference Room at City Hall. There were no minutes from previous meetings read and/or approved.

Attendance
Maggie Steenrod, Chairperson
Susan White, Committee Member
Bob Sheckler, Committee Member
Tony Piasecki, City Manager
Corbitt loch, Assistant City Manager
Joe Dusenbury, Harbormaster

Discussion Topics

Electrical Distribution System Project.

Harbormaster Joe Dusenbury updated the Committee on the progress of the power system upgrade project. Mr. Dusenbury told the Committee that Wood/Harbinger, Inc. had completed the study phase of the project and delivered the documents to the Marina staff. The purpose of the study phase was to assess the condition of the current system and determine the best approach to replacing the power distribution equipment in the Marina. At this time the power comes into the Marina on the north end and feeds the transformers located behind the bulkhead. Wood/Harbinger's recommendation is to bring the power into the center of the Marina and distribute it in three "loops". A central loop would feed the office, the boat yard and restaurant and the four largest docks. The north loop would feed the new guest moorage area and the new retail building and the south loop would feed the rest of the docks and the south parking lot area. This approach would allow the Marina to replace the distribution system in phases that would correspond to the other projects and keep the remaining sections of the old system in place and operating until they are replaced. The Harbormaster reported that the next step is to negotiate an agreement with Wood/Harbinger to design the "central loop" and develop the plans and documents for the construction phase. Wood/Harbinger has given the staff an estimate of $82,000 to develop the design and construction documents. The actual construction costs are estimated to be $650,000. The budget for electrical projects in the first phase of the Marina Master Plan is $750,000. The staff anticipated that the entire upland system could be replaced for $750,000. The central loop is the largest of the three phases, with all of the main switch-gear and most of the transformers, but the staff will still have to budget for more work on the distribution system in the second and third phases of the Marina Master Plan.

Dry Stack Boat Storage Project

The Harbormaster told the Committee that the staff had selected a consultant to do the site design and architectural specifications for the dry stack boat storage unit. The company is Moffatt & Nichols Engineers, Inc. Moffatt & Nichol has extensive marina experience, including dry stack projects. The Marina staff recommends Moffatt & Nichol because they have developed a computer simulation model to determine the feasibility of dry stack storage projects. In the staff's opinion, this model will allow the consultant and the staff to identify any bottlenecks in the service delivery that may impact the overall feasibility of the stack unit.
To set up the model, the consultant will need to determine the final footprint of the stack unit and where the wash down area and work areas will be. To accomplish that, the consultant will need to address pedestrian access in that area. The staff asked the Committee for direction on which alternatives to analyze. The Committee asked the staff to develop options for pedestrian access on the north end of the site and the south end of the site. The switch back ramp behind the building was dropped from consideration because of logistical problems.

Redondo Boat Ramp Improvement Project

Assistant City Manager Corbitt Loch reported on the progress of the Redondo Boat Ramp Improvement project. He told the Committee that the bids came in a little over budget and that the staff is negotiating with the low bidder on the project on several items. At this time, the gate system has been deleted from the contract, and the staff is looking at the possibility of having the Marina crew do some of the electrical work, and the Redondo Community Club has offered to build the arbors. Mr. Loch told the Committee that he expects the negotiations to be complete this week and that the contract should be in front of Council for final approval on June 12th.

Action Items

- The staff will continue to negotiate a contract with Wood/Harbinger for the design of the first phase of the Marina Power Distribution Project. The Committee asked the staff to have the contract ready for Council action at the June 26th meeting.
- The staff will finalize the contract with Moffatt & Nichols for the Dry Stack Project, with the goal of getting it to Council on June 26th also.
- The Assistant City Manager will prepare the Council packet for the Redondo Project and have it ready for the June 12th meeting.

Respectfully submitted by:

Joe Dusenbury, Harbormaster

OLD BUSINESS
Item #1

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 2003 Budget Amendment – MCI Fund No. 310 (Municipal Capital Improvements Fund)	FOR AGENDA OF: July 17, 2003
	DEPT. OF ORIGIN: Finance
ATTACHMENTS:	DATE SUBMITTED: June 20, 2003
Draft Ordinance No. 03-177 MCI Fund No. 310 Revised 2003 Budget Worksheet	CLEARANCES: [X] Parks, Recreation and Senior Services [X] Finance -pl
	APPROVED BY CITY MANAGER FOR SUBMITTAL: CTL for TP

Purpose and Recommendation
The purpose of this agenda item is to request Council's approval of Draft Ordinance No. 03-177 amending the 2003 budget by authorizing appropriations to complete the Steven J. Underwood Memorial Sports Park Phase 1 and Activity Center, and to authorize appropriations from Senior Services Donations and Special Events Revenues, and from available unreserved ending fund balance of $49,418.

Suggested Motions:

1. "I move to suspend Council Rule 26(b) to consider Draft Ordinance No. 03-177 on first reading."

2. "I move to adopt Draft Ordinance No. 03-177 relating to municipal finance, amending the 2003 budget adopted in Ordinance No. 1314."

Background
The MCI Fund 2002 unreserved ending fund balance totals $397,207 and is made up of the following.

Table 1: 2002 MCI Unreserved Ending Fund Balance

Carry Forward of Unreserved Fund Balance from 2001	$134,901
Carry Forward of 2002 Balance from Interest Earnings	10,596
Carry Forward of 2002 Balance from REET	66,920
Carry Forward of 2002 Balance from General Fund Transfer	84,790
Sports Park Reservation of Fund Balance from 2001	100,000
Total	$397,207

The following information outlines staff's recommendation for allocating some of the $397,207 to two unfinished projects, the Sports Park and the Activity Center.

Sports Park

The Steven J. Underwood Memorial Sports Park Phase 1 project was not complete as of the end of 2002 and the appropriations to finish the project must be reauthorized for 2003. Requested appropriations for 2003 total $211,988, and consist of $191,362 from the 2002 unreserved ending fund balance and $20,626 remaining from an IAC grant. The remaining budget balance from 2002 for the project totals $180,614. Staff is requesting an additional $31,374 to complete the project. The additional request is due to unanticipated contractor settlement costs for detention pond repairs and parking lot completion. IAC will not provide the $20,626 in grant funds unless the parking lot work is completed.

Table 2: Anticipated 2003 Expenditures for 2002 Sports Park Improvements

2003 Expenditures	
Remaining work to be completed	$180,614
Permit Fees	6,374
Settlement re: parking lot	25,000
Total Expenditures	$211,988

Table 3: Recommended 2003 Allocation to 2002 Sports Park Improvements

Funding Source	
Unreserved 2002 Ending Fund Balance	$191,362
IAC Grant	20,626
Total Allocation	$211,988

If the Council concurs with this recommendation, $205,845 of the 2002 unreserved fund balance remains ($397,207 - $191,362 = $205,845)

Activity Center

The Activity Center project was not complete as of the end of 2002 and the appropriations to finish the project must be reauthorized for 2003. Requested appropriations for 2003 total $284,367, and consist of $81,930 from the 2002 unreserved ending fund balance, $34,000 from the Legacy Foundation, and $168,437 from Haunted House proceeds. The remaining balance from the originally authorized budget of $327,818 totals $272,612. Staff is requesting an additional $11,755 to complete the project. The additional request is due to additional costs associated with the phone and data system installation, and floor installation.

The remaining unreserved fund balance of $123,915 was reprogrammed through the 2003 Capital Improvement Plan budget combined with the 2003 REET & $2,593 of the 2003 interest earnings to fund Parks and Recreation projects and the Arterial Street Fund Transfer. The following 2003 funds are available for appropriation:

Table 4: Remaining Unreserved Fund Balance

Item	**Amount**
2003 Interest Earnings	12,407
Excess Balance from the 2003 Transfer from the General Fund	17,147
Excess Balance from the 2003 Transfer to Debt Service Fund 216	19,864
Total	$49,418

Staff is requesting $8,000 be appropriated to fund the purchase of a divider wall system for the Activity Center. The funds were raised through the Senior Services donations and special event revenues. The Des Moines Activity Center hosted a "Raise the Sail" divider wall donation campaign beginning in March 2003 and raised $6,320 from private donations. And, the Way Off Broadway Revue sponsored by the Senior Center raised the additional $1,680 funds in May 2003. It is recommended that the City Council approve the transfer from the General Fund of the Senior Services Donations in the amount of $6,320 and Special Events revenues in the amount of $1,680 to the Municipal Capital Improvements Fund for the purchase of the divider wall system for the Des Moines Activity Center.

Discussion
The projects requested to be funded under this agenda item have been identified by Council and staff as priorities. Staff is requesting the remaining unreserved fund balance of $49,418 be appropriated for new projects. A new project listing under alternatives is provided to assist Council with options for spending the remaining unreserved fund balance of $49,418.

The following recaps the total budget amendment requested in Draft Ordinance No. 03-177:

Table 5: Budget Amendment Recap

Project	Funding Source	Appropriations
SJU Memorial Sports Park PH 1	Fund Balance IAC Grant Subtotal	$191,362 20,626 $211,988
Activity Center	Haunted House Legacy Foundation Fund Balance Subtotal	$168,437 34,000 81,930 $284,367
Activity Center Divider Wall System	Interfund Transfer	$8,000
New Projects	Fund Balance	49,418
Eden Upgrade 2003 Budget Reduction		($4,486)
1997 GO Bond Transfer Reduction		($19,864)
Total Appropriations		$529,423
Ending Fund Balance		12,111
Total Budget Amendment		$541,534

Alternatives
The City has many unmet needs and Council may decide to fund alternative projects with these available funds. The following new project listing is provided to assist Council with options for spending the remaining unreserved fund balance of $49,418.

Table 6: New Projects

New Projects	Priority	Funding Request
Drainage Work: Activity Center Parking Lot & SJU Memorial Park	1	$ 4,000
Activity Center Parking Lot Paving, ADA Walkways	2	48,493
Onsite Records Storage	3	44,229
Activity Center Rear Windows Safety Glass	4	2,000
Activity Center Fabric Entry Way Awning	5	4,500
Activity Center Security System	6	4,500

Recommendation
Staff recommends that Council approve Draft Ordinance No. 03-177. Staff recommends that Council approve funding for the drainage work and the Activity Center parking lot paving and ADA walkways. Staff is evaluating the cost elements for the Activity Center parking lot paving and ADA walkways and will provide Council with an affordable solution prior to the meeting.

Concurrence
The Parks, Recreation, and Senior Services Department and Finance Department concur with this action. The Finance and Economic Development Committee and the Municipal Facilities Committee have not reviewed this proposal.

DRAFT ORDINANCE NO. 03-177

CITY ATTORNEY'S FIRST DRAFT, 6-20-03

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to municipal finance, amending the 2003 budget adopted in Ordinance No. 1314 by amending Fund No. 310 (Municipal Capital Improvements Fund), and to authorize certain expenditures in the amounts specified in this ordinance.

WHEREAS, the City Council finds that current revenue and expenditure reports for the City differ from forecasts used to create the 2003 budget, enacted by Ordinance No. 1314, and further finds that such differences justify certain adjustments regarding obligations incurred and expenditures of proceeds for fiscal year 2003, all as described as follows:

(1) **Municipal Capital Improvements Fund: $541,534.** This adjustment allows for the funding of the following projects: Activity Center Room Divider System - $8,000; Steven J. Underwood Memorial Sports Park Phase 1 - $211,988; Activity Center - $284,367; and reduces the funding for the Eden Software Upgrade - $4,486 and Transfer-out to Fund 216 - $19,864; and provides for $49,418 in additional funding for new projects and increases Fund No. 310 Ending Fund Balance - $12,111.

WHEREAS, the City Council finds that the 2003 budget amendments to the City's budget are in the public interest; now therefore,

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

Sec. 1. Findings. Each and every of the findings expressed in the recitals to this ordinance are hereby adopted and incorporated by reference.

Sec. 2. Amendment to 2003 Budget. The 2003 budget for Fund 310 (Municipal Capital Improvements Fund) totaling $1,449,270 originally approved under Ordinance No. 1314, enacted on December 19, 2002, is hereby amended to include additional appropriations of $529,423 and increase in Ending Fund Balance of $12,111 for an amended 2003 budget of 1,990,804.

Sec. 3. Ratification and Confirmation. All acts taken by City officers and staff prior to the enactment of this ordinance that are consistent with and in furtherance of the purpose or intent of this ordinance are hereby ratified and confirmed by the City Council.

Sec. 4. 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 or 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 deems control.

Sec 5. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval and publication according to 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: _______, 2003
DRAFTORD/03-177

City of Des Moines
MCI Fund 310
Revised 2003 Budget

	Funding Source	2003 Budget	2003 Revised Bgt	
Beginning Fund Balance		$188,204	$664,112	
Reserved Fund Balance:				
Park in Lieu		($320)	$42,188	
Haunted House		49,439	192,248	
Sports Park		0	0	
King Cty Open Space		32,469	32,469	
		81,588	266,905	
Unreserved Fund Balance		$106,616	$397,207	
Revenues:				
Interest Earnings		$15,000	$15,000	
REET		600,000	600,000	
Haunted House - 2003 (Estimate from Patrice)		25,000	14,000	
Haunted House - 2002 (Estimate from Patrice)		0	14,000	
Legacy Foundation (Billed June 2003)		0	34,000	
Park In Lieu Fees		70,000	70,000	
CDBG - Fieldhouse		115,585	115,585	
CDBG - Sr Land Acq		72,138	72,138	
Carryfwd fm 2002 - IAC SJU Memorial Park Balance		0	20,626	
Tsf in fm General Fund		283,343	283,343	
Tsf in fm General Fund - Senior Services Special Events & Donations		0	8,000	
Tsf in fm Facilities Repair Fd		80,000	80,000	
Total Revenues		$1,261,066	$1,326,692	
Expenditures:				
DM Beach Park Repairs	REET	$14,500	$14,500	
Field House Renovation	REET	44,505	44,505	
Field House Renovation	CDBG	115,585	115,585	
SJU Memorial Park Ph 1 - Community Ctr	MCI	0	71,108	
SJU Memorial Park Ph 1 - Community Ctr	MCI	0	65,880	
SJU Memorial Park Ph 1 - Community Ctr	MCI	0	1,500	$211,988
SJU Memorial Park Ph 1	MCI	0	52,874	
SJU Memorial Park Ph 1	IAC Grant	0	20,626	
SJU Memorial Park Ph 1-1B	REET	173,300	173,300	
SJU Memorial Park Ph 1-1B	PK in Lieu	60,000	60,000	
Activity Center	Legacy	0	34,000	
Activity Center	MCI	0	81,930	$284,367
Activity Center	Haunted Hs	0	168,437	
Activity Center - Room Divider System	Sr Donations	0	8,000	
Park n Rec Master Plan	REET	20,000	20,000	
Eden Upgrade	Gen Fd	137,339	137,339	
Eden Upgrade - Adj Bgt for add'l 2002 Expenditures	Gen Fd	0	(4,486)	
City Hall North Wing Remodel	Fac Repair	80,000	80,000	
1998 GO Bond Debt	REET	99,203	99,203	
1998 GO Bond Debt	CDBG	69,440	69,440	
1997 GO Bond Debt	Gen Fd	133,343	133,343	
1997 GO Bond Debt (Tsf-out to Fund 216 Reduced by Fund 317 Tsf to Fund 216 in 2002)		0	(19,864)	
Transfer to Arterial Street	MCI	0	59,588	
Transfer to Arterial Street	REET	375,000	315,412	
Total Expenditures		$1,322,215	$1,802,220	
Ending Fund Balance		$127,055	$188,584	$1,990,804
Fund Balance Reserves:				
Park in Lieu		$10,000	$52,188	
Haunted House		76,672	51,811	
CDBG Sr Land Acquisition		7,138	2,698	
Sports Park		0	0	
King County Open Space		32,469	32,469	
Total Fund Balance Reserves		$126,279	$139,166	
Unreserved Fund Balance		$776	$49,418	

Reconciliation of Beginning Unreserved Fund Balance:	$ 397,207
Carryfwd of Unreserved Fund Balance from 2001	(134,901)
Carryfwd of Unused Interest Earnings	(10,596)
Carryfwd of Unused Excess Reet from 2002	(66,920)
Carryfwd of Unused General Fund Transfer from 200:	(84,790)
Sports Park Reservation of Fund Bal in 2001	(100,000)
	$ -

Project Funding:	
REET	$666,920
MCI	332,880
CDBG	185,025
IAC Grant	20,626
Park in Lieu	60,000
Legacy Foundation	34,000
Haunted House	168,437
Tsf in fm Gen Fund	254,332
Tsf in fm Fac Repair Fund	80,000
	$1,802,220

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Authorizing the City Manager to Negotiate a Sole Source Purchase of a Floating Breakwater for the Redondo Boat Launching Ramp.	FOR AGENDA OF: July 17, 2003 DATE SUBMITTED: January 24, 2003 CLEARANCES: [X] Marina ________ [X] Legal ________
ATTACHMENTS: 1. Draft Resolution No. 03-181; 2. Draft Agreement with Wave Dispersion Technologies, Inc. for the sole source purchase of a WhisprWave floating breakwater.	APPROVED BY CITY MANAGER FOR SUBMITTAL: ________

A. Purpose & Recommendation

The purpose of this Agenda Item is to seek Council approval for the sole source purchase of a floating breakwater system for the Redondo Boat Launching Ramp, as part of the Boat Launch Improvement Project.

Suggested Motion: "I move to adopt Draft Resolution N0. 03-181, waiving the state competitive bidding requirements and allowing the City to enter into a sole-source purchase agreement with Wave Dispersion Technologies, Inc. for the purchase of a WhisprWave floating breakwater, and authorizing the City Manager to sign such agreement with a purchase price of $186,700, plus WSST, substantially in the form as submitted."

B. Background

Because of its location, the boat-launching ramp at Redondo is exposed to weather generated waves at all times of the year. Wind speeds of 10 to 15 mph, which are common on the Sound, will generate small waves with periods of 4 seconds or less. These small waves make the ramp unsafe for launching and retrieving boats. Finding a suitable wave-barrier is one of the prime objectives of the Redondo Boat Launch Renovation Project. Typical wave barriers are concrete and/or steel structures because of the weight needed to dampen wave action. These structures can be either floating or stationary.

The beach at Redondo is a spawning area for two important species of fish. Concerns about beach erosion that would degrade spawning habitat and block fish migration preclude the use of a stationary wave barrier in front of the ramp. Environmentally, floating structures are preferred, but massive steel or concrete floats that would take heavy equipment to get in and out of the water and would be expensive for the Marina to maintain.

C. Discussion

The WhisprWave, manufactured by Wave Dispersion Technologies of Summit, New Jersey offers a unique solution to the wave protection problem at Redondo. The WhisprWave is made of durable polyethylene modules. The modules are pre-assembled into sub-units that can be launched with the Marina's equipment and towed to the site for final assembly and anchoring. After the wave barrier is assembled and in place, about two thirds of the modules are flooded with water. The weight of the water in the flooded modules provides the mass needed to dampen short-period waves.

It was always the staff's intention to separate the purchase of the floating breakwater from the contract for the remainder of the Redondo Boat Launch Renovation Project. Each year, the Marina staff will have to install and retrieve whatever system is used, so the staff thought it would be better to have the supplier of the system work directly with the Marina staff on the initial installation. The City's consultants on this project, Reid Middleton, Inc. agreed with the staff on this method of purchasing the breakwater system, especially since the Whisprwave is the only breakwater system on the market that meets the requirements of the project and it's installation is entirely separate from the rest of the project's scope of work.

In summary, the staff recommends purchasing the WhisprWave because:

- It is the only wave barrier on the market that can be assembled and placed on station using existing Marina equipment.
- It can be retrieved at the end of the boating season, disassembled and stored, again using Marina equipment.
- It is acceptable to the State and Federal Environmental agencies.
- When it is assembled and on station, it is massive enough to dampen the short-period waves that make the ramp unsafe or unusable.

D. Alternatives

A concrete or steel floating breakwater would not be feasible because of the long-term costs of annual installation and retrieval of the system and leaving a breakwater in place year round in that location is not as acceptable to the regulatory agencies. It would be possible to publish a request for proposals for building and supplying a breakwater that meets the criteria for this location, but it is unlikely that anyone else will have an "off-the-shelf" system that is as far along in it's development as the WhisprWave.

E. Financial Impact

Wave Dispersion Technologies, Inc. has given the City a quote of $186,700 for supplying and installing a 180-foot floating breakwater at the Redondo Boat Launch site. This price includes shipping but does not include WSST of $16,430. The total cost of the WhisprWave installed would be $203,130. This amount is within the budget allocation for this part of the project.

F. Recommendation

The staff recommends that the Council approve Draft Resolution NO. XXX and authorize the staff to negotiate a sole source purchase agreement with Wave Technologies, Inc. for a WhisprWave floating breakwater system for the Redondo Launching Ramp.

G. Concurrence

City Attorney
Municipal Facilities Committee

CITY ATTORNEY'S FIRST DRAFT 07/09/03

DRAFT RESOLUTION NO. 03-181

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, waiving the state competitive bidding requirements for the purchase of a WhisprWave Wave Attenuator from Wave Dispersion Technologies, Inc., for the Redondo Boat Ramp Project, pursuant to RCW 39.04.280; and authorizing the purchase of same.

WHEREAS, in *Smith v. Seattle*, Wn.2d 64, 72 P.2d 588 (1947), the Washington Supreme Court held that cities have the right to specify a particular brand of article for purchase by public contract, even where such article is held in a monopoly by a single supplier, and

WHEREAS, the WhisprWave Wave Attenuator has been recommended for the Redondo Boat Ramp Project and the purchase is clearly and legitimately limited to a sole source supplier, and

WHEREAS, a suitable wave-barrier is one of the prime objectives of the Redondo Boat Ramp Improvement Project, and

WHEREAS, the Redondo Boat Ramp is exposed to weather generated waves at all time of the year due to its location, and

WHEREAS, typical concrete and/or steel wave barriers will degrade the spawning habitat and block fish migration at the Redondo Boat Ramp site, and

WHEREAS, the WhisprWave offers a unique solution to the Redondo wave and erosion problems, and

WHEREAS, WhisprWave is the only wave barrier on the market that can be assembled and placed on station using existing Marina equipment, and

WHEREAS, WhisprWave can be retrieved at the end of a boating season, disassembled and stored, again using Marina equipment, and

WHEREAS, WhisprWave is approved by state and federal environmental agencies, and

WHEREAS, the Des Moines Marina has requested that the City Council waive state competitive bidding requirements and authorize the purchase of a WhisprWave Wave Attenuator from Wave Dispersion Technologies, Inc., in Summit, New Jersey, for the Redondo Boat Ramp Improvement Project; now therefore,

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

Sec. 1. Based upon the preceding legislative findings, the City Council hereby declares that the purchase of the WhisprWave Wave Attenuator for the Redondo Boat Ramp Project is clearly and legitimately limited to a single source of supply and that the sole source of supply is Wave Dispersion Technologies, Inc.

Sec. 2. Based upon the preceding legislative findings, the competitive bidding requirements for the City of Des Moines are hereby waived and the City Manager is authorized to execute a contract for the purchase of the WhisprWave Wave Attenuator from Wave Dispersion Technologies, Inc., for the Redondo Boat Ramp Project

Sec. 3. This resolution shall take place immediately.

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:03-181

NEW BUSINESS
Item #2

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Purchase of an anchoring system for the floating breakwater at the Redondo Boat Launching Ramp. ATTACHMENTS: 1. Draft Resolution No. 03-193; 2. Draft Agreement with Helix Mooring Systems, Inc.	FOR AGENDA OF: July 17, 2003 DATE SUBMITTED: July 10, 2003 CLEARANCES: [X] Marina [X] Legal APPROVED BY CITY MANAGER FOR SUBMITTAL:

A. Purpose & Recommendation

The purpose of this Agenda Item is to seek Council approval for the sole-source purchase of an anchoring system for the floating breakwater at the Redondo Boat Launching Ramp, as part of the Boat Launch Improvement Project.

Suggested Motion: "I move to adopt Draft Resolution No. 03-193, waiving the sate competitive bidding requirements and allowing the City to enter into a sole-source purchase agreement with Helix Mooring Systems, Inc. for the purchase and installation of 20 Helix anchors and the purchase of 20 SeaFlex connectors for $96,740, and authorizing the City Manager to sign such agreement, substantially in the form as submitted."

B. Background

The floating breakwater system is designed to protect the boat-launching ramp from waves that are 1 to 3 feet high with periods of 4 seconds or less. The breakwater will be most effective if it stays in the "design" location shown on the plans for the Redondo Boat Ramp Renovation Project. To keep the breakwater on location at all tidal stages and in varying wind conditions, the Project Engineers have specified an anchoring system that uses Helix anchors and Seaflex anchor connectors. It has also been determined that the Helix Anchor and the Seaflex anchor connectors are specialized products that are essentially available from one source. When this occurs the normal State bidding requirements do not apply.

C. Discussion

The Helix anchors are "auger-in" type anchors that are drilled into the seabed at the design locations, using a hydraulic powered auguring machine. The design holding strength of 10,000 pounds per anchor is achieved by monitoring the foot-pounds of torque that the machine is delivering to the anchor during the installation process. There are other helical embedment anchors on the market, but only Helix Anchors have an installation process that allows the installer to predict the final holding strength of the anchor with an acceptable degree of accuracy. Another unique characteristic of the Helix Anchor is the marine termination. The marine termination is the top piece of the anchor that serves as the connection point for one end of the Seaflex connectors. The other end of the seaflex connector is attached to the WhisprWave floating breakwater. The marine termination on the Helix Anchor is a proprietary product that is only available on the Helix Anchor and our engineers have advised us that it is the only marine termination that will provide the holding capacity needed.

The Seaflex anchor connectors are a unique product that is manufactured in Sweden, and is used to moor docks and floating breakwaters in many locations worldwide. A Seaflex connector is essentially a heavily reinforced "bungee cord" that can stretch almost twice its original length while maintaining it design strength. As the Seaflex connector stretches, the reinforcement provided progressively greater resistance, which helps dampen movements caused by waves. The Seaflex will be pre-tensioned, so even at the lowest tide level, the breakwater will stay in its optimal design position. Seaflex connectors are relatively simple devices covered by a number of patents; so similar products are not available.

It was always the staff's intention to separate the purchase of the floating breakwater from the contract for the construction of the Redondo Boat Launch Improvement Project. After the first bid, it was apparent to staff and Project Engineers that the anchoring system was a source of some confusion for the contractors, because it required coordination with the installation of the floating breakwater, which was outside the contract.

In summary, the staff recommends purchasing the Helix Anchors and the Seaflex Anchor Connectors because:

- Helix Anchors are the original "auger-in" type anchors and they have a proven performance record. They have an installation process that allows the installer to predict the final holding strength of the anchor with an acceptable degree of accuracy.
- Helix Anchors have a unique installation system and a connecting device that are not available with any other product.
- Helix Anchors create minimal disruption to the seabed and are part of the State's permit approval.
- The Seaflex anchor connectors are the only product on the market that can keep the floating breakwater in the optimum location at all tide levels, while still being relatively maintenance free and easy to install.
- Seaflex anchor connectors are acceptable to the State and Federal Environmental agencies because they eliminate the bottom drag around the anchor that kills sea life.
-

D. <u>Alternatives</u>

There are other alternatives to the Helix/Seaflex anchoring system that would be cheaper initially, but they would be more difficult to install and maintain each year. Also the other systems would more damaging to the environment, and it is likely that the regulatory agencies would impose more restrictive conditions on their use.

E. Financial Impact

Helix Mooring Systems, Inc. has given the City a bid of $88,300 to provide and install the Helix anchors and provide the Seaflex anchor connectors. Helix Mooring Systems will also provide a technician to monitor the installation of anchors and to help the City staff determine the proper installation and tensioning methods for installing the Seaflex anchor Connectors. Washington State Sales tax is not included in the bid. With tax, the total requested expenditure authorization is $96,740. This amount is within the budget allocation for this part of the project.

F. Recommendation

The staff recommends that the Council approve Draft Resolution NO. XXX and authorize the staff to negotiate a sole source purchase agreement with Helix Mooring Systems, Inc. for an anchoring system for the WhisprWave floating breakwater for the Redondo Launching Ramp.

G. Concurrence

City Attorney

CITY ATTORNEY'S FIRST DRAFT 07/09/03

DRAFT RESOLUTION NO. 03-193

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, waiving the state competitive bidding requirements for the purchase and installation of twenty Helix Anchors and Seaflex Anchor Connectors from Helix Mooring Systems, Inc., for the Redondo Boat Ramp Project, pursuant to RCW 39.04.280; and authorizing the purchase of same.

WHEREAS, in *Smith v. Seattle*, Wn.2d 64, 72 P.2d 588 (1947), the Washington Supreme Court held that cities have the right to specify a particular brand of article for purchase by public contract, even where such article is held in a monopoly by a single supplier, and

WHEREAS, Helix Anchors and Seaflex Anchor Connectors have been recommended by project engineers for the Redondo Boat Ramp Project and the purchase is clearly and legitimately limited to a sole source supplier, and

WHEREAS, Seaflex Anchor Connectors are the only product on the market that can keep the proposed floating breakwater in the optimum location at all tide levels, and

WHEREAS, the Helix Anchoring System is manufactured by a unique process and will keep the Redondo floating breakwater in place, regardless of tidal or wave conditions, and

WHEREAS, the Helix Anchoring System and Seaflex Connectors are approved by state and federal environmental agencies, and

WHEREAS, the Des Moines Marina has requested that the City Council waive state competitive bidding requirements and authorize the purchase of the Helix Anchoring System and Seaflex Connectors from Helix Mooring Anchors in Belfast, Maine, for the Redondo Boat Ramp Improvement Project; now therefore,

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

Sec. 1. Based upon the preceding legislative findings, the City Council hereby declares that the purchase of the Helix

Anchoring System and Seaflex Connectors for the Redondo Boat Ramp Project is clearly and legitimately limited to a single source of supply and that the sole source of supply is Helix Mooring Anchors in Belfast, Maine.

Sec. 2. Based upon the preceding legislative findings, and pursuant to RCW 39.04.280, the competitive bidding requirements for the City of Des Moines are hereby waived and the City Manager is authorized to execute a contract for the purchase of the Helix Anchoring System and Seaflex Connectors from Helix Mooring Anchors, Belfast, Maine, for the Redondo Boat Ramp Project

Sec. 3. This resolution shall take place immediately.

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.

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M A Y O R

APPROVED AS TO FORM:

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City Attorney

ATTEST:

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City Clerk
DRAFTRES:03-193