

LINGA

AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
August 14, 2003 - 7:30 p.m.

CALL TO ORDER - Mayor Steenrod

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

- no speakers except Zenith - all passed

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

passed authorizing to purchase 18,000 in street lights

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORTS

CONSENT CALENDAR*

1. Motion is to approve the regular meeting minutes of June 26, July 7 and July 31, 2003.
2. Findings: Vouchers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing which has been made available to the City Council.

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

Claim checks # through # & electronic fund transfers in the total amount of \$

Payroll fund transfers in the total amount of \$

3. Motion is to authorize the City Manager to approve all vouchers for payment of the following claims during the period of August 15, 2003 through September 4, 2003:

- a. All vouchers for payment of payroll checks, including Marina payroll, and
- b. All vouchers for payment of claims and Marina checks, provided that all vouchers and checks approved by the City Manager in accordance with this motion shall be presented at the September 11, 2003 Council Meeting.

4. Motion is to authorize an extension of two (2) years to the City's Photocopying Agreement with IKON Office Solutions in the amount of minimum monthly payments of \$1,764.00 and authorize the City Manager to sign the extension agreement substantially in the form as submitted.

5. Motion is to authorize the City Manager to sign the Interlocal Agreement with King County for commute trip reduction services through June 30, 2005.

6. Motion is to approve the Contract for the Activity Center parking lot paving with (name to be inserted) in the amount of up to (\$ amount to be inserted) plus tax and authorize the City Manager to sign the contract, substantially in the form as submitted. And to authorize City Manager to approve change orders not to exceed 10% of the total contract amount.

Passed 7-0

removed by Benj...

7. Motion is to enter into agreements with Puget Sound Energy to cover the costs of the materials, installation, energy and maintenance of the street and sidewalk lighting associated with the Pacific Highway South Redevelopment Project and to authorize the City Manager to sign the agreements substantially in the form as submitted.
8. Motion is to enter into an agreement with Puget Sound Energy for the Construction work associated with undergrounding the power distribution system on Pacific Highway South and to authorize the City Manager to sign the agreement substantially in the form as submitted.
9. Motion is to confirm the Mayor's appointment of Diane Kennish as the City's Citizen Representative to the Des Moines Memorial Drive Advisory Committee.

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

PUBLIC HEARING CONTINUED

Draft Ordinance No. 03-125 Final Assessment Roll for LID No. 1-97-9 4th Place South Right-of-way - 1st Reading

Richard still open

SUMMARY: The purpose of this item is to continue the public hearing from the July 10, 2003 meeting on the final assessment roll of the 4th Place South Right-of-way Improvement District #1-97-9. After the public hearing is closed, it is recommended that Council approve Draft Ordinance No. 03-125.

PUBLIC HEARING

Unclassified Use Permit - Zenith Viewpointe, Alex White & Co., 23659 Marine View Drive South

SEPA dev. exception - UUP

SUMMARY: The purpose of this item is to provide information related to an appeal of a SEPA decision and review of applications for an unclassified use permit and environmental sensitive area development exception. The Council will use this and other information to direct administration to prepare findings of fact and a draft resolution supporting Council action on the SEPA appeal and review of the underlying applications at a later date.

PUBLIC HEARING

Draft Ordinance No. 03-172 Sanborn Street Vacation - 1st Reading

email

SUMMARY: The purpose of this item is to hold a public hearing to consider the vacation of portions of public right-of-way in the City; more specifically, that portion of South 208th Street between 11th Avenue South and 12th Avenue South, together with a portion of an abutting unopened alley.

OLD BUSINESS

1. Draft Resolution No. 03-109 Amend Council Rules 5, 9, 10 & 20 - 2nd Reading

SUMMARY: This is the 2nd reading of the draft resolution as required in DMMC 4.12.030. This proposed amendment to the Council *Rules of Procedure* was discussed by the Council at the July 10, 2003 meeting and subsequently placed on this agenda for consideration. An affirmative vote of at least a majority of the whole membership of the Council is needed to adopt this resolution.

NEW BUSINESS

1. Towing Services RFP

SUMMARY: The purpose of this agenda item is to give the City Council an opportunity to provide direction to staff regarding the possibility of issuing a Request for Proposal for towing/impound services. This item was placed on this Council agenda at the request of Councilmembers Sheckler, Sherman and White.

2. RCAA 2002 Invoices

SUMMARY: The purpose of this report is to provide the City Council an opportunity to review the July 11, 2003 letter from the Regional Commission on Airport Affairs (RCAA) regarding invoices for services they provided in 2002 to satisfy their responsibilities per the agreement between the City of Des Moines and RCAA and to determine whether or not the Council will authorize payment for these services. This item was placed on the Agenda at the request of Councilmembers Sherman, Sheckler and White.

NEXT MEETING DATE - Study Session September 4, 2003

ADJOURNMENT

ERIC S. doern
line 34**AGENDA ITEM****SUBJECT:** Draft Ordinance No. 03-172

File SV 2003-001 – Street Vacation:
 Portion of South 208th Street between 11th
 Avenue South and 12th Avenue South,
 together with a portion of an abutting
 unopened alley

ATTACHMENTS:

1. Draft Ordinance No. 03-172
2. Vicinity Map
3. Street/Alley Vacation Check List
4. 12/3/02 letter from Highline Water District
5. 3/3/03 letter from applicant
6. 6/17/03 letter from Qwest
7. 7/30/03 letter from Qwest

AGENDA OF: August 14, 2003**DEPT. OF ORIGIN:** Public Works**DATE SUBMITTED:** August 5, 2003**CLEARANCES:**☐ Finance☒ Public Works☒ Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

Purpose and Recommendation:

The purpose of this item is to hold a public hearing to consider the vacation of portions of public right-of-way in the City of Des Moines; more specifically, that portion of South 208th Street between 11th Avenue South and 12th Avenue South, together with a portion of an abutting unopened alley.

Recommended Motion:

First Motion: "I move to suspend Rule 26(b) in order to enact Draft Ordinance No.03-172 on first reading."

Second Motion: "I move to enact Draft Ordinance No. 03-172, vacating that portion of South 208th Street between 11th Avenue South and 12th Avenue South, together with a portion of an abutting unopened alley; while retaining the necessary utility easements."

Background:

The applicant for street vacation, Scot Sanborn, originally planned to file a lawsuit against the City to obtain vacation of an unopened right-of-way under the Laws of 1889. This particular public right-of-way was platted on January 17, 1890, as part of The Grove Addition; and is

AGENDA ITEM

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Background:

The applicant for street vacation, Scot Sanborn, originally planned to file a lawsuit against the City to obtain vacation of an unopened right-of-way under the Laws of 1889. This particular public right-of-way was platted on January 17, 1890, as part of The Grove Addition; and is

currently unimproved for transportation use, but does contain utilities. As such, pursuant to the Laws of 1889-90, DMMC 12.12.020(3), and DMMC 12.12.050(2)(b), this right-of-way is classified as a Class "C" right-of-way which requires no compensation. Rather than engaging in costly, time-consuming litigation, Mr. Sanborn submitted a completed street vacation petition packet on June 3, 2003. Staff mailed and hand-delivered notices of this proposed street vacation to all utility purveyors and other city departments on June 5, 2003, requesting their comments and input on this issue. Utility purveyors and other city departments were given a deadline of July 11, 2003 to submit their responses. A thorough review of all responses received showed that utility easements needed to be retained for Highline Water District and Qwest.

Due to the steep terrain as the land falls off to the east from Des Moines Memorial Drive down to 12th Avenue South, it is not expected that this right-of-way will ever be used for City transportation purposes.

Highline Water District needs to encumber within a utility easement, the area of South 208th Street proposed to be vacated in order to maintain their three (3) existing water mains (10", 12", and 20"). Qwest also needs to encumber within a utility easement, the entire area proposed to be vacated in order to maintain their existing buried conduits and cable.

The area is also subject to mapped Sensitive Area for a stream and buffer. This area is subject to mutually-agreed recognition, which Mr. Sanborn's attorney provided in a letter dated March 3, 2003, that the City's sensitive areas map as referenced in DMMC 18.86.050 indicates the presence of an important stream on the property; that the City's code presently requires a 35-foot buffer on each side of an important stream; but that actual restrictions on the use of the property, if any, will be determined under the applicable ordinances at the time Mr. Sanborn actually applies to develop the property.

Discussion:

The Public Works Director is recommending the vacation of that portion of South 208th Street between 11th Avenue South and 12th Avenue South, together with a portion of an abutting unopened alley; while retaining the necessary utility easements.

Alternatives:

1. Council could choose not to vacate any portion of this public right-of-way.
2. Council could choose to reduce the limits of the proposed vacation area.

Financial Impact:

By vacating this portion of currently unopened for transportation purposes public right-of-way, the property could then be placed onto the tax rolls, thus allowing the City to collect property taxes and increase revenue.

Recommendation/Conclusion:

Staff recommends that City Council vacate the portion of South 208th Street, together with a portion of an abutting unopened alley, per the staff recommendations on Page 2 of the Street/Alley Vacation Check List (Attachment 3).

Concurrence:

Both Public Works and Legal concur that placing this currently unopened for transportation purposes public right-of-way onto the tax rolls is the prudent choice.

p:\users\linda\doc\Agenda\2002

DRAFT ORDINANCE NO. 03-172

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, vacating a portion of City right-of-way in an area generally described as a portion of public right-of-way known as So. 208th Street, between 11th Avenue So. and 12th Avenue South, together with an abutting unopened alley, in the City of Des Moines, subject to the applicant's compliance with requirements set forth herein.

WHEREAS, the City Council of the City of Des Moines adopted Resolution No. 957, declaring its intent to consider vacation of a public right-of-way which now constitutes a portion of public right-of-way known as So. 208th Street, between 11th Avenue So. and 12th Avenue South, together with an abutting unopened alley, in the City of Des Moines, and

WHEREAS, notice of the public hearing was given in accordance with law and the public hearing was held before the City Council of the City of Des Moines on August 14, 2003, and all persons wishing to be heard were heard, and

WHEREAS, based on the evidence presented, the City Council makes the following findings of fact:

(1) The public right-of-way which is the subject of this ordinance consists of a portion of public right-of-way known as So. 208th Street, between 11th Avenue So. and 12th Avenue South, together with an abutting unopened alley; and

(2) The public right-of-way which is the subject of this ordinance is unimproved for transportation purposes, has never been opened for transportation purposes, and appears to be subject to vacation by operation of law under the Laws of 1889-90; and

(3) The public right-of-way which is the subject of this ordinance is necessary for present and future use by public utilities, under appropriate easements; and

(4) The public right-of-way which is the subject of this ordinance is surplus to the present and future needs of the citizens of the City of Des Moines for transportation purposes,

and it is in the public interest to vacate this right-of-way;
now therefore,

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

Sec. 1. Findings adopted. The recital set forth above are adopted as the City Council's findings of fact.

Sec. 2. Right-of-way vacation. Subject to the requirements set forth in this ordinance, the public right-of-way described as follows:

A portion of public right-of-way known as So. 208th Street, between 11th Avenue So. and 12th Avenue South, together with an abutting unopened alley, in the City of Des Moines;

is vacated and the property within the right-of-way so vacated shall belong to the respective abutting property owners.

Sec. 3. Conditions of right-of-way vacation. The right-of-way subject to vacation under this ordinance shall be subject to the following conditions:

(1) The abutting property owners shall not be required to pay the City of Des Moines on compensation for vacation of this Class C right-of-way.

(2) The abutting property owners recognize that the City's sensitive areas map as referenced in DMMC 18.86.050 indicates the presence of an important stream on the property; that the City's code presently requires a 35-foot buffer on each side of an important stream; but that actual restrictions on the use of the property, if any, will be determined under the applicable ordinances at the time the abutting property owners actually apply to develop the property.

(3) The abutting property owners recognize that the City of Des Moines retains an easement or the right to exercise and grant easements in respect to the land vacated by this ordinance for the construction, repair, and maintenance of public utilities and services, and that the City of Des Moines will grant utility easements through the right-of-way subject to

vacation under this ordinance as requested by Highline Water District and Qwest.

(4) Should the benefitted/abutting property owners fail to satisfy the conditions set forth in the previous subsections within 90 days of passage of this ordinance, then this ordinance shall be deemed void and of no legal effect and the underlying right-of-way vacation shall be deemed denied.

Sec. 4. Easement. Pursuant to RCW 35.79.030 the City of Des Moines shall retain an easement or the right to exercise and grant easements in respect to the land vacated by this ordinance for the construction, repair, and maintenance of public utilities and services.

Sec. 5. Severability - Construction.

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

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

Sec. 6. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

Ordinance No. _____
Page 4 of _____

ATTEST:

City Clerk
Published: _____

DRAFTORD/03-172

STREET/ALLEY VACATION CHECK LIST – SV2003-001 7/30/03

Name of Petitioner(s) Scot Sanborn

Right-of-way to be vacated: **Street** S. 208th St. (between 11th Avenue S. and 12th Avenue S.)

1. Name of Plat and date of addition under which the right-of-way was dedicated: The Grove Addition 01/17/1890
2. What percent of the adjacent ownerships have petitioned in favor of the vacation? 100%; 2 out of 2
3. Was the street/alley in a plat filed before March 12, 1904, thus making it eligible for vacation by operation of law (Sect. 32, Ch. 19, Laws of 1889-90) if it was not opened before March 12, 1904? Yes
4. Is the right-of-way currently used for public access by vehicular traffic? Or pedestrian traffic? No - Unopened Right of Way
5. Is the right-of-way the only access to other parcel ownerships? No
6. What impact will vacating the right-of-way have on the overall traffic circulation in the area? None
7. Does the right-of-way provide access to any shorelines, streams or other recreational areas? Yes – Northern Tributary to Des Moines Creek
8. Is the right-of-way proposed for vacation adjacent to another agency (city, county)? Yes – City of SeaTac
9. Which utilities currently have facilities in the right-of-way? Water District # 75 (Highline) and Phone (Qwest)

10. Which utilities have requested retention of an easement?

UTILITY COMPANY

EASEMENT

Highline Water District – Entire ROW area of S. 208th St. to cover (3) Ex. water lines (10", 12" and 20").

Qwest – Entire ROW area of S. 208th St. to cover Ex. facilities.

11. Police Department Comments:

No Concerns

12. Fire District Comments:

No Concerns

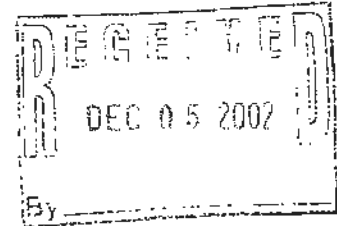
13. Staff Recommendations:

Vacate shown portion of S. 208th St. ROW between 11th Ave. S. and 12th Ave. S. together with a portion of an abutting unopened alley; and retain necessary utility easements.



Serving the Southwest Metropolitan Area since 1946

December 3, 2003



Mr. Scott J. Romano
Traffic Engineer Technician
City of Des Moines
21650 11th Ave. S.
Des Moines, WA 98198-6317

Re: Vacation of S. 208th Street

Dear Mr. Romano:

The District is writing in response to the City's request as to whether the District would like to retain an easement 30 feet north of S. 208th Street between 12th Ave. S. and Des Moines Memorial Way S. The District requests that it be granted an easement for this area (see attached map). This would allow the District to adequately operate and maintain several critical water mains in this area.

In addition, the District is requesting that our standard easement language be included. I have attached a copy of our standard easement language for your use.

If you have any questions or need additional information, please contact me at (206) 824-0375, ext. 102.

Very Truly Yours,

Thomas D. Keown, P.E.
Construction/Operations Manager

TDK:maf
Enclosure

Cc: Peggy S. Bosley, General Manager
Tim Heydon, City of Des Moines

ATTACHMENT 4

**HIGHLINE WATER DISTRICT
UTILITY EASEMENT**

The Grantor, _____, does hereby grant to Highline Water District, King County, Washington, a municipal corporation, Grantee, its successors and assigns, an easement and right-of-way over, through, under, across, upon and in the following-described property & situated in the City of _____, King County, Washington, to-wit:

for the construction, operation, maintenance, repair and/or replacement of a water pipeline and appurtenances thereto, together with all rights of ingress and egress to and from said easement for all purposes necessary and related thereto;

Grantee and its agents, designees or assigns shall have the right, without prior institution of any suit or proceeding at law, and without prior notice to Grantor, at such time as Grantee deems necessary to enter upon said property, by foot or vehicle, for the installation, repair, reconstruction or maintenance of water facilities and appurtenances without incurring any legal obligation or liability therefore, provided that such shall be accomplished in a manner that existing private improvements shall not be disturbed or destroyed, or in the event that they are disturbed or destroyed they will be replaced or repaired, as nearly as is practicable, to as good a condition as they were immediately before the property was entered upon by the Grantee.

Grantor hereby agrees that no building, wall rockery, trees or structure of any kind shall be erected or planted, nor shall any fill material be placed within the boundaries of said easement area. No excavation shall be made within three feet of said water service facilities, and the surface level of the ground within the easement area shall be maintained at the elevation as currently existing. In the event that this provision is violated, the Grantee shall have the right to require removal of any such structure and same shall be accomplished within a reasonable period of time and at Grantor's expense. Failure of Grantee to so exercise its right to require removal shall not constitute waiver of this right.

Grantor additionally grants to the Grantee, its agents, designees or assigns the use of such additional area immediately adjacent to said easement area as shall be required for the construction, re-construction, maintenance and operation of said water service facilities. The use of such additional area shall be held to a reasonable minimum and be returned to its condition existing immediately before the property was entered upon by Grantee or its agents.

IN WITNESS WHEREOF, the Grantor(s) has (have) executed these presents this _____ day of _____, _____.

Individual Acknowledgement

STATE OF WASHINGTON)
)SS
COUNTY OF KING)

On this ____ day of _____, _____, before me the undersigned, a Notary Public, personally appeared _____, to me known to be the individual or individuals described in and who executed the within and foregoing instrument, and acknowledged that it was signed as a free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

Signature of Notary

Print or stamp name of Notary

Notary Public for the State of
residing at _____

My appointment expires: _____

Corporate Acknowledgement

STATE OF WASHINGTON)
)SS
COUNTY OF KING)

On this _____ day of _____, _____, before me the undersigned, a Notary Public, personally appeared _____, to me known to be the _____ of _____, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

Signature of Notary

Print or stamp name of Notary

Notary Public for the State of
residing at _____

My appointment expires: _____

LAW OFFICES OF
ERIC R. STAHLFELD
145 S.W. 155TH STREET, SUITE 101
SEATTLE, WASHINGTON 98166
(206) 248-8016

March 3, 2003

Linda Marousek, Esq.
City Attorney
City of Des Moines
21630 11th Avenue S, Suite C
Des Moines, WA 98198-6398

RECEIVED

MAR 04 2003

DES MOINES LEGAL DEPARTMENT
DES MOINES, WASHINGTON

Re: Scot Sanborn Street Vacation

Dear Ms. Marousek:

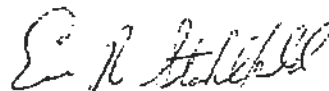
Mr. Sanborn is aware that the City represents that the City's sensitive areas map as referenced in DMMC 18.86.050 indicates the presence of an important stream on his property. Mr. Sanborn is also aware that the City's code presently requires a 35-foot buffer around important streams.

As we have discussed, Mr. Sanborn believes that restrictions on the use of his property, if any, should be determined at the time he actually applies to develop the property.

I understand that with the acknowledgments in this letter the City staff agree to support Mr. Sanborn when he files a request to vacate the street through the administrative review process.

If you have any questions, please feel free to call me at (206) 248-8016.

Very truly yours,



Eric R. Stahlfeld

cc: client

ATTACHMENT 5

June 17, 2003

TO: Scott J. Romano
Traffic Engineering Technician
City of Des Moines
21650 11th Ave S
Des Moines, WA 98198-6317

FROM: Garry Mohr
Qwest Engineering
23315 66th Ave S Rm. 115
Kent, WA 98032
PH. 253-372-5361
Fax: 253-372-5176

Scott,

In response to your proposed street vacation on S 208th St, street petition (SV 2003-001). Qwest presently has 2 buried 4" conduits and a buried cable through the proposed street vacation (see attached prints). If the proposed street vacation were to take place, Qwest would require a easement thru it to cover the existing facilities and provision for reinforcement. Qwest would have to charge to move the facilities, if that were required.

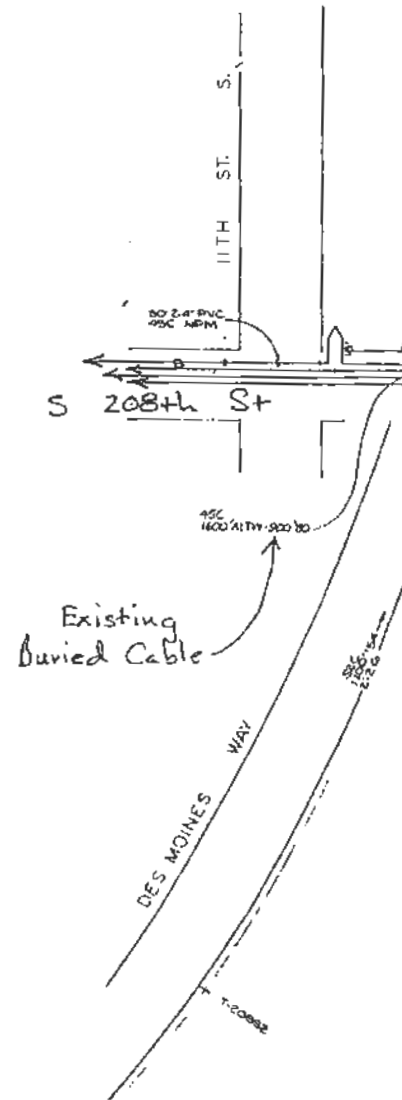
If you have any questions, please feel free to call me.

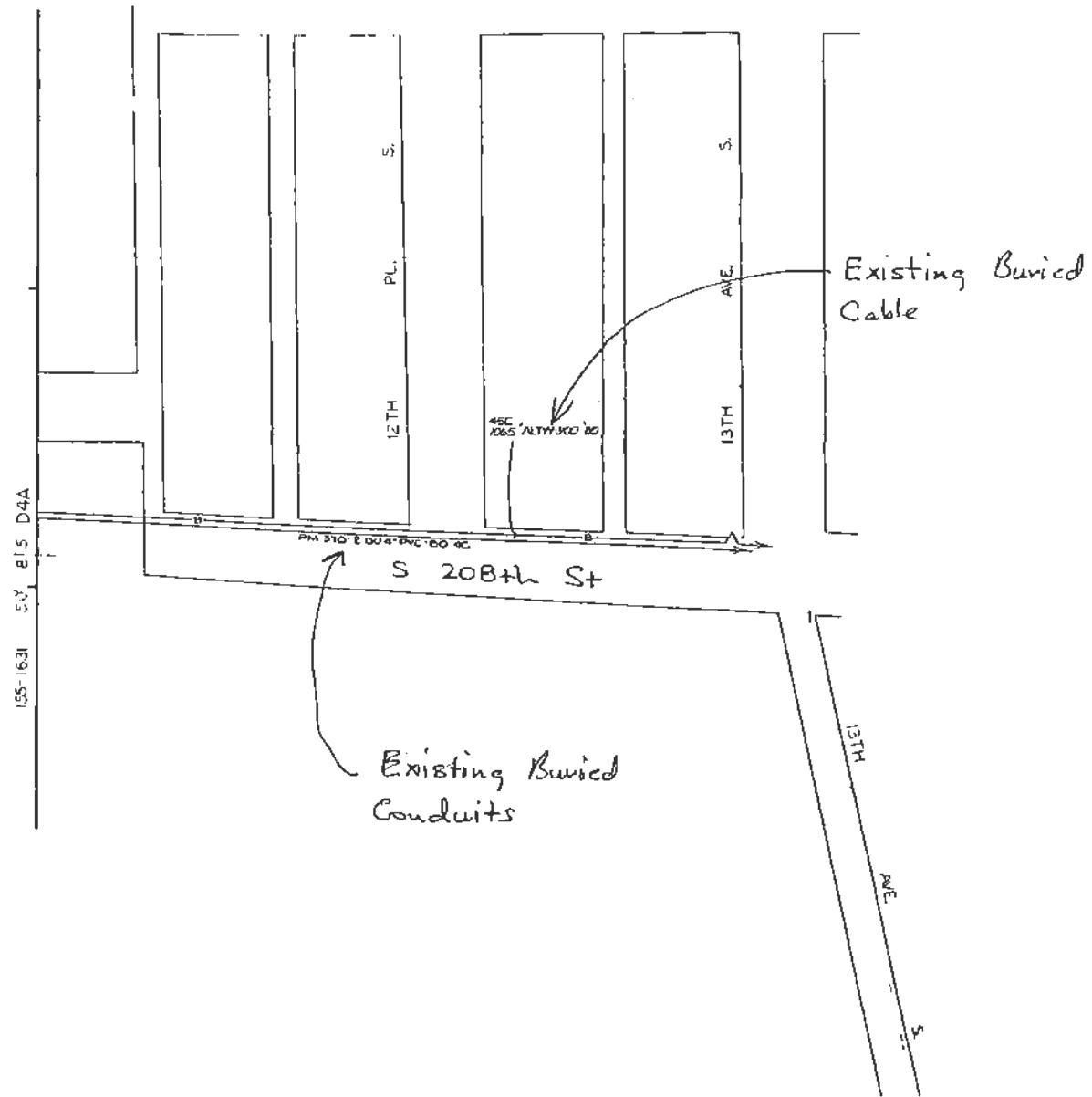
Sincerely,



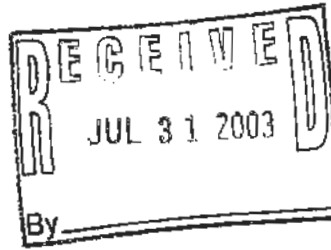
ATTACHMENT 6

Note:
Facilities would
require physical
locates in the field
for accurate locates.





July 30, 2003



City of Des Moines
Department of Public Works
21650 11th Avenue South
Des Moines, WA 98198-6317
Attn: Scott Romano

Re: Qwest Easement associated with Vacation file #SV 2003-001

Dear Mr. Romano:

Attached you will find documents that make up the Qwest easement package. Because Qwest has facilities spread throughout the area petitioned for vacation, we will require an easement covering this entire area.

Please refer any questions to me on (206) 346-7458.

Sincerely,

Don L. Dauphiny

Don L. Dauphiny
Right-of-Way Consultant for Qwest
Attachments

ATTACHMENT 7

RETURN TO: Qwest R.O.W.
1200 12th NW
Issaquah, WA 98027

RECORDING INFORMATION ABOVE

R/W # _____

EASEMENT

The undersigned Grantor(s) _____ for
and in consideration of _____ Dollars (\$ _____)
and other good and valuable consideration, the receipt whereof is hereby acknowledged,
do hereby grant and convey unto Qwest Corporation, a Colorado Corporation, hereafter
referred to as "Grantee", whose address is 1801 California St., Suite 5100, Denver, CO
80202, its successors, assigns, lessees, licensees, and agents a perpetual easement to
construct, reconstruct, modify, change, add to, operate, maintain, and remove such
telecommunications facilities, electrical facilities and gas facilities, and appurtenances,
from time to time, as Grantee may require upon, over, under and across the following
described land situated in the County of _____, State
of _____, which the Grantor owns or in which the Grantor has
any interest, to wit:

LOT _____ BLK _____
SECTION _____ TOWNSHIP _____ RANGE _____
TAX PARCEL # _____
SEE EXHIBIT(S) A & B ATTACHED HERETO AND BY THIS REFERENCE
MADE A PART HEREOF.

Grantor further conveys to Grantee the following incidental rights:

(1) A temporary right-of-way to be used during all periods of construction,
reconstruction, reinforcement, repair and removal upon a strip of land _____ feet wide on
the _____ side of, and a strip of land _____ feet wide on the _____ side of said easement.

(2) The right of ingress and egress over and across the lands of Grantor to and
from the above-described property and the right to clear and keep cleared all trees and
other obstructions as may be necessary for the Grantee's use and enjoyment of the
easement area.

Grantee shall indemnify Grantor for all damages caused to Grantor as a result of
Grantee's negligent exercise of the rights and privileges herein granted. Grantee shall
have no responsibility for pre-existing environmental contamination or liabilities.

Grantor reserves the right to occupy, use and cultivate said easement for all purposes not
inconsistent with the rights herein granted.

Grantor covenants that he/she/they is/are the fee simple owner of said land or in which
the Grantor has any interest and will warrant and defend title to the land against all

RECORDING INFORMATION ABOVE

Any claim, controversy or dispute arising out of this Agreement shall be settled by arbitration in accordance with the applicable rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in the county where the property is located.

Dated this _____ day of _____, 20____.

Grantor

(Official name of company or Corporation)

Grantor

By _____
Its _____

Grantor

[SEAL]

Grantor

Attest _____
Secretary of Corporation

(Individual Acknowledgment)

(Corporate Acknowledgment)

STATE OF WASHINGTON }
 } ss
COUNTY OF _____ }

STATE OF WASHINGTON }
 } ss
COUNTY OF _____ }

The foregoing instrument was
acknowledged before me this _____ day
of _____, 20__, by

The foregoing instrument was
acknowledged before me this _____ day of
_____, 20__, by

of _____,
a _____

Corporation, on behalf of the corporation.

[SEAL]

[SEAL]

Notary Public
My commission expires:

Notary Public
My commission expires:

EXHIBIT "A"
LEGAL DESCRIPTION OF
QWEST EASEMENT

EXHIBIT "B"
DESCRIPTIVE DRAWING OF
QWEST EASEMENT

print DMMC - 18'86.077 Slope 092
094

A G E N D A I T E M

SUBJECT:

*"Zenith Viewpointe"- Proposed Mixed
Use Development.*
City File No. LUA 2001-015

ATTACHMENTS:

1. Application-Unclass. Use Permit
2. Application-Development Exception
3. Letter of Appeal-SEPA Decision
4. Vicinity/ Aerial Photograph Map
5. Zoning Map
6. Land Use Plan Map
7. Comprehensive Plan Excerpts
8. SEPA Checklist
9. Determination of NonSignificance
10. Public Notice Open House
11. Env. Mitigation Agreement
12. DMMC 18.20, NC Zone
13. Chapter 18.60 DMMC
14. Chapter 18.56 DMMC
15. Section 18.86.094(6) DMMC
16. Prel. Planning Agency Minutes
(May 12, 2003 and June 2, 2003)
17. Code Interpretation-Develop. Site
18. Concept Plans

AGENDA OF: August 14, 2003DEPT OF ORIGIN: Comm. Dev.DATE SUBMITTED: August 8, 2003**CLEARANCES:**☒ COMM DEV☒ PUBLIC WORKS☒ LEGAL

APPROVED BY THE CITY MANAGER

FOR SUBMITTAL

PURPOSE AND RECOMMENDATION:

The purpose of this item is provide information related to an appeal of a SEPA decision and review of applications for an unclassified use permit and environmental sensitive area development exception. The City Council will use this and other information to direct administration to prepare findings of fact and a draft resolution supporting Council action on the SEPA appeal and review of the underlying applications at a later date.

Administration recommends the City Council

1. Take action upholding the City SEPA Official's determination thereby denying the petition for appeal on the SEPA appeal, and
2. Direct staff to prepare findings of fact and a draft resolution supporting denial of the SEPA appeal decision, and
3. Do not take action, but direct administration to prepare a draft resolution and findings of fact approving the requested applications for an unclassified use permit and a sensitive area development exception subject to specific mitigation measures and conditions of approval.

Passage of the following motions would allow administration to move forward with this recommendation.

Motion 1: "I move to deny an appeal of the City SEPA Official's determination and direct administration to prepare findings of fact supporting and a draft resolution denying the appeal. "

Motion 2: "I move to direct administration to prepare for further Council review at the regular September 11, 2003 meeting findings of fact and a draft resolution approving an environmentally sensitive area development exception subject to all staff recommended mitigation measures and conditions of approval specified in the August 14, 2003 administration report on file with the Des Moines Community Development Department; File No. LUA 2001-015, Applicant: Alex White and Co."

Motion 3: "I move to direct administration to prepare for further Council review at the regular September 11, 2003 meeting findings of fact and a draft resolution approving a request for an unclassified use permit subject to all staff recommended mitigation measures and conditions of approval specified in the August 14, 2003 administration report on file with the Des Moines Community Development Department; File No. LUA 2001-015, Applicant: Alex White and Co."

BACKGROUND:

Unclassified Use Permit An application requesting approval of an unclassified use permit was submitted to the Community Development Department on June 14, 2001. The applicant, Alex White and Company Inc., owns property located at 23659 Marine View Drive and proposes to develop this site for mixed-use (a mixture of commercial office and residential space). An unclassified use permit is required because the assigned zoning of the subject property, N-C Neighborhood Commercial, lists mixed-uses as a permitted use subject to obtaining an unclassified use permit (see Attachment 12). Processing an unclassified use permit is a Type IV land use review. This type of review involves a public meeting before the Planning Agency and a public hearing before the City Council. The Planning Agency forwards a recommendation to the City Council who then issues the final city decision on the proposal (see Attachment 14).

Sepa The proposed unclassified use permit development is also subject to the provisions of the State Environmental Policy Act (SEPA). SEPA requires that action cannot be taken on the proposed unclassified use permit until the proposal is first

reviewed by the SEPA Official to determine if the proposal creates significant and adverse environmental impacts. After a review of the applicant's plans and environmental documents, city staff believed that soliciting input from the immediate neighborhood at a meeting would be helpful in identifying environmental and design issues. This "neighborhood meeting" is not required by SEPA but is encouraged as a means to obtain as much information as possible prior to making a SEPA decision. City staff facilitated the neighborhood meeting on March 13, 2002. Twenty-four neighbors attended this meeting and approximately 15 written comments letters were also received. City staff observed that several concerns seemed to be repeated. Some of the concerns involved traffic impacts, congestion, and general pedestrian safety. City staff required the applicant to conduct a traffic study. After reviewing all environmental documents, city staff developed project mitigation. The applicant agreed to all of the terms of a city environmental mitigation agreement. The mitigation agreement resulted in a revised plan proposal that offered more open space and limitations on continuous building mass and provided greater clarity on what improvements would be constructed. The City SEPA Official issued a Mitigated Determination of NonSignificance (MDNS) SEPA decision on June 20, 2002. This determination was appealed on July 15, 2002 by neighbors in the surrounding Zenith neighborhood (see Attachment 3).

The Des Moines Hearing Examiner normally reviews appeals of SEPA decisions. However, DMMC 18.56.270(2) requires that appeals which relate to an underlying action or review, such as the subject unclassified use permit, be resolved at the open public hearing of that underlying review. In this case, since the City Council issues the final decision on the unclassified use permit, it also is required to review and issue a decision on the SEPA appeal. An intricacy of this hearing item that the Council must be aware of when it begins to issue its decisions is the order in which the decisions are made. Because a requirement of SEPA is that local jurisdictions cannot take action on proposed land use decisions unless a full and complete environmental review is first conducted, the Council must reconcile the SEPA appeal prior to issuing decisions on the applications for the unclassified use permit or the environmental development exception.

Sensitive Area Approval In addition to the applicant's request for approval of an unclassified use permit and the SEPA appeal issue, the City Council must also issue a decision on the request for an environmentally sensitive areas development exception for development of a previously altered environmentally sensitive area. City codes regulate development on steep slopes, but development may occur with prior city approval, if certain circumstances exist. A process to review these circumstances is provided for in the DMMC (see Attachment 15). Similar to the SEPA appeal issue, the Hearing Examiner normally reviews this type of application, unless it is combined with an underlying action that is reviewed by a different hearing body. Again, the City Council reviews the underlying unclassified use permit so it also is required to issue a decision on the request environmental development exception as part of a complete and consolidated hearing process.

Site Information The proposed unclassified use affects property commonly known as the Zenith Grocery store site located at 23659 Marine View Drive in the Zenith

neighborhood of Des Moines. The site is long and narrow with frontage on two improved streets, Marine View Drive and 7th Avenue South. The site also involves an undeveloped section of right-of-way, South 239th Street that is proposed by the applicant to be improved. Ownership and use of this improved right-of-way will remain in the public domain. The total development area measures 83 feet wide by 194.7 feet long. The development site slopes to the west an average of 18%. The highest portion of the site, the area closest to Marine View Drive, contains a dilapidated and substandard structure that has an old, abandoned commercial/retail space at finished floor grade with Marine View Drive. Below and extending to the west of the vacant commercial space are 3 apartment units. The portion of the site not occupied by building space consists of scattered and overgrown vegetation and gravel.

Project Overview The applicant proposes to construct a mixed-use development consisting of 8 dwelling units and 1800 square feet of office space. The subject property is zoned NC, Neighborhood Commercial and the proposed use is a permitted use in this zone subject to approval of an unclassified use permit. A conceptual development plan has been prepared which illustrates potentially how the proposed use could be achieved on the subject property (see Attachment 18). This plan is not a binding. It is merely an attempt to illustrate how development of the site for mixed-use might theoretically be achieved under restrictions of city building and zoning codes as well as additional restrictions imposed through SEPA mitigation should the unclassified use permit be approved. This plan is only a visual tool for city staff and decision-makers to use in identifying compatibility and impact related issues associated with a mixed-use project on the subject site. It is a volumetric study of space, not a project design alternative.

The plan illustrates three separate buildings that step down the hillside. The largest building is located adjacent to Marine View Drive. This structure contains a basement level parking area, 1st level office use, and 2nd and 3rd level use for stacked condominiums (4 units). The other two structures shown are located down the slope further to the west. These buildings are similar in nature. Each has two, townhome-style dwelling units above enclosed parking. Vehicular access to all buildings is proposed from a newly constructed street within the South 239th Street right-of-way. This new street extends to the west to intersect with 7th Avenue South. The new street shown cannot be connected to Marine View Drive because of the 46-50 foot grade difference between 7th Avenue South and Marine View Drive.

UNCLASSIFIED USE PERMIT

DISCUSSION:

Project Design As mentioned, the applicant's schematic plan is conceptual and nonbinding. An illustrative plan is not required as part of an unclassified use permit application submittal, but is very helpful to provide a more complete understanding of what the applicant envisions for this site. City staff has performed a general review of the illustrative plan to determine the extent of improvements that would be required and to determine if the applicant's vision can be realistically achieved under city codes.

The required improvements outlined in the SEPA mitigation agreement are reflected in the applicant's illustrative plan and are generally consistent with city codes with one minor and one more notable exception. A minor flaw in the illustrative plan is that it does not sufficiently account for city landscape requirements. Perimeter landscape areas adjacent to property lines need to be widened beyond what is illustrated. Staff believes that this can be corrected with some relatively minor adjustments as the design is finalized. The more notable aspect of the plan that does not meet code is the building height of the easterly-most building. The NC zone allows a maximum building height of 35 feet. Unlike other commercial zones in the city, the NC zone does not specify that building height be calculated from average sidewalk grade. The NC zone building height is measured from the average finished grade surrounding the building. It is difficult to ascertain the exact height of this building given the conceptual nature of the plans, but the height is clearly taller than 35 feet (approximately 45-48 feet). Naturally the applicant could modify the building to reduce its height or propose a different building design at time of permit application, but given the disparity of the height on the building as shown, it is likely that significant changes such as the elimination of an entire story would be required for a structure of this size.

Zoning The NC zone lists mixed-use as a permitted use subject to approval of an unclassified use permit. Because of this quirk in the code, the use permit process is not so much a debate on whether the use can be allowed but rather to what intensity. It should be noted that the site historically has been used as mixed-use with a retail component and 3 residential dwellings up until the time the Zenith Grocery store stopped conducting business several years ago. Now the retail area is vacant and only apartments remain on the site. Fundamentally, review of this application comes down to one question. At what point does the intensity of a mixed-use project development on the subject site become unreasonably incompatible with land uses that are permitted in the surrounding area? This is the critical question and the review criterion for this unclassified use permit request. A triplex, higher density PUD, and retirement center (the Masonic Home) are located near the site to the south, west and east, respectively. All other properties in the immediate area are single-family residential use. The city must assess the intensity of the proposed project to determine if there is relative compatibility with all of these surrounding uses.

Project Intensity Intensity of the proposed land use and development can be measured in two different ways-- level of activity and physical size. Of the two uses proposed, the activity level of the commercial office use is of most concern to staff. This use has the potential to generate substantially more traffic and people activity (customers) than what realistically is expected in a neighborhood that is predominately single-family residential. This is one of the reasons that city staff imposed a use restriction in the SEPA agreement on the proposed office space. Only office uses that do not require customers to drive to the site are allowed. This essentially reduces the office space use to a use comparable to what the city would allow under a home occupation business license and ameliorates concerns regarding office use compatibility with surrounding properties.

Vehicular Impacts The other component of the proposed use mixed-use plan, multi-family residential use (more specifically, a four plex and two duplexes) presents less of a concern in terms of the level of activity that it would generate. First, the use of the building is for residential occupancy. The 20-24 people that would live in the proposed homes are expected to have the same general activity level and living and pedestrian patterns as surrounding uses. In terms of vehicular activity levels, studies by the Institute of Traffic Engineers indicate that automobile trips for multi-family are actually slightly less than single-family use on a per unit basis. In addition, the total number of units proposed (8) though it may be more dwelling units than if the site were developed for single family, does not present a concern. An independent traffic study prepared by professional engineers for a total site build-out scenario that contained more project density, 11 multi-family units and 1800 square feet of office space, than what is proposed, 8 multi-family units and 1800 square feet of office space showed that a total of 9 car trips during the busiest hour of the day would occur. Even at this larger build-out scenario, this level of activity is certainly not considered significant, disruptive and possibly not even discernable.

Building Mass The mass and size of buildings in residential areas is not ordinarily an issue requiring discussion due to lot dimensional requirements and height and bulk controls there usually exist a layer of protection for adjoining residents. The subject property is unique in this regard. First, the zoning of the site is different than adjacent properties. While surrounding properties zoned RS-15000 have minimum setback requirements from property lines, the subject site's NC zone does not require any setbacks. This issue is further complicated by the fact that the site is relatively narrow. Though this is a legal parcel of record and is capable of being developed beyond its current use, it's narrow characteristic does not afford it an opportunity to provide very much separation from some adjoining properties. This separation issue is not a problem for the site except adjacent to the north property line. The east, west, and south property lines have rights-of-way adjacent to them that provide 30 feet or greater of separation that provide sufficient light and air space for nearby residents. The north property line, however, does not. The applicant's illustrative plan shows a setback of 5 feet along the north property line. This setback exceeds the minimum NC zone requirement, but it does not, in staff's opinion, provide quite enough physical separation given the total scale of building mass that could potentially be developed without any imposed limitations under the requested use permit. Even with the open space areas located east-to-west between the proposed buildings, there is a sense that the proposed structures are squeezed or shifted a little too far to the north, particularly for the tallest structure proposed on the eastern portion of the site. This creates a looming effect over the properties to the north that tends to accentuate the perception of the mass of the proposed structures and also reduces light and air space. Correction of the previously mentioned building height deficiency for the eastern building will improve this "looming" issue to some degree, but additional limiting conditions on this development are still needed in staff's opinion.

Recommendation Staff recommends that minimum setbacks along the north property line be imposed and clarified for all building walls adjacent to this property line. Considering that a required landscape area 10 feet wide is required at the ground level,

a 10 foot setback would be appropriate. However, staff believes that this setback should be increased to 13 feet for that portion of a primary building wall above the second story of all buildings adjacent to this property line. This recommendation is based on the fact that the building height for the NC zone is 5 feet taller than what is allowed by the RS-15000 zoning of the adjoining properties to the north, the cumulative horizontal building mass for the subject property would be larger than adjoining properties to the north but still substantially less than typical multifamily developments because of SEPA mitigation restrictions, and the setbacks would provide a reasonable level of physical separation for the tallest portions of the buildings which are the most likely aspect of the development to present concerns to neighboring single family residential uses. Staff considered recommending a smaller setback (10 feet) for the upper story but determined that the 3 additional feet would be useful in accommodating some minor design features such as open decks, railings, bay windows, and creative roofline treatments during administrative design review.

Project Density Another contributing factor to a project's size or mass is project density. The more units proposed generally equates to a larger project and building mass. Since there is a correlation between density and building mass and there is a relationship between building mass and use compatibility with surrounding properties, should density be limited for this mixed-use proposal? And, if so, what is the appropriate density? The applicant proposes a total of 8 multi-family dwellings under this unclassified use permit request. There is no restriction on maximum density stated within the underlying NC zone. However, the land use element of The Greater Des Moines Comprehensive Plan (see Attachment 7) addresses the subject of density rather clearly. It states that multi-family density in areas outside of the downtown and Pacific Highway areas should not exceed 18 units per acre. The proposed density exceeds this ratio (21.6 units per acre). To comply with this comprehensive plan policy, project density would have to be reduced to a maximum of 6 dwelling units. This would give the overall development a density of 16.2 units per acre.

A reduction in project density for this development makes sense and is recommended by staff. Without a reduction in density, a number of questions and concerns remain. The applicant would need to meet building height requirements, the terms of the environmental mitigation agreement, provide a viable development within a relatively narrow lot, and incorporate greater setbacks to further separate potentially larger mixed-use building mass from single-family properties. Is the site too constrained to accomplish all these things at a project density of 8 units? Density beyond a recommended density of 6 dwelling units for the site increases the chances of externalizing project impacts at the expense of adjacent properties and uses. The conceptual plan itself illustrates how "pushing the density envelope" creates a building height discrepancy. Keeping the density at 8 units will, in staff's opinion, undoubtedly cause problems and may compete against other design and use objectives already cited by staff. Staff does not believe the conceptual plan can be reworked and keep the proposed 8 unit density without displacing a considerable amount of the proposed office space and/or substantially reducing the size of proposed dwelling units overall. A significant reduction in the office space concerns staff because the office component of the overall mixed use would be too small to maintain a true and viable mixed use. The

reduction in the size of the dwelling units also concerns staff because maintaining a comparable housing character with the surrounding neighborhood must be an objective of this site's development. Units that are too small in size may decrease the potential for individual ownership and longer-term occupation by its residents. As units become progressively smaller, prospective occupants may see smaller-sized housing choices more as a starter home development and less as permanent housing. This would be inconsistent with the stable ownership tenure patterns and character of the surrounding area.

Conclusion Administration concludes that mixed use for the subject property is compatible with uses in the immediate area; but the applicant's proposal for 8 dwelling units together with 1800 square feet of unrestricted commercial space is too intense. The applicant's proposal requires modifications and imposing limiting conditions to ensure the scale and relative location of buildings serving the proposed mixed use are in harmony with its surroundings. Staff believes that increased setbacks, limiting building size and density, restricting the size and type of commercial uses, along with already imposed project mitigation will enable the site to be developed for mixed use without significantly affecting use of surrounding properties

ENVIRONMENTALLY SENSITIVE AREA DEVELOPMENT EXCEPTION

DISCUSSION:

Slope/Project Analysis The applicant requests that the proposed mixed use development be allowed to disturb more steep slope area than what is allowed by the city's sensitive area ordinance. The city's sensitive area ordinance limits development on slopes with a gradient greater than 15%. The subject site has an average gradient of 18%. This slope is not considered "severe" and accordingly is not regulated as stringently by city code. City codes allow properties with slopes between 15-25% to be disturbed by as much as 60%. Even though it is anticipated that proposed building areas will comprise only 42% of the development site, the reality is that related improvements to serve the building units such as yard areas, stairways, sidewalks, parking, driveways, and roads together with building development will affect most, if not all, of the site.

Code Objectives and Analysis The purpose of City of Des Moines regulations limiting disturbance on steep slopes is to maintain slope stability, minimize soil erosion, prevent impacts from increased surface water runoff, maintain a natural aesthetic character often associated with steep slope areas, and minimize the cost to the public to repair damaged facilities constructed on steep slopes due to structural failure. A development exception process is provided for in the city's sensitive area regulations as a means to provide relief under specific circumstances where the purpose or intent of the code is not applicable. The applicant has applied for relief under the "previously altered" provision. Administration concurs with the applicant's analysis and justification stated in Attachment 2. The subject site qualifies for this relief because the site is not an unadulterated, pristine, naturally-vegetated hillside. The entire site has already been disturbed. It has very little natural aesthetic value. In fact, viewing this hillside as a

natural system in a more comprehensive and holistic manner, the hillside is completely disturbed by existing developments beyond the site from South 236th Street to South 240th Street. The criteria required by city code have been fulfilled. Moreover, administration believes that redevelopment of this site would actually further the objectives of the sensitive area code by providing up-to-date hillside retaining structures that are engineered properly and surface water and erosion control systems that environmentally upgrade the site.

Recommendation The subject site is part of a larger natural system that has already been significantly disturbed by past development occurring both on and off the subject site. The project has been conditioned to require smaller building modules that can effectively step down the hillside and retain the site's overall sloping character. Additionally, the existing site is developed in a piecemeal manner under older codes and technology. Although this development is smaller in scale than what would likely occur under the mixed use application, the redevelopment of the site affords the city an opportunity to remove dated construction and replace it with construction methods that are structurally superior. Administration recommends that the City Council approve an environmental development exception for the subject site allowing a disturbance factor greater than 60%.

APPEAL OF CITY SEPA DETERMINATION

DISCUSSION:

History On pages 2 and 3 of this report, administration provided background information and a brief history on how the requirements for the State Environmental Policy Act (SEPA) were fulfilled for this proposal. It is also mentioned that the City SEPA Official's decision to issue a threshold determination of "Mitigated Determination of NonSignificance" was challenged in the form of an appeal filed on behalf of neighbors in the Zenith area by the law firm of Cairncross/Hempelmann. The letter of appeal dated July 15, 2002 is included as Attachment 3 to this administration report.

Organization and Respondent's Remarks Section III of the letter of appeal entitled "Specific Reasons Why the SEPA MDNS Should be Reversed" states that the City failed to adequately identify and mitigate many adverse environmental impacts of the proposed development. This statement is later elaborated in an issue-by-issue format on subsequent pages. For ease of understanding of all issues presented and to ensure that all issues are addressed individually and thoroughly, administration will restate the issue presented in the appeal in the order shown in the appeal letter and respond in a bold letter font format.

A. The MDNS is clearly erroneous because the City failed to identify all adverse environmental impacts of the Proposed Development.

- The Environmental Checklist indicates a variance approval is required for the Proposed Development. However, the Environmental Documents do not indicate the

reason the variance is necessary or evaluate whether the requested variance will have adverse environmental impacts.

In response to question J. on page 2 of the Environmental Checklist (See Attachment 8) the applicant does state that a variance approval (among other approvals) would be a required governmental approval for his original plan submitted in June 2001. It is believed that the applicant was simply attempting to fully disclose the fact that the proposal would involve development and disturbance on steep slopes and relief from city codes in this regard was needed. While it is true that city codes do regulate development on steep slopes and relief from these codes can be requested, it is not in the form of a variance. The proper process for requesting this relief is an environmental sensitive areas development exception. After administration explained this to the applicant, the proper application was filed (see Attachment 2). There is no need for a variance as part of this development request; therefore the suggestion that there may be adverse impacts associated with it is unfounded. The correction of the application in regards to steep slopes and sensitive area regulations is clearly noted in staff comments on page 9 of the same environmental checklist. It is also clearly identified in the notice of public hearing that was provided to the Zenith community.

- The site of the Proposed Development contains steep slopes (up to and including a 22% slope) that may cause the Proposed Development to have adverse environmental impacts. No such impact are identified or discussed in the Environmental Documents.

The presence of steep slopes on the site is clearly identified not only in topographic and submitted plans on file with the city, but is also plainly disclosed in questions A1, and A2 by the applicant and, again, by the clarifying administration comment on page 9, within the environmental checklist. Further, the applicant attempts to discuss, albeit generally, how improvements on slopes will be incorporated to address building on steep slopes in question A8 on the environmental checklist. The subject of development on steep slopes and possible impacts as a whole is not included in the city's mitigation agreement because the city already has substantive authority to regulate various development scenarios on steep slopes in its municipal code (Chapter 18.86 DMMC). This section of the city code was specifically established in 1990 to provide clear and predictable regulations for these situations mandated by the State Growth Management Act. Additionally, since 1990 case law related to use of SEPA to mitigate projects has clearly evolved to require that local jurisdictions codify or provide other clear policy guidance before demanding environmental mitigation. The city clearly has done that through the adoption of a comprehensive environmentally sensitive areas ordinance. The applicant is following the prescribed process outlined in this ordinance.

- The Proposed Development will result in approximately 70% of the site being covered with impervious surfaces. This high percentage of impervious surface coverage, particularly combined with the steep slopes of the site and area surrounding the Proposed Development are likely to have adverse environmental impacts. One such impact is the drainage challenges potentially caused by these conditions. The Environmental Documents contain no discussion of potential impacts the Proposed Development will have on drainage in the surrounding area or how drainage is to be handled to ensure the extensive impervious surface coverage of the Proposed Development does not have adverse environmental impacts.

Similar to the response to the previous steep slope issue, a specific process and standards are already in place to review and require the applicant to address drainage issues under this development proposal —the King County Surface Water Design Manual which was adopted by city ordinance 853 and codified as Section 18.86.130 DMMC. However, the applicant did on page 5 of the environmental checklist identify in questions 3a and 4 that improvements will be required to address surface water runoff created by hardsurfacing. Additionally, administration mentioned in the mitigation agreement that substandard stormwater systems exist adjacent to the site and will be required to be upgraded. This can be found in the recital section of the agreement. Additional clarity identifying (to the extent possible) where off-site drainage improvements will be located are found in items 3c and 7b of the mitigation agreement. The off-site and on-site drainage systems to manage the increased runoff responsibly are not engineered before there is certainty that the project will actually be approved. Should the development be approved, exact drainage improvements and sizing will be required under the city's already adopted drainage standards. Application of the city's surface water drainage requirements will not allow drainage impacts to be created by the proposed development.

- The Proposed Development is adjacent to single-family residences. Due to the Proposed Development's nature, height, bulk and scale, the proposed Development will have shadowing and glare impacts on the nearby properties. SEPA specifically indicates that light and glare impacts must be addressed. WAC 197-11-444. Such adverse environmental impacts were not identified or discussed in the Environmental Documents.

These issues have been addressed in environmental documents on file with the city. Furthermore, the issue posed by the appellants is suggestive of a development scale scenario that simply is not going to occur. Under the assigned NC zoning, the maximum possible height of the proposed development is 5 feet taller than what is allow on surrounding properties. This is not considered a significant height disparity as one might find if the site were developed as a mid or high rise building construction scenario. The height issue alone should not create shadowing impacts significantly different than if 30-foot tall single-family houses were constructed on the site. Aside from the height issue, though, the potential for longer more continuous building mass does exist

under the NC zoning than under the surrounding single-family residential (RS-15,000) zoning. This potential building mass is, to a certain extent, controlled by landscape requirements that in effect require future buildings on the subject site to be physically separated from adjoining residential properties by 10 feet. However, the applicant and city staff agreed that additional measures were required to further reduce the continuous building mass issue. The mitigation agreement states in its recital the need to scale down building size on the subject site in an attempt to bring the character of the development closer to what could be achieved on single family zoned properties. This concern translated to imposing mitigation measure 13. This mitigation item effectively prohibits constructing buildings larger than 55 feet over approximately 70% of the subject site. Because building mass is limited, the potential for light, glare, and shadowing impacts is also limited. The applicant discloses in items K1 and K4 on page 10 of the environmental checklist that low level lighting typical to residential use is anticipated and that all exterior light fixtures will be designed for glare reduction. It should be further mentioned that a significant factor in the light and glare is automobile use. Traffic studies demonstrate that the amount of automobile trips for this project is very low. The mitigation agreement restricts the use of commercial space and administration has recommended a density limit that will further reduce light and glare concerns created by automobile use.

B. The MDNS is clearly erroneous because the City failed to adequately mitigate all adverse environmental impacts of the Proposed Development.

- One of the City's SEPA policies is to use all means to assure aesthetically pleasing surroundings for its residents. DMMC 16.04.200(4)(a). SEPA also requires that aesthetic impacts of development be considered. WAC197-11-444. The Proposed Development is located in a neighborhood of single-family homes. The Proposed Development will significantly impact the aesthetics of the Zenith Community. It does not fit in with the single-family residential character of the Zenith Community. Not only will the Proposed Development change the character of the Zenith Community, but also it will impact the views the Zenith Community members' currently have from their homes as well as the nature and degree of light Zenith Community members receive into their homes. In the Environmental Mitigation Agreement, the City partially recognized the significant impact the Proposed Development would have on single-family residences in the Zenith Community, but did not adequately mitigate the impact. Specifically, the City only required that buildings in a small portion of the Proposed Development be of limited length and gross floor area. Environmental Mitigation Paragraph 13. The mitigation condition does not adequately mitigate the adverse impacts caused by the height, bulk and scale of the Proposed Development. Further, the Environmental documents do not consider or adequately mitigate the adverse aesthetic, shadowing and glare impacts caused by the Proposed Development

The Zenith neighborhood, as defined under the city's comprehensive plan land use plan map, is not exclusively characterized as single-family residential. It contains a variety of land uses in addition to single-family residential including

two large retirement communities (Judson Park and the Masonic Home), a mixed residential density PUD (Huntington Park), a higher density single-family PUD (Seashore Club), a townhome development (Highland Village), four multi-family developments (including a triplex adjacent to the subject site) and the existing mixed use on the subject site. City staff does agree that there is a general predominance of single-family residential uses west of Marine Drive. This issue is not ignored in SEPA documents for the proposed development; it is dealt with directly and effectively. The end result of the mitigation imposed on this project coupled with underlying NC restrictions is that approximately 70% of this site (the western most portion—the area of the site most likely to affect views and adjacent single family uses) will not be able to have a building dimension greater than 55 feet as measured in an east to west manner nor greater than 40 feet as measured in a north to south manner. This clearly minimizes the appellants aforementioned potential project impacts such that they cannot be considered significant. The proposed development is mixed use but the scale and design of the development has been successfully limited to be respectful of the aesthetic character and scale of single-family uses. In fact, there are more than just a few estate homes located in the Zenith area that would easily exceed the requirements imposed on this development. The issues of identifying and mitigating height and bulk and light impacts have to a large degree been already addressed in a response to an earlier appeal comment and will not be repeated by staff again. It should be noted, however, that changes or impacts to an area created by a development that are purportedly not addressed or not adequately addressed by a SEPA Official, must be significant and adverse. The measure for adequately mitigating an impact is not simply stating that a condition exists, but rather that the condition exists and is significant in nature. Staff believes that the appellant fails to state why an alleged impact that staff has mitigated is still significant and adverse. For example, the appellant mentions that (some) Zenith residents' views are impacted and a certain degree of light may not be received by Zenith residents. Quantitatively, or otherwise, no description is provided to clearly state how and why these purported impacts are clearly significant under SEPA.

- The Proposed Development will increase both vehicular and pedestrian traffic in the surrounding areas. This increased traffic is particularly significant in the Zenith Community because of the steep and narrow roads at issue. Because much of the area lacks sidewalks, additional vehicle traffic adversely impact pedestrian safety in the area surrounding the Proposed Development. Similarly, because the roads are narrow and steep, the increase in traffic adversely impacts vehicular safety in the area surrounding the Proposed Development. The City did not adequately mitigate this adverse impact of the Proposed Development.

Traffic, both pedestrian and vehicular will increase in the surrounding area as a result of the proposed development, but only marginally according to an April 9, 2002 study prepared TPE, Engineering Inc. The total project will generate less than 9 car trips per PM peak hour. The roads west of Marine View Drive in this

neighborhood are narrow and some do have slopes as they rise to meet Marine View Drive. These are existing conditions not created by the development and therefore cannot be addressed in SEPA. However, the city engineering staff evaluated the road system during a recent LID formed by the neighborhood to improve their road system. Though it does not ideally match up against city street standards, it historically has functioned to serve the many residents that already live there and use the street on a daily basis. The issue of road width and sidewalks were both issues brought up during the LID process, but the Zenith neighborhood petitioned successfully to the City Council to not include sidewalks and limit road widening. As far as mitigation imposed on the development is concerned, the applicant will construct a full street to serve the proposed development and construct frontage improvements adjacent to the site along 7th Avenue South. Additionally, extensive sidewalk improvements and rebuilding of a pedestrian connection to Marine View Drive is required. All of these improvements are identified in the mitigation agreement, are proportionate to the impacts created, and will provide mitigation for which a nexus exists.

Conclusion The appeal should not be granted. The City SEPA Official's threshold determination of Mitigated Determination of NonSignificance for the subject use and resulting development was based on information readily available in city environmental documents on file with the city and adequately addressed potential significant adverse environmental impacts. The basis for the appellants arguments are either not sufficiently demonstrated to be considered significant in nature or involve raising issues as SEPA issues when in fact these issues are subject to more detailed and prescribed city processes already adopted and in place to establish controls based on substantive authority via adopted city policies. Examples include: City Surface Water Management review, Environmentally Sensitive areas review, Design Review, and Civil Plan review.

ALTERNATIVES:

The City Council may:

1. Direct administration to prepare findings of fact and a draft resolution that support denying the SEPA appeal, and approving the requested unclassified use permit and development exception with limiting conditions and mitigation as recommended by administration for Council review and action at the September 11, 2003 meeting.
2. Direct administration to prepare findings of fact and a draft resolution that support denying the SEPA appeal, and approving the requested unclassified use permit and development exception with amended limiting conditions and mitigation for Council review and action at the September 11, 2003 meeting.
3. Direct administration to prepare findings of fact and a draft resolution that supports upholding the SEPA appeal for Council review and action at the September 11, 2003 meeting. (Under this scenario, no action on the unclassified use permit or development exception can be taken.)

4. Direct administration to prepare findings of fact and a draft resolution which support denying the SEPA appeal and denying (either or both) the requested unclassified use permit and development exception for Council review and action at the September 11, 2003 meeting.

FINANCIAL IMPACT:

There is no direct financial impact related to the review and approval of this application. No expenditure of city funds is proposed or required.

RECOMMENDATION/CONCLUSION:

Administration recommends the City Council act consistent with alternative 1 stated above subject to the following conditions of approval:

Conditions of Approval

1. All terms of the June 10, 2002 environmental mitigation agreement shall be met, and
2. A minimum setback along the north property line of 10 feet shall be required for all building walls on the subject site; except that this setback shall be increased to 13 feet for that portion of a primary building wall above the second story of all buildings, and
3. The total number of residential units shall not exceed six (6), and
4. Total gross commercial/office floor space shall not be less than 1200 square feet or greater than 2000 square feet, and
5. The applicant shall submit plans for administrative design review that comply with all minimum requirements of the NC zone, including but not limited to building height, and other applicable zoning requirements prior to issuance of a building permit.

Administration believes that the applicant's request for a development exception is warranted and a conditional use permit allowing mixed-use development will be reasonably compatible with adjoining uses provided the aforementioned conditions of approval are met.

CONCURRENCE:

Planning Agency The Des Moines Planning Agency reviewed the proposed mixed-use development at public meetings conducted on May 12, 2003 and June 2, 2003. The requested development exception and the SEPA appeal were not reviewed by the Agency as they are outside of its purview. Minutes of the Agency's meetings provide some degree of detail of its discussion of the requested unclassified use permit. Minutes are included as Attachment 16.

The Planning Agency voted unanimously to recommend that the City Council approve the requested unclassified use permit and concurred with most of administration's recommended conditions of approval. However, the agency believed that a requirement should be added that limits the number of buildings on the site to two buildings instead of three. The Agency believed that this would provide more open space; this was believed would improve compatibility with other uses in the area. Staff has spent considerable time evaluating this issue and concludes that whatever increased open space is gained by merging the buildings would be offset negatively by increasing the mass of the structures beyond what is required in the SEPA agreement (55 feet). In another issue, the Agency also believed that the upper limit in the amount of commercial space should be increased from what staff recommended (1600 square feet, originally) to 2000 square feet to provide for more flexibility in the redesign of the eastern building because of building height complications. Staff agrees with the Agency's assessment and has revised its recommendation to include the 2000 square foot area. Other aspects of the proposal that the Agency seemed to strongly endorse was a definite decrease in density from the 8 units proposed to 6 units and to restrict use of the commercial space as suggested by staff to ameliorate traffic and parking concerns.

Other Agencies The agencies listed below were contacted as part of the review process of this application. Their concerns, if any, were addressed in the terms of the environmental mitigation agreement that the applicant endorsed and which has become part of this application.

Des Moines Engineering (Surface Water Management Division)
Des Moines Engineering (Transportation Division)
Des Moines Community Development (Building Division)
Des Moines Community Development (Development Services)
King County Fire District #26
Midway Sewer District
Highline Water District
Puget Sound Energy
Qwest
AT&T (now Comcast Cable)
METRO
Highline School District
Washington State Department of Ecology

CITY OF DES MOINES
PLANNING & DEVELOPMENT DEPARTMENT
TYPE _____
LAND USE PERMIT
MASTER APPLICATION

Application Date 6/14/01 Issue Date _____ Related Permit No. _____ Permit No. LUA01-015

OWNER

NAME Lease OK! okattdi.com
Alex White: G. Inc

ADDRESS 27013 PACIFIC HWAY S. SUITE 1428

CITY DES MOINES ZIP 98198

TELEPHONE NUMBER 253-850-0200 FAX 253-850-3083

CONTACT PERSON AND FIRM

NAME ROBERT HALL
PACIFIC RIM ARCHITECTURE

ADDRESS 317 17th AVE. S.

CITY SEATTLE ZIP 98144

TELEPHONE NUMBER 206-323-7626

PROJECT INFORMATION

PROJECT NAME ZENITH VIEWPOINTS

PROJECT LOCATION/ADDRESS 23659 MARINE VIEW DR. S.

KING COUNTY ASSESSOR'S ACCOUNT NO. 511 940 0055

WATER DISTRICT HIGHLINE

SEWER DISTRICT MIDWAY

FIRE DISTRICT KING COUNTY #26

PROJECT INFORMATION

EXISTING ZONING	PROPOSED ZONING
<u>NC</u>	<u>NC</u>

SITE AREA (SQ. FT. OR ACREAGE) 9,737.5 SF

BUILDING FOOT PRINT AREA 5,647 SF

PROPOSED LAND USE MIXED USE

EXISTING LAND USE COMMERCIAL / RES. UNIT

NUMBER OF PROPOSED UNITS OR LOTS 5 RES. UNITS / 1 OFFICE

DOES THE SITE CONTAIN ANY ENVIRONMENTALLY SENSITIVE AREAS?
No

PROPERTY LEGAL DESCRIPTION (ATTACH SEPARATE SHEET IF NECESSARY)

THE SOUTH 50 FEET LOT 4 OF THE MAPLES, ACCORDING TO PLAT RECORDED IN VOLUME 8 OF PLATS A PAGE(S) 55, RECORDS OF KING COUNTY, WASHINGTON.

ATTACHMENT 1

STATEMENT OF OWNERSHIP & HOLD HARMLESS AGREEMENT

Statement of ownership:

The undersigned property owner(s), under penalty of perjury, each state that we are all the legal owners of the above described property and authorize individuals or entities identified herein as applicants to file this application allowing for said property's development.

Authority to enter property:

The undersigned property owner(s), do hereby authorize employees of the City of Des Moines to enter onto property legally described in this application to examine and inspect as necessary to process this development application.

Hold Harmless Agreement:

The undersigned, certifies under penalty of perjury, the truth and/or accuracy of all statements, designs, plans and/or specifications submitted with said application and hereby agrees to defend, pay and save harmless the City of Des Moines, its officers, employees, and agents from any and all claims, including costs, expenses and attorney's fees incurred in investigation and defense of said claims whether real or imaginary which may be hereafter made by any person including the undersigned, his successors, assigns, employees and agents, and arising out of reliance by the City of Des Moines, its officers, employees and agents upon any maps, designs, drawings, plans or specifications, or any factual statements, including the reasonable inferences to be drawn therefrom contained in said application or submitted along with said application.

Alex White Co, Inc
Name of Owner (please print)


Signature of Owner

5-21-01
Date

CITY OF DES MOINES
COMMUNITY DEVELOPMENT DEPARTMENT

DEVELOPMENT EXCEPTION APPLICATION
AS PERMITTED BY THE ENVIRONMENTALLY SENSITIVE AREAS REGULATIONS

ESA
DEVELOPMENT
EXCEPTION ESA

Application Date: 2-25-03

Permit No.: _____

PROJECT INFORMATION

King County Assessor number: 511940-0055

Project Address: 23659 MARINEVIEW DR Des Moines WA 98198

Property Owner: ALEX WHITE & G Owner's Phone Number: 206 824 1100

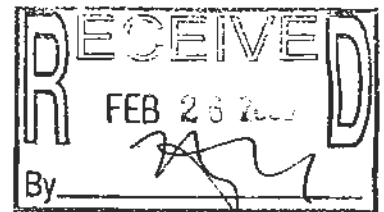
Owner's Address: 22030 7TH AVE S Suite #204

City: DES MOINES State: WA Zip: 98198

Contact Person: ALEX WHITE Contact number: 206 949 9850

Type of Exception to be determined by Planning Official

- ☐ Development other than one single family dwelling within the buffer area of a wetland or stream [DMMC 18.86.094(3)].
- ☒ Development of a previously altered ESA [DMMC 18.86.094(6)].
- ☐ Limited waiver of hillside disturbance limitations [DMMC 18.86.094(4)].
- ☐ Emergencies [DMMC 18.86.096].
- ☐ Drainage facilities [DMMC 18.86.098].
- ☐ Trails and trail-related facilities [DMMC 18.86.100].
- ☐ Utilities and roadway construction [DMMC 18.86.101].
- ☐ Stream crossings [DMMC 18.86.102].
- ☐ Stream relocation and dredging [DMMC 18.86.103].
- ☐ Stream channel, stream bank, bluff or shore stabilization [DMMC 18.86.104].
- ☐ One single family dwelling within the buffer area of a wetland or stream [DMMC 18.86.094(2)].
- ☐ Yard reductions for one single-family dwelling [DMMC 18.86.094(1)(a)].
- ☐ Modification of existing structures [DMMC 18.86.094(5)].



FEE SCHEDULE

DESCRIPTION	FEE	FEE
Hearing examiner review	\$1,500.00 + \$10.00/1,000 sq. ft. of lot area over 1 acre	
Administrative Project Review	\$500.00 (single family) \$1,500.00 (other)	
Automation Fee	\$7.50 (single family) \$ 25.00 (commercial)	

Receipt Number:

e:

Total Fees:

PERMIT SUBMITTAL REQUIREMENTS

- ☒ Legal description, tax parcel I.D. numbers, zoning, and acreage of subject property.
- ☒ Application fee.
- ☒ Development plans, including site plan and building elevation. The site plan should show the distance from the environmental feature. In the case of a steep slope show the toe or top of the slope. For wetlands, show the wetland boundary and for water bodies please show the ordinary high water mark or the top of the bank of a stream.
- ☒ Written explanation of the proposal's compliance with the criteria specified by Chapter 18.86 DMMC.
- ☐ All other plans, special studies, mitigation plans, or other information as required for development within sensitive areas and their buffers (Chapter 18.86 DMMC).

OFFICE USE ONLY

To be completed by Community Development Department staff

File Number: _____

Date received: _____

Community Development Department review by: _____

☐ Approved

☐ Denied

☐ Approved w/ conditions (attach conditions of approval)

Date: _____

Comments:

☐ Staff report attached

COMPLIANCE WITH DEVELOPMENT EXCEPTION CRITERIA

Alex White & Co. ("White") is applying for a development exception (the "Development Exception") because the topography of the development site and the surrounding area has been previously altered. White seeks a Development Exception from the application of DMMC 18.86.077(1), which prescribes the maximum amount of slope disturbance allowed on a development site. White qualifies for the Development Exception because it can demonstrate that it meets all of the decision criteria set forth in DMMC 18.86.094(6). The decision criteria, and the corresponding analysis, follow a brief description of the proposed project.

Project Description

The development site contains 16,160 square feet, 9,735 of which are within tax lot 511940-0055, and 6,425 of which are within unimproved portions of adjacent South 239th Street. The topography of the development site slopes downward from Marine View Drive on the East toward 7th Avenue on the West. Although the percentage of the slope varies across the development site, the percentage never exceeds 25% and is generally more than 15%. Accordingly, under DMMC 18.86.077(1), White is allowed to "disturb" up to 60% of the development site without a Development Exception.

White is proposing to construct new townhouses and offices on the development site. The new buildings will cover 6,820 square feet of the development site, which constitutes 42% of the development site. White is also proposing to regrade and pave South 239th Street, which constitutes 40% of the development site. In the remaining portions of the development site, White is proposing to create open space and yards.

- (i) *The environmentally sensitive area was lawfully altered in accordance with the provisions of this code and any state and federal laws at the time the alteration occurred;*

The development site is located on a hillside that rises from Puget Sound to Marine View Drive. The entire hillside between South 236th Street on the North and South 240th Street on the South (the "Hillside") has been previously cleared, graded, altered, and disturbed to create new single-family homes and multi-family and commercial uses. Development of the Hillside has occurred on a piecemeal basis over the past 60 years. White understands that this development occurred in accordance with all applicable laws and under valid building permits. There is no evidence that any of the development occurred in violation of any applicable laws.

With respect to the development site, it has also been previously developed. There is an existing building located on the eastern half of the development site and South 239th Street occupies the southern portion of the development site. The slopes on the development site were disturbed and altered to accommodate the existing building,

Marine View Drive, and South 239th Street. In addition, all native trees and vegetation were previously cleared from the development site, probably to accommodate the building and roads. All of these changes to the development site occurred under valid permits and in accordance with all applicable laws and regulations.

- (ii) *The alteration has significantly disrupted the natural functions of the environmentally sensitive area;*

Historical alterations to the Hillside and the development site have significantly disrupted the natural functions of the hillsides in and around the development site. The Hillside has been denuded of much of its native vegetation, which deprives the soil of the stabilizing function of roots and the moderating effects of wind and water erosion of leaves and branches, and which decreases percolation of precipitation into the soil, thereby reducing the amount of groundwater recharge and adding water to runoff that would ordinarily be transpired by the vegetation. See DMMC 18.86.010(3)(a) and (b). Development of the Hillside has also altered the natural drainage patterns, which can result in increased runoff and erosion. See DMMC 18.86.010(3)(b). Construction of houses and roads on the Hillside has decreased the amount of groundwater percolation and increased the amount of runoff. See DMMC 18.86.010(3)(b). Prior development has changed the natural character and distinctive features of the Hillside by, among other things, stripping away native vegetation, reducing the amount of open space, and affecting historical viewpoints. See DMMC 18.86.010(3)(c).

- (iii) *The proposal utilizes to the maximum extent possible the best available construction, design, and development techniques which results in the least adverse impact on the environmentally sensitive area;*

Where a hillside is already developed and has been previously altered, as in the present case, the natural functions of the hillside have already been lost and the applicant may seek a Development Exception to exceed the maximum disturbance limitation of DMMC 18.86.077(1). In cases like these, review of the proposed project shifts from limiting the amount of hillside disturbance to ensuring that the proposed project utilizes the best available construction, design, and development techniques and incorporates certain specific development standards. DMMC 18.86.096(6)(iii) and (iv).

The proposed project utilizes, to the maximum extent possible, the best available construction, design, and development techniques. These are described in detail below.

- (iv) *The proposal incorporates the development standards of DMMC 18.86.070 through 18.86.087 and the surface water design manual to the maximum extent possible; and*

The City has adopted specific development standards for projects proposed on hillsides. These standards are set forth in DMMC 18.86.077. White has incorporated these development standards into its proposed project. These development standards are divided into four categories: (1) development location; (2) development design; (3) construction techniques; and (4) landscaping.

Development Location

The proposed location of the new buildings, driveways, and yards satisfies the requirements of DMMC 18.86.077(2). The three buildings are clustered together to retain as much open space as possible and their location conforms to the natural contour of the slope. The buildings will have stepped foundations that correspond to the existing topography. The location of South 239th Street will not change, and its final grade will continue to slope from east to west.

Development Design

The proposed design of the new buildings, driveways, and yards satisfies the requirements of DMMC 18.86.077(3). White is proposing three buildings instead of one to maximize the amount of open space on the site. White has also minimized the footprint of the proposed buildings by reducing the number of residential units from nine to eight. The proposed project does not require the use of any standard prepared building pads. South 239th Street will serve as a common access drive for the offices and all residential units. The improvements to South 239th Street and the proposed driveways and parking stalls have all been designed to parallel the natural contours of the hillside. Locating 20 of the 23 proposed parking stalls under the new buildings has minimized the amount of impervious surface. To the extent possible, White proposes to retain the existing topography by constructing retaining walls along the north and south property lines and replacing the existing retaining wall along the eastern property line, which supports Marine View Drive.

Construction Techniques

The proposed project will employ the construction techniques suggested by DMMC 18.86.077(4). White will use foundation walls as retaining walls rather than constructing new rockeries outside the footprint of the buildings. The new structures will be tiered to conform to the existing topography and to minimize topographic modification. The proposal does not involve fill-based construction techniques.

Landscaping

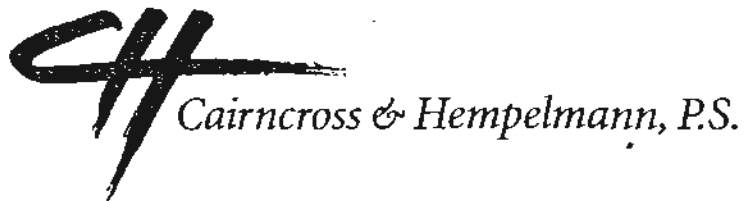
The proposed project will incorporate, to the maximum extent possible, the landscaping standards set forth in DMMC 18.86.077(5). The proposed landscaping

plan includes a landscaped pedestrian walkway connecting 7th Avenue South with Marine View Drive. The walkway will include a new stairway constructed of durable materials. An 800 square foot landscaped garden area, featuring species native to the Puget Sound region, will be located part way up this new stairway. In addition, an open, landscaped area will be created between Townhomes 2 and 3 and a landscaped play area will be provided between Townhome 4 and the Condominium Building.

The proposed project will also incorporate, to the maximum extent possible, the standards of the City's surface water design manual. These standards will be fully addressed by White's civil engineer during the permitting phase of this project.

(v) *The proposal is consistent with the purpose and intent of this chapter.*

Based on all of the above, the proposed project is consistent with the purpose and intent of Chapter 18.86 DMMC.



July 15, 2002

VIA HAND DELIVERY

Judith Kilgore, Director
Des Moines Community Development Department
21630 11th Avenue S, Suite D
Des Moines, WA 98198-6398

Re: Appeal of Notice of Determination of Nonsignificance (Mitigated)
File No. LUA 2001-015
Location of Proposed Development: 23659 Marine View Drive

Dear Ms. Kilgore:

Our firm represents residents of the residential neighborhood that surrounds the proposed development referenced above, who we will refer to collectively as the Zenith Community. Pursuant to Chapter 18.94 of the Des Moines Municipal Code ("DMMC"), this letter constitutes Zenith Community's formal appeal of the Mitigated Determination of Nonsignificance ("MDNS") issued by the City of Des Moines ("City") on June 20, 2002 pursuant to the State Environmental Policy Act, Ch. 43.21C RCW ("SEPA") for the development proposed by Alex White and Company, Inc. referenced above ("Proposed Development"). The MDNS and Environmental Mitigation Agreement for the Proposed Development are attached as Exhibit A. A check in the amount of \$500.00 for the appeal filing fee is enclosed. Set forth below is Zenith Community's statement of appeal.

I. Individuals Appealing MDNS

The following members of the Zenith Community are bringing this appeal:

John M. Crawford
23920 6th Avenue S.
Des Moines, WA 98198
206.824.8519

Robert B. Benson
23905 Marine View Drive S.
Des Moines, WA 98198
206.878.7884

Law Offices

524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
Phone: 206-587-0700 • Fax: 206-587-2308

COPY

100118469.DOC11
http://law.cairncross.com
direct: (206) 254-4492

ATTACHMENT 3

Judith Kilgore, Director
July 15, 2002
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Lloyd Lytle
23911 Marine View Drive S.
Des Moines, WA 98198
206.824.8743

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23660 7th Avenue S.
Des Moines, WA 98198
206.824.0739
206.271.2771 (mobile)

Helaine Skelly
Peter Skelly
23622 7th Avenue S.
Des Moines, WA 98198
206.870.2414

Alice McCabe
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Lewis A. Argano
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Mary B. Benson
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Paula Bogovich
Mele Bogovich
23635 Marine View Drive
Des Moines, WA 98198
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Harriet C. Butters
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Allan M. Smith
Donna M. Smith
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Keith C. Workman
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Santosh K. Guha
Jayasri Guha
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Dorothy F. Newell
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Jack Caldwell
Betsy E. Caldwell
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Des Moines, WA 98198
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Scott K. Wayne
Debra L. Wayne
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Des Moines, WA 98198
206.870.5522

Judith Kilgore, Director
July 15, 2002
Page 3

Corinna Ham
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Des Moines, WA 98198
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Merle Dameron
Carol Dameron
23650 7th Avenue S.
Des Moines, WA 98198
206.824.1190

Norma Somers
23525 7th Avenue S.
Des Moines, WA 98198
206.824.2578

Phillip Tonigro
23923 7th Avenue S.
Des Moines, WA 98198
206.824.8395

II. Standing of Zenith Community

The Zenith Community is composed of individuals who are aggrieved and adversely affected by issuance of the MDNS for the Proposed Development. The Zenith Community has standing to bring this appeal. The Zenith Community was within the zone of interests the City was required to consider in making its threshold determination under SEPA. They live in close proximity to the Proposed Development and will be adversely impacted by the Proposed Development in many ways.

For example, the Zenith Community will be adversely impacted because the Proposed Development will increase traffic in the Zenith Community, which will adversely affect vehicular and pedestrian safety on the steep, narrow roads in the Zenith Community. The Proposed Development will also negatively impact the members of the Zenith Community because its height, bulk and scale is entirely inconsistent with the single-family residential neighborhood that surrounds the Proposed Development and will adversely affect the Zenith Community's quiet enjoyment of their homes and neighborhood.

III. Specific Reasons Why The SEPA MDNS Should Be Reversed

Briefly summarized, the MDNS should be reversed for the following reasons. The Zenith Community will more specifically elaborate on these issues in briefing and oral argument to the Hearing Examiner. The Zenith Community reviewed the Environmental Checklist completed for the project, the Environmental Mitigation Agreement, correspondence from the applicant for the Proposed Development to the City, the MDNS (collectively "Environmental Documents") and applicable statutes and regulations in preparing this appeal letter.

Under SEPA, local jurisdictions are required to fully consider environmental impacts of development. See, e.g., Polygon Corp. v. City of Seattle, 90 Wn.2d 59, 578 P.2d 1309 (1978). Here, as described below, the City failed to adequately identify and mitigate many adverse environmental impacts of the Proposed Development.

A. The MDNS is clearly erroneous because the City failed to identify all adverse environmental impacts of the Proposed Development.

- The Environmental Checklist indicates a variance approval is required for the Proposed Development. However, the Environmental Documents do not indicate the reason the variance is necessary or evaluate whether the requested variance will have adverse environmental impacts.

- The site of the Proposed Development contains steep slopes (up to and including a 22% slope) that may cause the Proposed Development to have adverse environmental impacts. No such impacts are identified or discussed in the Environmental Documents.

- The Proposed Development will result in approximately 70% of the site being covered with impervious surfaces. This high percentage of impervious surface coverage, particularly combined with the steep slopes of the site and area surrounding the Proposed Development are likely to have adverse environmental impacts. One such impact is the drainage challenges potentially caused by these conditions. The Environmental Documents contain no discussion of potential impacts the Proposed Development will have on drainage in the surrounding area or how drainage is to be handled to ensure the extensive impervious surface coverage of the Proposed Development does not have adverse environmental impacts.

- The Proposed Development is adjacent to single-family residences. Due to the Proposed Development's nature, height, bulk and scale, the Proposed Development will have shadowing and glare impacts on the nearby properties. SEPA specifically indicates that light and glare impacts must be addressed. WAC 197-11-444. Such adverse environmental impacts were not identified or discussed in the Environmental Documents.

B. The MDNS is clearly erroneous because the City failed to adequately mitigate all adverse environmental impacts of the Proposed Development.

- One of the City's SEPA policies is to use all means to assure aesthetically pleasing surroundings for its residents. DMMC 16.04.200(4)(a). SEPA also requires that aesthetic impacts of development be considered. WAC 197-11-444. The Proposed Development is located in a neighborhood of single-family homes. The Proposed Development will significantly impact the aesthetics of the Zenith Community. It does not fit in with the single-family residential character of the Zenith Community. Not only will the Proposed Development change the character of the Zenith Community, but also it will impact the views the Zenith Community members' currently have from their homes as well as the nature and degree of light Zenith Community members receive into their homes. In the Environmental Mitigation Agreement, the City partially recognized the significant impact the Proposed

Judith Kilgore, Director
July 15, 2002
Page 5

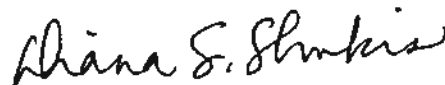
Development would have on single-family residences in the Zenith Community, but did not adequately mitigate the impact. Specifically, the City only required that buildings in a small portion of the Proposed Development be of limited length and gross floor area. Environmental Mitigation Agreement, ¶ 13. The mitigation condition does not adequately mitigate the adverse impacts caused by the height, bulk and scale of the Proposed Development. Further, the Environmental Documents do not consider or adequately mitigate the adverse aesthetic, shadowing and glare impacts caused by the Proposed Development.

- The Proposed Development will increase both vehicular and pedestrian traffic in the surrounding areas. This increased traffic is particularly significant in the Zenith Community because of the steep and narrow roads at issue. Because much of the area lacks sidewalks, additional vehicle traffic adversely impacts pedestrian safety in the area surrounding the Proposed Development. Similarly, because the roads are narrow and steep, the increase in traffic adversely impacts vehicular safety in the area surrounding the Proposed Development. The City did not adequately mitigate this adverse impact of the Proposed Development.

IV. Relief Requested

The Zenith Community requests that the Hearing Examiner rule the MDNS for the Proposed Development is clearly erroneous and order preparation of an Environmental Impact Statement to analyze the unmitigated probable significant adverse environmental impacts of the Proposed Development. In the alternative, the Zenith Community requests that the Hearing Examiner require the City to adequately mitigate the adverse environmental impacts of the Proposed Development.

Very truly yours,



Brian L. Holtzclaw
Diana S. Shukis

BLH:DSS:msd

Enclosures Exhibit A: City of Des Moines DNS and Environmental Mitigation Agreement
Filing Fee Check

cc: Des Moines City Clerk
 Zenith Community



150 Feet



Scale 1:1200 or 1" = 100'



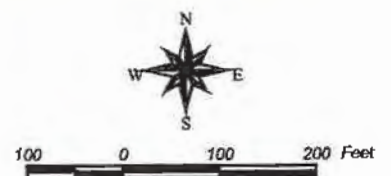
Zenith Viewpointe Zoning / Vicinity Map

File #LUA 2003-015



City of Des Moines
Community Development
21530 11th Ave S, Suite D
Des Moines, WA 98115-6388
Phone: (206) 423-7675 • Fax: (206) 471-6541

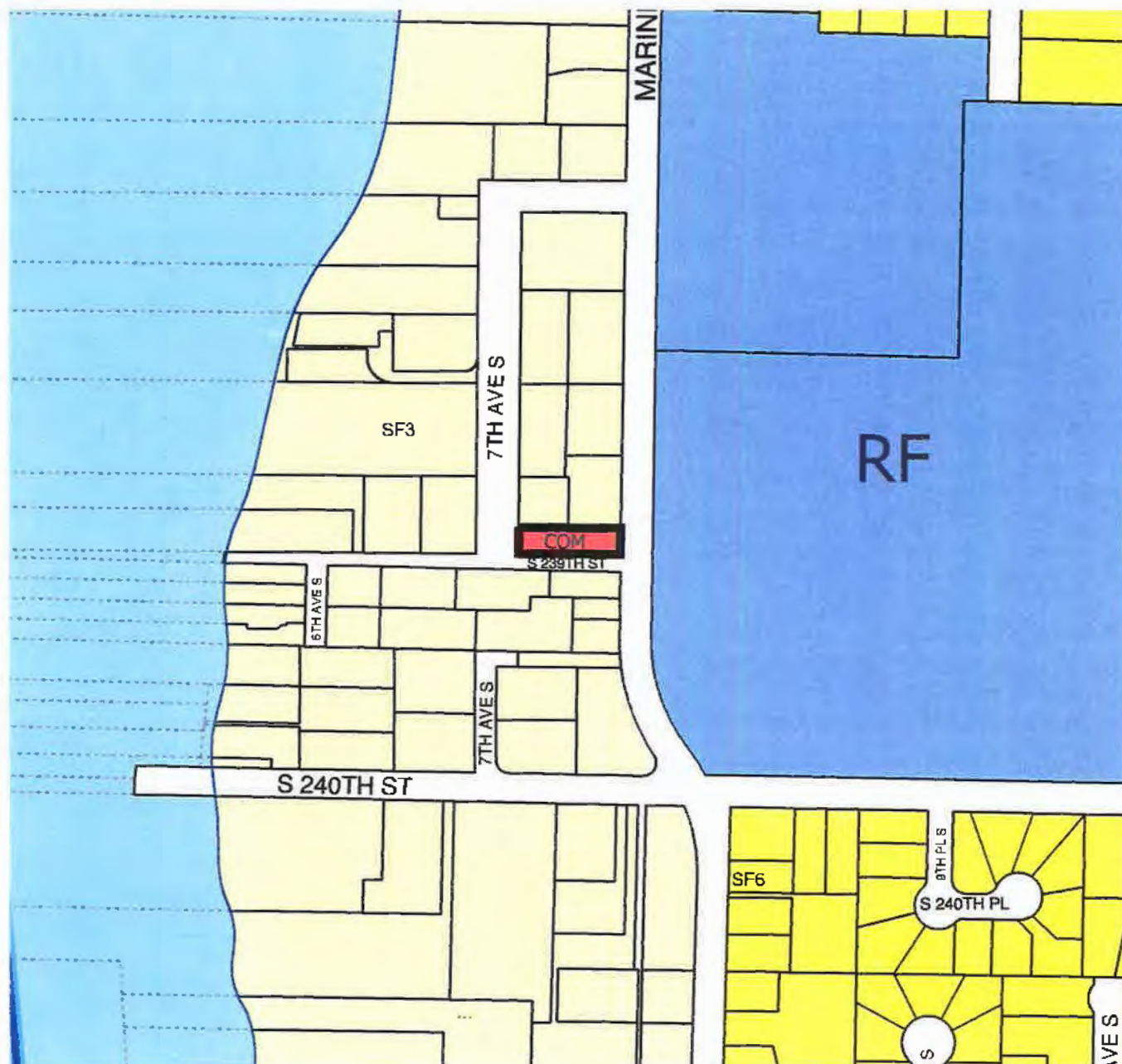
RESIDENTIAL ZONING		COMMERCIAL ZONING	
	R-SE Residential: Suburban Estates		N-C Neighborhood Commercial
	R-SR Residential: Suburban Residential		B-C Community Business
	RS-15000 Residential: Single Family 15,000		C-C Commercial
	RS-8600 Residential: Single Family 8600		D-C Downtown Commercial
	RS-6400 Residential: Single Family 6400		C-G General Commercial
	RS-7200 Residential: Single Family 7200		B-P Business Park
	RA-3600 Residential: Attached Townhouse & Duplex		H-C Highway Commercial
	RM-2400 Residential: Multifamily 2400	PACIFIC RIDGE	
	RM-1800 Residential: Multifamily 1800		PR-R Pacific Ridge Residential
	RM-900A Residential: Multifamily 900		PR-C1 Pacific Ridge Commercial 1
	RM-900B Restricted Service		PR-C2 Pacific Ridge Commercial 2
	RM-400 Multifamily 400		



LUA2001-15_Zoning.pdf
May 2003

Zenith Viewpointe Comprehensive Plan Map

File #LUA 2001-015

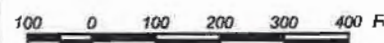


City of Des Moines
Community Development
21620 11th Ave S, Suite D
Des Moines, WA 98138-6399
Phone: (206) 476-1570 • FAX: (206) 476-0541

Subject Parcel

Comprehensive Plan Preferred Land Use

Single Family 1	Multifamily 9	Business Park
Single Family 3	Multifamily 12	Commercial
Single Family 4	Multifamily 18	Public Facility / Utilities
Single Family 5	Multifamily 24	Park
Single Family 6	Multifamily 36	Pacific Ridge Residential
Townhouse - 9	Multifamily 48	Pacific Ridge Mixed
Townhouse - 12	Retirement Facility	Pacific Ridge Commercial



LUA2001-015_CompPlan.pdf
May 2003

Applicable Policies Des Moines Comprehensive Plan
Zenith Viewpointe, Unclassified Use Permit Request, File # LUA 2001-015

General Planning Element

Policy 1-03-02 Utilize the Comprehensive Plan as the policy basis for preparing neighborhood plans, establishing development regulations, prioritizing capital improvement construction, reviewing individual development proposals and making other decisions affecting the growth and development of Des Moines and the surrounding area.

Policy 1-03-05 Plan for and regulate development to enhance the quality and maintain the unique character of Des Moines' neighborhoods and business districts.

Implementation

Strategy 1-04-01(3) Evaluate proposed subdivisions, rezones, conditional use permits, planned unit development, unclassified use permits and other development proposals involving discretionary decisions by the City for consistency with the Comprehensive Plan.

Implementation

Strategy 1-04-01(5) Utilize the authority of the State Environmental Policy Act (SEPA) to ensure that new development is designed and constructed consistent with the Comprehensive Plan. (chapter 16.04 DMMC)

Implementation

Strategy 1-04-03(2) Conduct public hearings on all development proposal which seek changes from existing development regulation (e.g., rezones, variances and planned unit developments) or which are potentially incompatible with neighboring development (e.g., conditional and unclassified uses) prior to city approval of those proposals. Provide an opportunity for public comment on all development proposals subject to SEPA review.

Implementation

Strategy 1-04-03(3) Notify the public of all development proposals involving SEPA review or public hearings by mailing notice to nearby property owners, erecting public information signs on site, publishing notice in the newspaper and posting notices at public buildings. (chapter 16.04 DMMC)

Land Use Element

- Policy 2-03-01** Seek a harmonious blend of living, working, shopping, recreational and cultural land uses.
- Policy 2-03-02(3)** Preserve open spaces where appropriate to moderate the environmental and visual impacts of new development. (chapter 16.04 DMMC)
- Policy 2-03-03** Limit future development to areas where adequate public facilities and services exist or can be concurrently provided.
- Policy 2-03-04** Preserve the integrity of existing single family neighborhoods..
- Policy 2-03-05** Promote a land use pattern, scale, and density which supports public transportation services and encourages people to walk and bicycle, as well as provide convenient and safe automobile usage.
- Policy 2-03-06(1)** Limit the amount of new multifamily development to maintain a balance between single and multifamily dwellings and preserve neighborhood character. Future multiple family dwellings should also be limited to areas where the pattern of existing multiple family development and zoning is predominant.
- Policy 2-03-06(3)** Where multifamily development is permitted, density should be limited. In the area west of the Downtown Business District, density should not exceed 36 dwellings per acre. Between I-5 and commercial uses along Pacific Highway S. and on properties with existing multifamily development abutting commercial uses along Pacific Highway S., density should not exceed 24 dwellings per acre. Elsewhere, density should not exceed 18 dwellings per acre.
- Policy 2-03-11** Recognize the Greater Des Moines Comprehensive Plan Preferred Land Use Maps, Figures 2-4 through 2-12, as the official land use maps of the City of Des Moines, providing a geographic representation of the Land Use Element goal and policies. Undertake all planning activities to implement and support the designated land use pattern.
- Policy 2-03-12** Recognize that the existence of concomitant agreements, contract rezones, and similar restrictions may limit the degree to which properties may be developed. Such restrictions established by the City shall be given substantial weight during consideration of requested amendments.

**Implementation
Strategy 2-04-13**

Permit home occupations in residential neighborhoods only if they comply with standards that ensure compatibility with the neighborhood.

**Implementation
Strategy 2-04-19**

Seek to minimize negative impacts of new development on neighborhoods by providing uniform standards at the interface of incompatible land uses which address, but are not limited to, the following: site access and circulation; structure height and scale; preservation of views; separation of buildings; landscaping; density; and noise buffering. (chapter 18.02 DMMC)

**Implementation
Strategy 2-04-21**

Establish standards for new development to provide on and off-site roadways, utilities and other public facilities as necessary to serve the additional demand generated by the development.

Conservation Element

Policy 4-03-02

Plan land use to achieve social, economic, and environmental balance.

Policy 4-03-06

Regulate public and private development proposals in ways to insure that the valuable functions of natural resources are preserved, restored, or improved.

Policy 4-03-12

Require review and permit approval before construction activity is allowed to occur within, adjacent to, or likely would affect an environmentally sensitive area. (chapter 16.04 DMMC, chapter 16.16 DMMC, chapter 16.12 DMMC).

**Implementation
Strategy D-7**

Identify environmentally sensitive areas and promulgate performance standards and restrictions for any proposed developments within or adjacent to them.

**Implementation
Strategy 4-04-02(3)**

Require that development proposals contain measures to stabilize soils, hillsides, bluffs and ravine sidewalls and promote wildlife habitat by retaining critical areas of existing native vegetation.

Implementation

Strategy 4-04-02(8)

Require the issuance of a permit and review by the city prior to any construction activity that would occur in, be adjacent to, or would likely affect a sensitive or critical area. A permit would be required because the functions and values of unique sensitive and critical areas can be severely damaged by improper refuse dumping, clearing, grading, filling, and construction. (chapter 16.04 DMMC).

Park, Recreation , Open Space Element

Policy 6-03-03

Des Moines should identify lands that, as public open space, could enhance the appearance and character of the City. Such lands may serve as community or neighborhood separators, create gateway features into Des Moines, enhance local and regional park systems, or link existing natural or built amenities

Policy 6-03-04

Des Moines should cause the preservation of significant environmentally sensitive areas as passive open space. Where appropriate, the City may construct improvements that enhance the public's awareness of, and appreciation for, natural areas. (chapter 19.20 DMMC)

Policy 6-03-08

Des Moines should increase opportunities for public access to the public shoreline of Puget Sound.

Housing Element

Policy 7-03-04

Residential areas should be protected from adverse impacts associated with incompatible land uses or nearby transportation facilities/activities. (chapter 18.02 DMMC)

Policy 7-03-05

Promote compliance with the Land Use Element's residential policies regarding density, population, housing mix, locational criteria, etc. (chapter 18.02 DMMC)

Implementation

Strategy 7-04-05

Continue to implement the residential policies of the Land Use Element regarding dispersion of housing types, unit mix, future population, etc. (chapter 18.06 DMMC)

Strategy 7-04-06

Protect existing and planned residential areas from unmitigated adverse impacts that may be generated by nearby incompatible land uses or transportation facilities or activities. (chapter 18.06 DMMC)

Strategy 7-04-017 Continue to allow mixed use development in the Downtown Neighborhood as provided by the Zoning Code. Consider allowing mixed use in other commercial zones. (chapter 18.20 DMMC)

Community Character Element

Policy 8-03-01(3) Develop plans, land use regulations and review procedures to preserve and protect designated residential communities from inconsistent and incompatible land uses which threaten to undermine their stability and their residential character. (chapter 18.08 DMMC, chapter 18.19 DMMC)

Policy 8-03-01(4) Establish and adopt restrictions on the use of surface streets in residential neighborhoods to ensure that extraordinary increases in commercial traffic do not damage residential roads or subject residential neighborhoods to unusual congestion and noisy surface street traffic.

Transportation Element

Policy 3-03-01 Design the transportation system to serve the land use pattern set forth by the Land Use Element of the Greater Des Moines Comprehensive Plan. (chapter 12.28 DMMC)

Policy 3-03-06 Prevent the intrusion of through traffic into residential neighborhoods

Policy 3-03-07 Provide facilities to accommodate safe pedestrian and bicycle movement. (chapter 12.28 DMMC)

Implementation

Strategy 3-04-01(7) Design a road network that facilitates convenient access within and between neighborhoods. Require new development to install roads that connect with or allow for future connection with roads on adjacent properties. (chapter 12.40 DMMC)

Implementation

Strategy 3-04-02(2) Ensure that new commercial, multifamily, and single family subdivisions, adjacent to transit routes are designed to provide convenient pedestrian access to transit stops. Require such developments to incorporate facilities, such as transit shelters, bus pullouts and landing areas that foster transit ridership. (chapters 18.08 - 18.30 DMMC)

Implementation**Strategy 3-04-03(3)**

Identify pedestrian corridors linking neighborhoods to schools, parks, transit routes, and businesses. Give high priority to constructing sidewalks and walkways within those corridors where existing pedestrian facilities are unsafe or indirect. (chapter 12.28 DMMC)

Implementation**Strategy 3-04-03(7)**

Require new commercial and residential developments to construct walkways that provide safe and convenient pedestrian linkages with adjacent streets. (chapters 18.08 - 18.30 DMMC)

Implementation**Strategy 3-04-06(4)**

Require new development to dedicate and improve abutting right-of-way as necessary to meet street development standards. (chapter 12.28 DMMC)

Implementation**Strategy 3-04-07(2)**

Design roads and other transportation facilities to fit the character of the neighborhoods through which they pass. (chapter 12.40 DMMC)

Implementation**Strategy 3-04-07(3)**

Construct roads and other transportation facilities to minimize adverse impacts upon surface water runoff, drainage patterns and environmentally sensitive areas.

ENVIRONMENTAL CHECKLIST

FEE: \$ _____

FILE NO.: _____

WA2001-015

RECEIPT #: _____

DATE RECEIVED: _____

01/14/2001

I. BACKGROUND

ADMINISTRATION
COMMENTS ONLY

A. Name of proposed project, if applicable:

ZENITH VIEWPOINT

B. Name, address and telephone number of property owner(s):

ALEX WHITE & CO., INC.
27013 PACIFIC HIGHWAY S., SUITE 428
DES MOINES, WA 98198
(253) 850.6200

C. Name, address and telephone number of representative(s) [contractor, architect, etc.]:

ROBERT HALL
PACIFIC RIM ARCHITECTURE
317 17th AVE. S.
SEATTLE, WA 98144
(206) 323.7626

D. Date checklist prepared: 6 JUNE 2001

E. Agency requesting checklist:

CITY OF DES MOINES, WA.

F. Proposed timing or schedule (including phasing, if applicable):

CONSTRUCTION TO BEGIN SPRING 2002

G. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

NO

H. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

TOPOGRAPHIC SURVEY

ATTACHMENT 8

- I. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

UNKNOWN

- J. List any government approvals or permits that will be needed for your proposal, if known.

UNCLASSIFIED USE PERMIT
SEPA DETERMINATIONS
VARIANCE APPROVAL
BUILDING PERMIT

- K. Give a brief, complete description of your proposal, including the proposed uses and the size of the project and site. (There are several questions later in this checklist which ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page.)

TO DEMOLISH EXISTING STORE AND BUILD 2 BUILDINGS - ONE WITH 3 RESIDENTIAL UNITS, THE OTHER WITH 2 UNITS AND OFFICE SPACE FRONTING ON MARINE VIEW DR. S.

Square footage of buildings:

12,927 SF

Square footage of parking areas:

400 SF

Number of parking spaces:

14 ON SITE

4 ON STREET

- L. Location of the proposal including street address (if any) and legal description (including section, township and range). Give sufficient information for a person to understand the precise location of your proposed project. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). (You are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.)

23659 MARINE VIEW DR S.

LEGAL: "THE S. 50' LOT 4 OF THE MAPLES, ACCORDING TO PLAT RECORDED IN VOL. 8 OF PLATS AT PAGE(S) 55, RECORDS OF KING CO., WASHINGTON"

II. ENVIRONMENTAL ELEMENTS

A. EARTH

1. General description of the site (circle one):
flat; rolling hilly; steep slopes;
mountainous; other (explain):

STEEP SLOPE

2. What is the steepest slope on the site (approximate percent slope)?

22%

3. What general types of soils are found on the site? (For example: clay; sand; gravel; peat; muck.)

UNKNOWN

4. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

NO

5. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.

EXISTING MATERIAL ON SITE WILL BE BALANCED FOR CUT AND FILL.

6. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

NO

7. About what percent of the site will be covered with impervious surfaces after project construction (for example: asphalt or buildings)?

70%

8. Proposed measures to reduce or control erosion, or other impacts to the earth, if any?

ROCKERIES AND RETAINING WALLS WILL BE LOCATED AS REQUIRED NEAR THE EAST PROPERTY LINE AND PEDESTRIAN WALKWAY

B. AIR

1. What type of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities, if known.

NORMAL EMISSIONS ASSOCIATED W/ CONSTRUCTION OF 2 TRIPLEX BUILDINGS.

2. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

NO

3. Proposed measures to reduce or control emissions of other impacts to air, if any:

NONE

2 triplex changed to
5 townhomes &
one mixed-uses
building

C. WATER

1. Surface:

- a. Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.
NO
- b. Will the project require any work over, in or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.
N/A
- c. Estimate the amount of fill and dredge material that would be placed in or removed from surface of water or wetlands, and indicate the area of the site that would be affected. Indicate the source of fill material.
N/A
- d. Will the proposal require surface water withdrawals or diversions? Give general description, purpose and approximate quantities if known.
NO
- e. Does the proposal lie within any 100-year flood plain? If so, note location on the site plan.
NO
- f. Does the proposal involve any discharges of waste material to surface waters? If so, describe the type of waste and anticipated volume of discharge.
NO

Puget Sound
530' to west

2. Ground:

- a. Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose and approximate quantities, if known.

No

- b. Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: domestic sewage; industrial, containing the following chemicals...; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

N/A

3. Water Runoff (including storm water):

- a. Describe the source of runoff (including storm water) and method of collection and disposal, if any (including quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

ROOF AND PAVED AREAS WILL
BE CONNECTED TO STORM
SEWER SYSTEM

- b. Could waste materials enter ground or surface waters? If so, generally describe.

NO

4. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any.

CURB & GUTTER
STORM SEWER CONNECTION
LANDSCAPINGD. PLANTS

- a. Check or circle types of vegetation found on the site:

☒ deciduous tree:alder, maple, aspen,
other _____☐ evergreen tree:fir cedar, pine,
other _____☒ shrubs☒ grass☐ pasture

- crop or grain
— wet soil plants:
cattail, buttercup,
bullrush, skunk
cabbage,
other _____
— water plants:
water lily, eelgrass,
milfoil,
other _____
— other types of vegetation:

2. What kind and amount of vegetation will be removed or altered?

ALL OF IT

3. List threatened or endangered species known to be on or near the site.

NONE

4. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

LANDSCAPING ~~REMOVED~~ PLANS,
TO INCLUDE NATIVE PLANTS, WILL
BE DEVELOPED. SEE SITE PLAN
SHEET A-1.

E. ANIMALS/WILDLIFE

1. Circle any birds and animals that have been observed on or near the site or are known to be on or near the site:

birds: heron, eagle, songbirds,
other _____

mammals: deer, bear, elk, beavers,
others _____

fish: bass, salmon, trout, herring,
shellfish, other _____

2. List any threatened or endangered species known to be on or near the site.

N/A

3. Is the site part of a migrational route? If so, explain.

No

4. Proposed measures to preserve or enhance wildlife, if any:

NONE

F. ENERGY AND NATURAL RESOURCES

1. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed projects energy needs? Describe whether it will be used for heating, manufacturing, etc.

NATURAL GAS FURNACES
HYDROPONIC IN-FLOOR HEATING
IN SOME LIVING AREAS

2. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

NO

3. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

ENERGY-EFFICIENT DOORS & WINDOWS

G. ENVIRONMENTAL HEALTH

1. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

NO

- a. Describe special emergency services that might be required.

- b. Proposed measures to reduce or control environmental health hazards, if any:

2. Noise

- a. What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

SOME TRAFFIC NOISE FROM MARINE VIEW DR.S.

- b. What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

SHORT-TERM CONSTRUCTION NOISES
LIMITED TO THE HOURS 8AM-6PM.

- c. Proposed measures to reduce or control noise impacts, if any:

NONE

H. LAND AND SHORELINE USE

1. What is the current use of the site and adjacent properties?

EXISTING STORE W/ RESIDENTIAL
UNIT

2. Has the site been used for agriculture? If so, describe.

NO

3. Describe any structures on the site.

EXISTING STORE

4. Will any structures be demolished? If so, what?

EXISTING BUILDING WILL BE
DEMOLISHED

5. What is the current zoning classification of the site?

NC - NEIGHBORHOOD COMMERCIAL

6. What is the current Comprehensive Plan designation of the site?

COMMERCIAL

7. If applicable, what is the current Shoreline Master Program designation of the site?

N/A.

8. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.

NO

yes - steep slopes above 15% slope are considered sensitive in DMMC 18.86

9. Approximately how many people would reside or work in the completed project?

14 RESIDENTS

10 PEOPLE WORKING @ OFFICE SPACE

10. Approximately how many people would the completed project displace?

NONE - BUILDING CURRENTLY VACANT

11. Proposed measures to avoid or reduce displacement impacts, if any:

N/A

12. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

MIXED-USE DEVELOPMENT MAINTAINS COMMERCIAL USE WHILE PROVIDING 5 NEW RESIDENTIAL UNITS IN PRIMARILY RESIDENTIAL NEIGHBORHOOD

1. HOUSING

1. Approximately how many units would be provided, if any? Indicate whether high-, middle- or low-income housing.

5 NEW UNITS TO BE SOLD FOR \$400,000.

2. Approximately how many units, if any would be eliminated? Indicate whether high-, middle- or low-income housing.

NONE

3. Proposed measures to reduce or control housing impacts, if any:

NONE

J. AESTHETICS

1. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

HEIGHT LIMIT = 35'
BRICK / STUCCO / GLASS

2. What views in the immediate vicinity would be altered or obstructed?

PARTIAL VIEWS FROM PROPERTY TO THE NORTH. ADJACENT PROP. TO THE SOUTH IS A CITY-OWNED ROW.

3. Proposed measure to reduce or control aesthetic impacts, if any:

LANDSCAPING & HIGH QUALITY EXTERIOR MATERIALS

K. LIGHT AND GLARE

1. What type of light or glare will the proposal produce? What time of day would it mainly occur?

NORMAL RESIDENTIAL LIGHTING
OFFICE LIGHTING WILL BE LOW-LEVEL AND SIMILAR TO RESIDENTIAL

2. Could light or glare from the finished project be a safety hazard or interfere with views?

NO

3. What existing off-site sources of light or glare may affect your proposal?

NONE

4. Proposed measure(s) to reduce or control light and glare impacts, if any:

ALL EXTERIOR FIXTURE WILL BE DESIGNED FOR GLARE REDUCTION

L. RECREATION

1. What designated and informal recreational opportunities are in the immediate vicinity?

BEACH ACCESS @ END OF 239th ST S.

2. Would the proposed project displace any existing recreational uses? If so, describe.

NO

3. Proposed measures to reduce or control impacts on recreation, including recreational opportunities to be provided by the project or application, if any:

NONE

M. HISTORIC AND CULTURAL PRESERVATION

1. Are there any places or objects listed on, or proposed for, national, state or local preservation registers known to be on or next to the site? If so, generally describe.

MASONIC HOME

2. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site:

N/A

MASONIC
HOME

3. Proposed measure to reduce or control impacts, if any:

BRICK TYPE & COLORS WILL BE
RELATED TO MASONIC HOME ACROSS
MARINE VIEW DR.S.

N. TRANSPORTATION

1. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.

MARINE VIEW DR.S. IS AN ARTERIAL
ROUTE. ACCESS TO THIS SITE WILL
BE FROM THE AVE.S.

2. Is the site currently served by public transportation? If not, what is the approximate distance to the nearest transit stop?

YES. BUS ROUTE ON MARINE VIEW DR.S.

3. How many parking spaces would the completed project have? How many would the project eliminate?

14 ON SITE

4 ON MARINE VIEW DR (EXISTING)

THE EXISTING BUILDING HAS NO
ON-SITE PARKING.

14 stalls
onsite

4. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether private or public).

THE EXISTING CITY-OWNED R.O.W. TO THE SOUTH WILL BE DEVELOPED TO PROVIDE ACCESS TO THE UNITS, A PEDESTRIAN WALKWAY W/STAIRS AND LANDSCAPING.

5. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

NO

6. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.

2 x 5 UNITS: 10
OFFICE AREA: 8
APPROXIMATELY: 18

2 x 9 units: 18
OFFICE: 8
26

7. Proposed measures to reduce or control transportation impacts, if any:

NONE

O. PUBLIC SERVICES

1. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.

SLIGHT INCREASE FOR SERVICES DUE TO 5 ADDITIONAL RES. UNITS

9 units

2. Proposed measures to reduce or control impacts on public services, if any:

NONE

P. UTILITIES

1. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other (describe):

2. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity that might be needed.

REQUIRED UTILITIES ARE ALREADY AVAILABLE.

III. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.


Signature

ROBERT H. HALL
Type or Print Name

ARCHITECT
Title

7 June 2001
Submittal Date

ADMINISTRATION ONLY

Administrative Review By: Celeste Y. Carlson
Title: Land Use Planner
Date: 2/13/2002

**CITY OF DES MOINES
DETERMINATION OF NONSIGNIFICANCE (MITIGATED)**

Description of proposal: Construction of a mixed use development consisting of 8 residential dwellings and 1800 square feet of office space within three separate structures together with appurtenant parking, landscaping, pedestrian access, and adjoining utility and street construction.

Proponent: Alex White and Company, Inc.

Location of proposal, including street address, if any: 23659 Marine View Drive

Lead Agency: City of Des Moines

The City of Des Moines has determined that the above-described proposal does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued under 197-11-340(2). The lead agency will not act on this proposal for 15 days from the date below*. Comments must be submitted by July 5, 2002.

Responsible Official:

Judith Kilgore

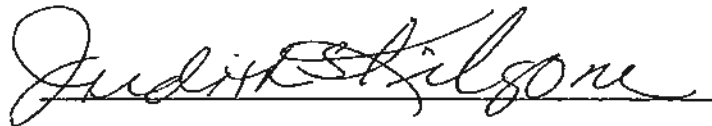
Phone: (206) 870-7576

Position/Title:

Community Development Director
21650 11th Avenue South, Suite D
Des Moines, WA 98198

June 20, 2002

(Date*)



(Signature)

**For Additional
Information Contact:**

Robert Ruth, Senior Planner, Phone (206) 870-6555

AGENCY APPEAL

APPEAL: Any agency or person may appeal SEPA procedural compliance to the Des Moines Hearing Examiner by filing a written appeal with the Des Moines City Clerk. Such appeal must be filed within ten (10) days of the date this Determination of Nonsignificance is final. The last date for filing such an appeal as to this proposal will be 4:30 p.m. on July 15, 2002. Procedural determinations include the adequacy of the Determination of Nonsignificance, whether proper notice has been given, and whether the commenting period has been observed. The pendency of a procedural appeal shall stay any action on this proposal until final determination by the Hearing Examiner.

Publish date: June 20, 2002

U:\rob\word6\SEPA\zenith viewpoint dns.DOC



PUBLIC NOTICE OF LAND USE APPLICATION

NOTICE IS HEREBY GIVEN THAT AN APPLICATION FOR THE FOLLOWING REQUESTED LAND USE DEVELOPMENT PROPOSAL HAS BEEN FILED WITH THE CITY OF DES MOINES COMMUNITY DEVELOPMENT DEPARTMENT.

**DATE OF
NOTICE:**

February 27, 2002

APPLICANT:

Alex White

PROPOSAL:

A request for approval of an unclassified use permit to allow the construction of mixed use development that includes 1,800 square feet of commercial office and 9 residential dwelling units.

**FILE
NUMBER:**

LUA 2001-015

LOCATION:

23659 Marine View Drive South

LEGAL

DESCRIPTION:

THE SOUTH 50 FEET OF LOT 4 OF THE MAPLES, AS PER PLAT RECORDED IN VOLUME 8 OF PLATS, PAGE 55 RECORDS OF KING COUNTY.

The public is invited to review contents of the official file for the proposal. Written comments are also encouraged and will be accepted for consideration if filed with the Community Development Department on or before 4:30 p.m. March 14, 2002. Further information about the proposal may be obtained by contacting Celeste Carlson at the Community Development Department (Phone: 206-870-6595) during regular working hours. The Community Development Department is located at 21630 11th Avenue South, Suite D, Des Moines, WA, 98198

PROJECT OPEN HOUSE

The public is invited to an open house sponsored by the applicant concerning this project. The applicant will present their development plan and public comments on environmental and design elements of the project are encouraged. The open house will be on Wednesday, March 13, 2002 between 7:30-9:00 p.m. at the Des Moines Fire Station located at 22238 South 223rd Street. City Staff will also be present to answer questions.

ENVIRONMENTAL MITIGATION AGREEMENT

FILE NO. LUA 2001-015

THIS AGREEMENT is entered into by and between the City of Des Moines, a municipal corporation hereinafter referred to as the "City" and Alex White, hereinafter referred to as the "Developer".

WHEREAS, this agreement is executed pursuant to Chapter 43.21 RCW, the State Environmental Policy Act (SEPA), and Title 16 Des Moines Municipal Code, to provide for mitigation of existing and known environmental impacts associated with the development hereinafter described. This agreement is not, and shall not be construed as a voluntary agreement pursuant to RCW 82.02.020, and the provisions of RCW 82.02.020 shall not be applied hereto. This agreement does not preclude any evaluation and determination by the City of Des Moines upon later actions or proposals undertaken by the Developer which may require a determination of significance and environmental review under SEPA, and

WHEREAS, the Developer is seeking approvals to allow the construction of mixed use development that includes 1,800 square feet of commercial office and 9 residential dwelling units, including improvements for on and off site drainage, parking, and landscaping on property located at 23659 Marine View Drive South, further described as:

TAX LOT 5119400055, AS SHOWN IN RECORDS OF THE ASSESSOR, KING COUNTY, WASHINGTON.

Legal Description:

THE SOUTH 50 FEET LOT 4 OF THE MAPLES, ACCORDING TO PLAT RECORDED IN VOLUME 8 OF PLATS AT PAGE(S) 55, RECORDS OF KING COUNTY, WASHINGTON.

WHEREAS, the City of Des Moines Community Development Department has determined that the proposed development of the subject property may result in adverse environmental impacts which requires the Developer to modify the submitted environmental application by entering into an agreement to mitigate such impacts; and

WHEREAS, DMMC 18.45 states that private and common recreation area is required for new multiple family developments containing more than 4 dwellings; and

WHEREAS, there is an existing 4" sewer force main located 4' deep in the unimproved South 239th Street right-of-way that must be removed and replaced under the improved right-of-way; and

WHEREAS, there is an 18" substandard storm sewer pipe located in the unimproved South 239th Street right-of-way; and

WHEREAS, parking located on City rights-of-way must be public; and

WHEREAS, there is an existing public staircase located upon the South 239th Street right-of-way that must be moved in order to improve the right-of-way; and

WHEREAS, there is an existing sewer pump station located adjacent to the development on 7th Avenue South; and

WHEREAS, there are no existing sidewalks on the adjacent 7th Avenue right-of-way; and

WHEREAS, there is a considerable amount of concern regarding the lack of onsite parking for residents, tenants, and guests of the new development; and

WHEREAS, because of the narrow width of the adjacent South 239th right-of-way, it will be improved to City Standards for an alley cross-section; and

WHEREAS, the Zenith neighborhood adjacent to the western portion of this site consists solely of single family residences, and to ensure the integrity of the community's

character any development on the lower western portion of the site will need to be similar in size to the surrounding single family dwellings; and

NOW, THEREFORE, the City and Developer agree that the following mitigation measures shall be employed by the Developer to ensure that possible adverse environmental impacts created by the proposed project are minimized or eliminated.

1. The applicant shall submit a detailed landscape and amenity plan to the Community Development Department for review and approval for all proposed common open and recreation space located within the subject property as part of administrative design review for this proposal.
2. The applicant shall not be required to participate in the installation of intersection improvements at South 240th Street and Marine View Drive South because of the low number of additional trips anticipated to be generated during the peak hour from this project.
3. The applicant shall improve that portion of the South 239th Street right-of-way adjacent to the subject site as follows:
 - a. Construct a new 20' asphalt road consistent with City Street Standards for an alley cross section.
 - b. Install integral curb and gutter along the entire south side of the new street.
 - c. Replace all existing storm sewer collection and conveyance facilities within the existing South 239th Street right-of-way with new improvements designed to the satisfaction of the City Engineer.
 - d. Stripe the road as a fire lane and provide "no parking" signage to the satisfaction of the Fire Marshal.
 - e. Construct the road to a gradient not exceeding 14%.
 - f. Install 6 inch concrete "C" curbing along the entire north side of the road except for those portions providing access to enclosed parking areas.
4. The applicant shall provide a limited use vehicle turn-around centrally located within the proposed site designed to accommodate passenger vehicles. This area shall also be clearly identified as "no parking" area.
5. All existing and future utilities adjacent to the site shall be placed underground. Any utility that serves the subject property that is not located within public right-of-way shall be placed in an easement. The Developer shall provide a conceptual utility plan and identify all existing and proposed easements.
6. All existing utility improvements located within rights-of-way shall be relocated to the satisfaction of individual utility purveyors and as further specified in this agreement.
7. The applicant shall design and construct the following improvements to the site's frontage on 7th Avenue South to the satisfaction of the City Engineer:
 - a. Concrete curb, gutter, and sidewalk.
 - b. Drainage collection basins, and conveyance pipe as needed to adequately manage road runoff and tie-in to the downstream system.
 - c. Replacement and/or relocation of any conflicting or

substandard utility structures.

- d. Base material and new asphalt to complete residential access street section on the east side of the street to the new curb line.
8. The Developer shall install a 5-foot-wide concrete sidewalk linking new sidewalks along 7th Avenue to the proposed western-most building on the subject site.
9. The Developer shall relocate the existing sewer force main within South 239th Street to a depth consistent with the final street design and Midway Sewer District requirements. The Developer shall also be responsible for monitoring and providing an alternate method of transporting sewage between the time the existing force main is shut off and the new one is reconnected.
10. In the event that the proposed development results in the creation of parking within any public right-of-way, this parking shall not be assigned or otherwise reserved for any tenant or owner within the proposed mixed use development.
11. The Developer shall provide a pedestrian walk connecting the existing sidewalk on Marine View Drive to new sidewalks at street grade on 7th Avenue South. The existing wooden public staircase shall be replaced with a pedestrian access design to be approved by the Community Development Department. Design details shall be submitted to the City as part of administrative design review of the project. The walk shall include a public viewing platform at the top of the stairs. Safety lighting shall be provided along the viewing platform and the entire length of the sidewalk. Lighting shall be designed so as to minimize lighting impacts and glare to adjacent properties.
12. The Developer shall record a covenant that restricts and limits the use of any designated commercial space on the subject property to office use only. The office use shall be further limited to those office uses that do not provide direct person-to-person services to customers on-site.
13. The Developer shall design the proposed development consistent with the city NC zoning standards, except that on the western 120 feet of the subject site, building mass shall be designed to transition to a scale and contain useable floor area more consistent with surrounding single-family residential use. In this area, individual buildings shall not exceed 55 feet in length and the gross floor area of individual dwelling units shall be a minimum of 1500 square feet.
14. All portions of proposed structures overhanging or encroaching into city rights-of-way shall be reviewed by the Public Works and Community Development Director prior to approval. Encroachments shall be reviewed for consistency with the provisions of DMMC 18.27.060. The Developer shall provide a liability waiver in a form acceptable to the City Attorney for all encroachments.
15. Should the City Council approve an Unclassified Use Permit to develop the subject property and should the Developer decide to proceed to develop the subject property, the Developer shall demolish and remove all existing buildings on the subject property within 1 year of the effective date of City Council action on the proposed Unclassified Use Permit.

16. This agreement shall be binding upon the heirs, successors, assigns and all other parties legally empowered with signatory rights of any or all of the parties hereto.

17. Should the term, provision, condition or other portion of the Agreement be held to be inoperative, invalid, or void, the same shall not affect any other term, provision, condition or other portion of this Agreement; and the remainder of this Agreement shall be effective as if such term, provision, condition or portion had not been contained herein.

CITY:

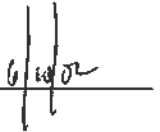
DEVELOPER:



Community Development Director,
Judith S. Kilgore



Alex White



6/18/02

STATE OF WASHINGTON)
COUNTY OF King } ss.

I, the undersigned, a notary public in and for the State of Washington, hereby certify that on this 16 day of June, 2002 Alex White personally appeared before me, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.



Notary Public in and for the State of
Washington, residing at King County
My commission expires 7-19-02

Chapter 18.20
N-C NEIGHBORHOOD COMMERCIAL ZONE

Sections

18.20.010 Purpose of zone.

18.20.020 Permitted uses.

18.20.030 Limitations on uses.

18.20.035 Hazardous waste and hazardous substances.

18.20.040 Permissible floor area.

18.20.050 Height.

18.20.060 Required open spaces.

18.20.010 Purpose of zone.

The purpose of this zone and its application is to provide for the location of and grouping of uses which are considered compatible uses having common performance standards in that they represent on-premises retail enterprises and involve only incidental and limited fabrication or assembly of commodities, or comprise a type of enterprise dispensing commodities, or providing professional services, or providing personal services to the individual. These services are intended to provide local facilities to serve the everyday needs of the neighborhood area. To meet this need will require that the facilities permitted in this zone shall locate adjacent to residential areas on access streets directly serving such residential areas. By establishing limitations upon building height and floor space as set forth in this zone, it is the further objective to maintain a limited intensity of land use compatible with serving the neighborhood residential areas, rather than on a community-wide basis. A further purpose of this zone and its application is to permit the more efficient and economical design and installation of all physical public service facilities in terms of size and capacity to adequately and permanently meet needs resulting from a defined intensity of land use. Public utility installations, being governed by circumstances related to geographical area to be served, are also permitted in this zone. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.26.010), 1964.]

18.20.020 Permitted uses.

Any of the following types of uses which can meet the following standards are permitted and allowed by this zone, subject to the limitations set forth in this chapter:

(1) Any on-premises retail enterprise dispensing food or commodities (but not including automobiles, boats, trailers, and heavy-duty equipment) and which may involve only incidental and limited fabrication or assembly of commodities;

(2) Business offices and any type of use rendering professional services or personal services to the individual; provided:

(a) The service does not involve keeping the person receiving the service overnight on the premises;

(b) The service does not include selling alcoholic beverages for on-premises consumption unless accessory to restaurant;

(c) The service does not involve in whole or in part the providing of recreation, recreational facilities, or entertainment other than moorage for private pleasure craft;

- (d) The professional service does not include kennels or small animal hospitals or clinics;
- (3) Any public utility installation relating directly to local distribution of services including switching and transmission stations but not including warehouses, service yards, or the like unless otherwise permitted by this title;
- (4) Public off-street parking facilities, whether publicly or privately owned and operated; provided, any area so used shall not be used for a vehicle, trailer, or boat sales area or for the accessory storage of such vehicles;
- (5) Churches;
- (6) Planned unit development as provided in chapter 18.52 DMMC;
- (7) Public office buildings, art galleries, museums, libraries, police and fire stations;
- (8) One antenna system which exceeds the maximum building height specified for the commercial zone and which:
- (a) Does not exceed 15 feet in height above the building height limitation for the applicable zone;
- (b) Is set back at least the vertical height of the antenna system measured from the center point of the base of the mast horizontally to the nearest property line;
- (c) Has a maximum horizontal cross-sectional area for that part of the mast which is above building height limitation for the zone such that an imaginary four-inch diameter circle would encompass all points of the horizontal cross-section;
- (d) Has a maximum allowable three-dimensional space intrusion of 1,200 cubic feet for single ground plane antennas with a single driven element, and 200 cubic feet for beams, quads, and other multi-element antennas; provided, that these limitations on three-dimensional space intrusion shall not be applicable to single long-wire antennas, single whip antennas, and single coaxial antennas. In this paragraph, "three-dimensional space intrusion" means the space within an imaginary rectangular prism which contains all extremities of an antenna;
- (e) Does not encroach into any required setback for the zone; a guy wire and anchor point for an antenna system is prohibited in any required setback or within three feet of the side or rear property lines; provided, if any alley abuts a rear property line, a guy wire and anchor point may extend to the rear property line;
- (f) Provided, that a variation from the above limitations not to exceed 10 percent may be granted by city administrative officials; such variation shall be granted when it will not significantly increase the hazard factor, the aesthetic impact, or the economic consequences of such antenna system;
- (g) Further provided, that all antenna systems exceeding the above limitations and legally in place on November 5, 1978, the effective date of the ordinance codified in this subsection (8), shall have one year within which to satisfy the requirements for and receive a conditional use permit which authorizes the continued placement of such antenna system;
- (h) Further provided, that all antenna systems constructed, enlarged, or moved after November 5, 1978, shall comply with the provisions of chapter 14.06 DMMC on the antenna system review permit process;
- (9) Mixed uses, subject to an unclassified use permit. [Ord. 1237 § 3, 1999; Ord. 617 § 5, 1985; Ord. 445 § 3, 1978; Ord. 175 § 1(24.26.020), 1964.]

18.20.030 Limitations on uses.

Every use locating in a N-C zone shall be subject to the following further conditions and

limitations:

(1) All uses shall conform to the general provisions and exceptions, off-street parking requirements and loading area requirements set forth beginning with chapter 18.36 DMMC; and all parking lots, parking areas, and loading areas shall be surfaced, screened, developed, and maintained;

(2) All uses shall be conducted wholly within an entirely enclosed building except:

- (a) Public utility installations;
- (b) Growing stock in connection with horticultural nurseries, whether the stock is in open ground, pots, or containers;
- (c) Moorages for private pleasure craft;
- (d) Parking and loading areas;
- (e) Public off-street parking lots;

(3) Any areas used as set forth in subsection (2) of this section, except horticultural nurseries, moorages, and public utility installations, shall be improved and maintained as required for off-street parking areas;

(4) No automobile service stations are permitted in the N-C zone;

(5) All products made incident to a permitted use which are manufactured, processed, or treated on the premises shall be sold on the premises only and at retail only, and not more than three persons may be employed in the manufacturing, processing, or treatment of products, except that this limitation shall not apply to restaurants;

(6) Any repairing done on the premises shall be incidental only and limited to custom repairing of the types of merchandise sold on the premises at retail; the floor area devoted to such repairing shall not exceed 20 percent of the total floor area occupied by the particular enterprise of which it is a part, except that the limitations of this paragraph shall not apply to shoe, radio, television, or other small household appliance repair service;

(7) No used or secondhand articles, materials, or equipment unless accessory to the primary activity may be sold, offered for sale, or stored on the premises except paintings, objects of art, or antiques as defined in this title;

(8) Storage shall be limited to accessory storage of commodities sold at retail on the premises or materials used in the limited fabrication of commodities sold at retail on the premises;

(9) All operations conducted on the premises shall not be objectionable beyond the property boundary lines by reason of noise, steam, odor, fumes, gases, smoke, vibration, hazard, or other causes, and any use which produces odor, fumes (toxic or nontoxic), gases, airborne solids, or other atmospheric contaminants shall be allowed to locate only if conforming in every respect to the rules and regulations established by an applicable and qualified public agency;

(10) If a building site has a boundary line which is a common line with residential property, a wall or view-obscuring fence or hedge not less than five feet nor more than six feet in height shall be installed and maintained for screening purposes and controlling access. Where the wall of a building is on such common property line, no separate wall or fence need be installed along that portion of the common property line occupied by the wall of the building. Public utility installations need not fence along such lines; provided, the conditions set forth in DMMC 18.08.020(12)(c) are maintained adjacent to common boundaries with residential property;

(11) (Repealed by Ord. 617);

(12) (Repealed by Ord. 584). [Ord. 1237 §§ 2, 4, 1999; Ord. 617 § 3(part), 1985; Ord. 584 § 7(part), 1983; Ord. 193 §§ 2, 3, 1965; Ord. 175 § 1(24.26.030), 1964.]

18.20.035 Hazardous waste and hazardous substances.

Any use permitted by this chapter which involves the treatment or storage of hazardous waste or the use or handling of hazardous substances shall conform to the regulations contained in this section. In the event there is a conflict between the provisions of this section and any other provision of this chapter, the provisions of this section shall prevail.

(1) Off-site hazardous waste facilities are prohibited.

(2) On-site hazardous waste facilities are permitted as an accessory use only; provided, that the location of such facilities shall be consistent with siting criteria adopted or hereafter amended by the Department of Ecology under RCW 70.105.210 incorporated in this section by reference and that the transport, storage, containment, treatment, or disposal of such hazardous wastes shall be performed so as not to jeopardize the health and safety of any individual or harm the environment.

(3) The use or handling of hazardous substances are permitted as an accessory use only; provided, that the transport, storage, containment, application and disposal of such hazardous substances shall be performed so as not to jeopardize the health and safety of any individual or harm the environment.

(4) Violation – Civil Penalty, Revocation of Business License. Failure to comply with any of the requirements of this section shall result in enforcement by civil penalty as set forth in DMMC 18.72.060 and revocation of business license as set forth in DMMC 5.04.060.

(5) Violation – Abatement Authorized. Any person or business who fails to comply with the provisions of this chapter, or permits a violation to continue after receiving written notice of violation from the community development director, shall be deemed to be causing or permitting a public nuisance and shall be liable in an action for abatement filed by the city in superior court. [Ord. 757 § 2, 1988.]

18.20.040 Permissible floor area.

The maximum permitted floor area to be contained in all buildings on a lot or site in a N-C zone shall not exceed the square foot area of the lot or site upon which the building or buildings are located. [Ord. 1237 § 2, 1999; Ord. 175 § 1(24.26.040), 1964.]

18.20.050 Height.

In a N-C zone no building or structure shall exceed a height of 35 feet. [Ord. 1237 § 2, 1999; Ord. 175 § 1(24.26.050), 1964.]

18.20.060 Required open spaces.

Additional open spaces, both as to amount and location on the premises may be required in connection with a variance or planned unit development to apply the established requirements of this and related codes pertaining to such subjects as off-street parking, loading areas, convenient and safe circulation of vehicles and pedestrians, ingress and egress as related to marginal traffic pattern, vision clearance (traffic), drainage, and lighting. [Ord. 175 § 1(24.26.060), 1964.]

Chapter 18.60
AMENDMENTS, UNCLASSIFIED USE PERMITS, PLANNED UNIT
DEVELOPMENTS, AND APPEALS

Sections

- 18.60.010 Zoning code may be amended.**
- 18.60.020 Unclassified/conditional use permits.**
- 18.60.030 Initiation of amendment.**
- 18.60.040 Public hearing required.**
- 18.60.050 Repealed.**
- 18.60.060 Repealed.**
- 18.60.070 Repealed.**
- 18.60.080 Repealed.**
- 18.60.090 Repealed.**
- 18.60.100 Repealed.**
- 18.60.110 Decision of city council.**
- 18.60.120 Textual changes to zoning code.**
- 18.60.130 Expiration of zoning reclassifications and unclassified use permits.**
- 18.60.140 Notice requirements for comprehensive plan and zoning code amendments changing provisions regarding lot area per dwelling unit.**

18.60.010 Zoning code may be amended.

Whenever public necessity, convenience, and general welfare require, the boundaries of the zones established on maps by this title, the zone of property uses in this title, or other provisions of this title may be amended as follows:

- (1) By the adoption of or the amendment of a zoning map or maps; or
- (2) By adoption of a planned unit development; or
- (3) By amending the text of the title. [Ord. 1237 § 3, 1999; Ord. 175 § 1(24.60.010), 1964.]

18.60.020 Unclassified/conditional use permits.

Unclassified and conditional use permits may be granted upon the filing of an application therefor by a property owner, or a lessee. An applicant for a conditional use permit shall follow the provisions of the hearing examiner code and "form of application" of chapter 18.64 DMMC. The procedure to be followed in considering an application for an unclassified use permit shall be the same as set forth in this chapter for amendments. [Ord. 770 § 66, 1988; Ord. 175 § 1(24.60.020), 1964.]

18.60.030 Initiation of amendment.

Amendments to this title and the zoning map of the city are initiated as follows:

- (1) Amendments to the zoning map of the city may be initiated by:
 - (a) The verified application of one or more owners of property which is proposed to be reclassified or rezoned;
 - (b) Adoption of a motion by the city council directing the community development department to initiate the amendment;
 - (c) Adoption of a motion by the planning agency requesting the city manager to initiate

the amendment through the community development department;

(d) The community development department with the approval of the city manager.

(2) In the case of textual changes to the zoning code, in the manner provided in DMMC 18.60.120. [Ord. 770 § 67, 1988; Ord. 553 § 1, 1982; Ord. 175 § 1(24.60.030), 1964.]

18.60.040 Public hearing required.

The city council shall hold one public hearing before taking action on any amendment to this title, application for a planned unit development, or unclassified use permit, and notice of the hearing shall be given as provided in Article V of chapter 16.04 DMMC (Commenting). [Ord. 1174 § 63, 1996; Ord. 175 § 1(24.60.040), 1964.]

18.60.050 Decision on applications – Time limit.

Repealed by Ord. 1174. [Ord. 175 § 1(24.60.050), 1964.]

18.60.060 Notice of planning agency's decision.

Repealed by Ord. 1174. [Ord. 175 § 1(24.60.060), 1964.]

18.60.070 Board to hold public hearing.

Repealed by Ord. 1174. [Ord. 175 § 1(24.60.070), 1964.]

18.60.080 Finality of planning agency's action.

Repealed by Ord. 1174. [Ord. 175 § 1(24.60.080), 1964.]

18.60.090 Actions of agency may be appealed – Time limit.

Repealed by Ord. 1174. [Ord. 175 § 1(24.60.100), 1964.]

18.60.100 Report appeal to the board.

Repealed by Ord. 1174. [Ord. 175 § 1(24.60.110), 1964.]

18.60.110 Decision of city council.

Enactment of a resolution or ordinance by the city council approving an amendment, planned unit developments, or unclassified use permits shall constitute final action. When the action of the city council is to deny a request for an amendment, planned unit development, or unclassified use permit, the adoption of the motion shall constitute final action. Written notice of the action shall be forwarded to the community development department to be attached to the permanent file of the case and the community development department shall notify the applicant of the final action of the city council. [Ord. 1174 § 64, 1996; Ord. 175 § 1(24.60.120), 1964.]

18.60.120 Textual changes to zoning code.

Amendments to this title that constitute a textual change are made in the following manner:

(1) As used in this section, unless the context or subject matter clearly requires otherwise, "textual change" means a change or amendment to this title except:

(a) Amendments changing the zone of a particular parcel of property (commonly known as a rezoning); or

(b) Actions relating to adoption or amendment to the comprehensive plan.

(2) No textual change is made without at least one public hearing before the city council.

(3) The city council shall set a date for the public hearing by motion. Notice of the public hearing shall generally conform with DMMC 17.44.030 (Notice). Continued hearings may be held at the discretion of the city council but no additional notice is required.

(4) The community development director may schedule a public meeting of the planning agency to allow for review of a proposed textual code amendment. The planning agency may recommend approval, approval with conditions or amendments, or denial of the proposed textual code amendment. The recommendation(s) of the planning agency shall be forwarded to the city council for review during the public hearing. [Ord. 1237 § 3, 1999; Ord. 1174 § 65, 1996; Ord. 1062 § 1, 1993; Ord. 770 § 68, 1988; Ord. 553 § 2, 1982.]

18.60.130 Expiration of zoning reclassifications and unclassified use permits.

Any zoning reclassification granted pursuant to this title shall become void unless a building permit is applied for within the time specified in the enacting legislation or, if no date is specified, within three years of the effective date of the enacting ordinance. Zoning reclassifications initiated by the city are exempt from this provision. Any unclassified use permit granted pursuant to this title shall likewise become void unless a building permit is applied for (or the activity for which the permit is granted is commenced, if no building permit is involved) within the time specified in the permit, or if no date is specified, within three years of the action of the city council in granting the permit. [Ord. 769 § 1, 1988.]

18.60.140 Notice requirements for comprehensive plan and zoning code amendments changing provisions regarding lot area per dwelling unit.

For proposed comprehensive plan and textual code amendments regarding lot area per dwelling unit, the city shall notify all owners of properties that would be subject to the proposed change(s) in lot area per dwelling unit requirements. Notice to such owners, and specific requirements related to the timing and form of such notices, as well as other parties who are also entitled to notice, shall generally conform with the public notice procedure for site-specific proposals, contained in Article V of chapter 16.04 DMMC, particularly DMMC 16.04.160(5). [Ord. 1241 § 1, 1999.]

Chapter 18.56

LAND USE REVIEW PROCEDURES

Sections

- 18.56.010 Purpose and intent.**
- 18.56.020 Framework for decision.**
- 18.56.030 Type I land use action – General.**
- 18.56.040 Type II land use action – General.**
- 18.56.050 Type III land use action – General.**
- 18.56.060 Type IV land use action – General.**
- 18.56.070 Type V land use action – General.**
- 18.56.080 Type VI land use action – General.**
- 18.56.085 Type VII land use action – General.**
- 18.56.090 Application.**
- 18.56.100 Pre-application meetings.**
- 18.56.110 Contents of applications.**
- 18.56.120 Acceptance for vesting.**
- 18.56.130 Notice of complete application.**
- 18.56.140 Public notice of proposed land use action.**
- 18.56.150 Review process for Type I land use action.**
- 18.56.160 Review process for Type II land use action.**
- 18.56.170 Review process for Type III land use action.**
- 18.56.180 Review process for Type IV land use action.**
- 18.56.190 Review process for Type V land use action.**
- 18.56.200 Review process for Type VI land use action.**
- 18.56.205 Review process for Type VII land use action.**
- 18.56.210 Written report or decision.**
- 18.56.220 Procedures for open record public hearings.**
- 18.56.230 Procedures for closed record appeal hearings.**
- 18.56.240 Reconsideration.**
- 18.56.250 Remand.**
- 18.56.260 Final decision.**
- 18.56.270 Appeals.**

18.56.010 Purpose and intent.

The purpose of this chapter is to establish standard procedures for land use and related development decisions made by the city of Des Moines. The procedures are designed to promote timely and informed public participation, eliminate redundancy in the application, land use review, and appeal processes, minimize delay and expense, and result in land use actions that further the city goals, policies, and strategies as set forth in the Greater Des Moines Comprehensive Plan. As required by RCW 36.70B.060, as presently constituted or as may be subsequently amended, these procedures provide for an integrated and consolidated land use review process. The procedures integrate the environmental review process specified in Title 16 DMMC (Environment) with the procedures for land use actions specified in Title 14 DMMC

(Buildings and Construction), Title 17 DMMC (Subdivisions), and Title 18 DMMC (Zoning), and provide for the consolidation of appeal processes for land use actions. The review procedures specified by Title 17 DMMC (Subdivisions) for a land use action authorized by that title shall take precedence over the procedures specified by this chapter. [Ord. 1174 § 1, 1996.]

18.56.020 Framework for decision.

(1) The scope of a land use action covered by this chapter shall be limited as specified by RCW 36.70B.030 as presently constituted or as may be subsequently amended.

(2) Except when a land use action is categorically exempt from SEPA, environmental review shall be conducted concurrently with review of other proposed land use actions requested by an applicant. Integrated and consolidated review shall be provided as required by RCW 36.70B.120 and 36.70B.140 as presently constituted or as may be subsequently amended.

(3) As allowed by RCW 36.70B.140(1) as presently constituted or as may be subsequently amended, the following land use actions are not subject to the provisions of RCW 36.70B.070, 36.70B.080, 36.70B.090, 36.70B.110, 36.70B.120, and 36.70B.130 because the city council has determined that these projects present special circumstances that warrant a review process different from the process specified by this chapter:

- (a) Business park master plans;
- (b) Street vacations and other actions relating to use of public areas or facilities;
- (c) Type VI land use actions; and
- (d) Abatement of nonconforming uses.

(4) As authorized by RCW 36.70B.140(2) as presently constituted or as may be subsequently amended, the following Type I land use actions shall not be subject to the provisions of RCW 36.70B.060, 36.70B.110, 36.70B.120, and 36.70B.130 as presently constituted or as may be subsequently amended:

- (a) Lot line adjustments;
- (b) Construction permits required under Title 14 DMMC that are categorically exempt from environmental review under chapter 16.04 DMMC (SEPA Rules), or for which environmental review has been completed in conjunction with other project permits.

(5) Land use actions are classified into seven types, based upon the entity responsible for the decision, the amount of discretion exercised by the decisionmaker, the degree of impact associated with the decision, the amount and type of public input sought, and the type of appeal available. The seven categories of land use actions are as follows:

- (a) Type I: Administrative decision made without legal requirement for public comment.
- (b) Type II: Administrative decision made after legally required opportunity for public comment.
- (c) Type III: Quasi-judicial and other decisions by hearing examiner made after legally required opportunity for public comment.
- (d) Type IV: Quasi-judicial and other nonlegislative decisions by city council made after legally required opportunity for public comment.
- (e) Type V: Quasi-judicial and other nonlegislative decisions by city council made without legal requirement for public comment.
- (f) Type VI: Legislative decision by city council made after legally required opportunity for public comment.
- (g) Type VII: Quasi-judicial and other nonlegislative decisions by planning agency made

after legally required opportunity for public comment.

(6) The land use review procedures specified by Title 17 DMMC (Subdivisions) for a land use action explicitly covered by that title shall control over the procedures specified by this chapter. [Ord. 1287 § 1, 2001; Ord. 1174 § 2, 1996.]

18.56.030 Type I land use action – General.

A Type I land use action is an administrative land use decision made by the community development director. Public notice of application is not required for a Type I land use action. The following actions are designated as Type I land use actions:

- (1) Sign special use permit.
- (2) Comprehensive sign design permit.
- (3) Design review.
- (4) Lot line adjustment.
- (5) On-site parking exception.
- (6) Reduction of the minimum dimension of on-site parking.
- (7) Waiver of zoning requirement as specified by chapter 18.61 DMMC.
- (8) Building height bonus.
- (9) Determination that the action is categorically exempt from State Environmental Policy Act (SEPA) Rules.
- (10) Interpretation of Title 14 DMMC (Buildings and Construction), Title 16 DMMC (Environment), Title 17 DMMC (Subdivisions), and Title 18 DMMC (Zoning).
- (11) Construction permits required under Title 14 DMMC (Buildings and Construction).
- (12) Actions not specifically listed in this or any other section of this chapter and that are administrative land use actions made without legal requirement for public comment. [Ord. 1267 § 12, 2000; Ord. 1174 § 3, 1996.]

18.56.040 Type II land use action – General.

A Type II land use action is an administrative land use decision made by the community development director. Public notice of application is required for a Type II land use action. The following actions are designated as Type II land use actions:

- (1) Determination of nonsignificance (DNS) and mitigated DNS.
- (2) Determination of significance (DS).
- (3) Determination of the adequacy of a final environmental impact statement.
- (4) Binding site plan with no more than four lots.
- (5) Short subdivision.
- (6) Alteration or vacation of short subdivision without public dedication.
- (7) Alteration or vacation of binding site plan with no more than four lots.
- (8) Townhouse development with no more than four lots.
- (9) Community development director approval, conditional approval, or denial of a project based upon chapter 16.04 DMMC (SEPA Rules).
- (10) Actions not specifically listed in this or any other section of this chapter and that are administrative land use actions taken after a legally required opportunity for public comment. [Ord. 1197 § 35, 1997; Ord. 1174 § 4, 1996.]

18.56.050 Type III land use action – General.

A Type III land use action includes quasi-judicial land use decisions and other land use decisions made by the hearing examiner. Except as specified below, public notice of application is required for a Type III land use action. The following actions are designated as Type III land use actions:

- (1) Variance.
- (2) Conditional use permit.
- (3) Environmentally sensitive area development exception.
- (4) Shoreline substantial development permit and revisions.
- (5) Modification of parking provisions.
- (6) Hearing examiner approval, conditional approval, or denial of a project based upon chapter 16.04 DMMC (SEPA Rules).
- (7) Appeal of an administrative land use decision, except that appeal of a decision of the building official is limited to interpretation or application of the building code, mechanical code, electrical code, and plumbing code. Public notice requirements for appeal of an administrative land use decision are provided by DMMC 18.94.150.
- (8) Actions not specifically listed in this or any other section of this chapter and that are quasi-judicial land use actions delegated to the hearing examiner by the city council. [Ord. 1174 § 5, 1996.]

18.56.060 Type IV land use action – General.

A Type IV land use action includes quasi-judicial land use decisions and other nonlegislative land use decisions made by the city council. Public notice of application is required for a Type IV land use action. The following actions are designated as Type IV land use actions:

- (1) Zoning map amendment (rezone).
- (2) Unclassified use permit.
- (3) Preliminary planned unit development.
- (4) Business park master plan.
- (5) Final hinding site plan for a business park master plan.
- (6) Shoreline substantial development with an environmental impact statement.
- (7) Shoreline conditional use.
- (8) Shoreline variance.
- (9) City council approval, conditional approval, or denial of a project based upon chapter 16.04 DMMC (SEPA Rules).
- (10) Actions not specifically listed in this or any other section of this chapter and that are quasi-judicial land use actions made by the city council following a legally required opportunity for public comment. [Ord. 1287 § 2, 2001; Ord. 1197 § 36, 1997; Ord. 1174 § 6, 1996.]

18.56.070 Type V land use action – General.

A Type V land use action includes quasi-judicial land use decisions and other nonlegislative land use decisions made by the city council. Public notice of application is not required for a Type V land use action. The following actions are designated as Type V land use actions:

- (1) Textual code amendment of Title 14 DMMC (Buildings and Construction) and Title 16 DMMC (Environment).
- (2) Final planned unit development.
- (3) Subdivision – final plat.

- (4) Final modified short subdivision.
- (5) Final modified subdivision.
- (6) Final alteration or vacation of subdivision.
- (7) Final alteration or vacation of short subdivision with public dedication.
- (8) Final alteration or vacation of binding site plan with public dedication.
- (9) Final alteration or vacation of binding site plan with more than four lots and not involving a public dedication.
- (10) Final binding site plan with more than four lots.
- (11) Final townhouse development with more than four lots.
- (12) Actions not specifically listed in this or any other section of this chapter and that are quasi-judicial land use actions made by the city council without a legal requirement for public comment. [Ord. 1197 § 37, 1997; Ord. 1174 § 7, 1996.]

18.56.080 Type VI land use action – General.

A Type VI land use action is a legislative land use decision made by the city council. Public notice of application is required for a Type VI land use action. The following actions are designated as Type VI land use actions:

- (1) Textual code amendment of Title 17 DMMC (Subdivisions) and Title 18 DMMC (Zoning).
- (2) Area-wide rezones.
- (3) Comprehensive plan adoption or amendment.
- (4) Actions not specifically listed in this or any other section of this chapter and that are legislative land use actions made by the city council. [Ord. 1174 § 8, 1996.]

18.56.085 Type VII land use action – General.

A Type VII land use action includes quasi-judicial land use decisions and other nonlegislative land use decisions made by the planning agency. Public notice of application is required for a Type VII land use action. The following actions are designated as Type VII land use actions:

- (1) Subdivision – preliminary plat.
- (2) Preliminary modified subdivision.
- (3) Preliminary alteration or vacation of subdivision.
- (4) Preliminary alteration or vacation of short subdivision with public dedication.
- (5) Preliminary alteration or vacation of binding site plan with public dedication.
- (6) Preliminary alteration or vacation of binding site plan with more than four lots and not involving public dedication.
- (7) Preliminary binding site plan with more than four lots.
- (8) Preliminary townhouse development with more than four lots.
- (9) Planning agency approval, conditional approval, or denial of a project based upon chapter 16.04 DMMC (SEPA Rules).
- (10) Actions not specifically listed in this or any other section of this chapter and that are quasi-judicial land use actions made by the planning agency following a legally required opportunity for public comment. [Ord. 1287 § 3, 2001.]

18.56.090 Application.

(1) The city shall integrate its land use review and environmental review processes in order to avoid unnecessary duplication or delay. When a proposed development requires more than one land use action, the applicant may request concurrent review of all proposed land use actions.

(2) All applications for land use actions and other city approvals specified in Title 14 DMMC (Buildings and Construction), Title 16 DMMC (Environment), Title 17 DMMC (Subdivisions), and Title 18 DMMC (Zoning) shall be submitted on forms specified by the community development department. All applications shall be authorized by the property owner. [Ord. 1174 § 9, 1996.]

18.56.100 Pre-application meetings.

(1) Informal Pre-Application Meetings. Applicants for a land use action may participate in an informal meeting prior to submittal of the application for land use action or the formal pre-application meeting. The purpose of the meeting is to discuss, in general terms, the proposed land use action, alternatives, required approvals, and the land use action process.

(2) Formal Pre-Application Meetings. Unless waived by the community development director, potential applicants or their designees are required to attend a formal pre-application meeting for all Type III, Type IV, Type VI, and Type VII land use actions. The purpose of the meeting is to discuss the nature of the proposed development, application and approval requirements, fees, review process and schedule, and applicable policies and regulations. As appropriate, the community development director shall invite representatives of affected agencies, such as other city departments and special purpose districts, to attend any formal pre-application meeting. This meeting requirement should be deemed waived in the event the community development director or the community development director's designee is unavailable to meet within 10 days of a request for such meeting. [Ord. 1287 § 4, 2001; Ord. 1174 § 10, 1996.]

18.56.110 Contents of applications.

(1) All applications for land use actions under Title 14 DMMC (Buildings and Construction), Title 16 DMMC (Environment), Title 17 DMMC (Subdivisions), and Title 18 DMMC (Zoning) shall include the information specified in the applicable title. The property owner shall sign all applications or provide written authorization of the requested land use action. The community development director may require additional information as reasonably necessary to fully and properly evaluate the proposed land use action.

(2) The applicant may submit consolidated applications for concurrent review, or phase application submittal for consecutive review and approval. [Ord. 1174 § 11, 1996.]

18.56.120 Acceptance for vesting.

(1) An application for a proposed land use action shall not serve to vest any development rights until the community development director determines the application is complete as specified by this code.

(2) Applications found to include material errors shall be deemed withdrawn and subsequent submittals shall be treated as a new application and shall require a new application fee.

(3) Applicant-generated requests for revision(s), i.e., those requests which are not made in response to staff review or public appeal, that result in a substantial change to the proposed land use action, as determined by the community development director, shall be treated as a new

application as of the date of receipt of the revision by the community development department and shall require a new application fee. [Ord. 1174 § 12, 1996.]

18.56.130 Notice of complete application.

(1) An application for land use action is complete for purposes of this section when it contains all of the following:

- (a) A completed application form.
- (b) All applicable fees.
- (c) Written authorization of the property owner.
- (d) A completed environmental checklist for projects subject to review under the State Environmental Policy Act (SEPA).
- (e) Information required in applicable titles of the Des Moines Municipal Code.

(2) Notice of complete application shall be provided as provided in RCW 36.70B.070 as presently constituted or as may be subsequently amended.

(3) For the purposes of this section, applications will only be deemed "received" if filed during regular business hours with the appropriate department and date-stamped by a city official authorized to accept such applications.

(4) More than one request for additional information may be required by the community development director prior to the issuance of a notice of complete application. The community development director shall attempt to minimize the number of requests for additional information. The applicant shall attempt to provide the requested information in a complete and prompt manner. [Ord. 1174 § 13, 1996.]

18.56.140 Public notice of proposed land use action.

(1) Upon a determination that a complete application for a land use action has been filed, the community development director shall issue a notice of proposed land use action as required by RCW 36.70B.110 as presently constituted or as may be subsequently amended.

(2) The notice of proposed land use action shall be provided as specified by Article V of chapter 16.04 DMMC (Commenting), DMMC 18.94.150 (Notice of hearing – Required), DMMC 18.94.160 (Notice of hearing – Content), DMMC 18.94.170 (Persons entitled to notice), and DMMC 18.94.180 (Notice of hearing – When given).

(3) Unless an open record public hearing is required, public notice of a land use action is not required for a Type I land use action or an action categorically exempt under chapter 16.04 DMMC.

(4) The notice of proposed land use action shall indicate that a 15-day public comment period is provided.

(5) Written comment in response to a notice of proposed land use action shall be provided to the community development department during the 15-day public comment period.

(6) If allowed by chapter 197-11 WAC as presently constituted or as may be subsequently amended, notice of proposed land use action may be combined with notice of proposed DNS for the purpose of consolidating comment periods. [Ord. 1174 § 14, 1996.]

18.56.150 Review process for Type I land use action.

(1) The community development director may approve, approve with conditions, or deny a Type I land use action without public notice.

(2) The decision of the community development director shall be effective on the date issued.

(3) The community development director's decision regarding a Type I land use action is appealable to the hearing examiner as provided in DMMC 18.94.113. [Ord. 1174 § 15, 1996.]

18.56.160 Review process for Type II land use action.

(1) Upon conclusion of the 15-day public comment period, the community development director may approve, approve with conditions, or deny a Type II land use action subject to applicable public notice and appeal provisions.

(2) The community development director's decision regarding a Type II land use action shall be effective on the date issued.

(3) Except as provided by subsections (4) and (5) of this section, the community development director's decision regarding a Type II land use action is appealable to the hearing examiner as provided in DMMC 18.94.113.

(4) A determination of significance (DS) is not appealable to the hearing examiner or the city council and may be appealed by filing a land use petition with the superior court of Washington for King County as provided by chapter 36.70C RCW, as presently constituted or as may be subsequently amended.

(5) Within the Pacific Ridge area, a SEPA determination is not appealable to the hearing examiner or the city council and may be appealed by filing a land use petition with the superior court of Washington for King County as provided by chapter 36.70C RCW, as presently constituted or as may be subsequently amended. [Ord. 1267 § 13, 2000; Ord. 1217 § 20, 1998; Ord. 1174 § 16, 1996.]

18.56.170 Review process for Type III land use action.

(1) Upon conclusion of the 15-day comment period and any applicable SEPA appeal period, the hearing examiner may approve, approve with conditions, or deny a Type III land use action as specified by chapter 18.94 DMMC (Hearing examiner code).

(2) The hearing examiner's decision regarding a Type III land use action is appealable to the Superior Court of Washington for King County as specified by DMMC 18.94.260 (Appeals from decision of hearing examiner). [Ord. 1174 § 17, 1996.]

18.56.180 Review process for Type IV land use action.

(1) The planning agency shall conduct a public meeting for review of the proposed land use action. The planning agency may recommend approval, approval with conditions or amendments, or denial of a Type IV land use action. The recommendation(s) of the planning agency shall be forwarded to the city council.

(2) Upon conclusion of the 15-day comment period and any applicable SEPA appeal period, the city council may approve, approve with conditions, or deny a Type IV land use action upon compliance with the procedural requirements of chapter 18.94 DMMC (Hearing examiner code).

(3) The city council's decision regarding a Type IV land use action is appealable to the Superior Court of Washington for King County as specified by DMMC 18.94.300 (Appeal from decision of the city council). [Ord. 1174 § 18, 1996.]

18.56.190 Review process for Type V land use action.

(1) The city council may approve, approve with conditions, or deny a Type V land use action

without public notice other than the notice requirements for public meetings.

(2) The decision of the city council shall be effective on the date final action is taken during a public meeting or as otherwise provided by law.

(3) The city council's decision regarding a Type V land use action is appealable the Superior Court of Washington for King County as specified by DMMC 18.94.300 (Appeal from decision of the city council). [Ord. 1174 § 19, 1996.]

18.56.200 Review process for Type VI land use action.

(1) For all Type VI land use actions except textual code amendments, the planning agency shall conduct a public hearing for review of the proposed land use action. The planning agency may recommend approval, approval with conditions, or denial of a Type VI land use action. The recommendation(s) of the planning agency shall be forwarded to the city council.

(2) For textual code amendments, the community development director may schedule a public meeting before the planning agency as provided in DMMC 18.60.120.

(3) Upon conclusion of the 15-day comment period, the city council may approve, approve with conditions, or deny a Type VI land use action upon compliance with the procedural requirements of chapter 18.60 DMMC (Amendments, Unclassified Use Permits, Planned Unit Developments, and Appeals).

(4) Except for matters subject to review by the Central Puget Sound Growth Management Hearings Board as provided by RCW 36.70A.280 as presently constituted or as may be subsequently amended, the city council's decision regarding a Type VI land use action is appealable the Superior Court of Washington for King County as specified by DMMC 18.94.300 (Appeal from decision of the city council). [Ord. 1193 § 5, 1997; Ord. 1174 § 20, 1996.]

18.56.205 Review process for Type VII land use action.

(1) Upon conclusion of the 15-day comment period and any applicable SEPA appeal period, the planning agency may approve, approve with conditions, or deny a Type VII land use action upon compliance with the procedural requirements of chapter 18.94 DMMC (Hearing Examiner).

(2) The planning agency's decision regarding a Type VII land use action is appealable to the Superior Court of Washington for King County as specified by DMMC 18.94.300 (Appeal from decision of the city council). [Ord. 1287 § 5, 2001.]

18.56.210 Written report or decision.

A written report shall be provided as required by RCW 36.70B.060 and 36.70B.130 as presently constituted or as may be subsequently amended. [Ord. 1174 § 21, 1996.]

18.56.220 Procedures for open record public hearings.

(1) Open record public hearings shall be conducted as required by chapter 4.12 DMMC (City Council – Rules of Procedure), chapter 18.94 DMMC (Hearing Examiner), RCW 36.70B.020, 36.70B.060, 36.70B.110, 36.70B.120, 43.21C.075, and other applicable law as presently constituted or as may be subsequently amended. Open record public hearings conducted by the planning agency shall adhere to the city council rules of procedure as well as other applicable provisions.

(2) Written information received from the public or other agencies shall be admitted to the record during the time between the publication of the applicable public notice, and the closing of

the open record public hearing by the presiding officer of the hearing.

(3) Oral testimony from the public or other agencies shall be admitted to the record during the time between the opening and closing of the open record public hearing by the presiding officer of the hearing.

(4) Upon the closing of the open record public hearing by the presiding officer of the city council, no additional written information or oral testimony from the public or other agencies will be accepted or considered. [Ord. 1287 § 6, 2001; Ord. 1193 § 6, 1997; Ord. 1174 § 22, 1996.]

18.56.230 Procedures for closed record appeal hearings.

(1) Closed record appeal hearings shall be conducted in accordance with chapter 4.12 DMMC (City council – Rules of procedure) and chapter 18.94 DMMC (Hearing examiner) as applicable.

(2) Closed record public hearings shall be conducted as required by RCW 36.70B.020, 36.70B.060, 36.70B.110, 36.70B.120, 43.21C.075, and other applicable law as presently constituted or as may be subsequently amended.

(3) Except as specified by procedures for reconsideration or remand, no new evidence or testimony shall be given or received during a closed record appeal hearing. However, the parties to the appeal may submit written statements limited to the issue(s) appealed. [Ord. 1174 § 23, 1996.]

18.56.240 Reconsideration.

A party to a public hearing or closed record appeal may seek reconsideration of a final decision. Requests for reconsideration shall be submitted and considered as specified by DMMC 18.94.250 (Decision – Reconsideration). [Ord. 1287 § 7, 2001; Ord. 1174 § 24, 1996.]

18.56.250 Remand.

The city council may remand a hearing examiner decision on a Type III land use action as specified by DMMC 18.94.290 (City council action on appeal – Procedure – Burden of proof – Criteria to affirm, modify, reverse, or remand). [Ord. 1174 § 25, 1996.]

18.56.260 Final decision.

(1) When written notice of a final decision is required, such notice shall be provided as specified by RCW 36.70B.060, 36.70B.090, 36.70B.130, as presently constituted or as may be subsequently amended.

(2) As specified by chapter 64.40 RCW, as presently constituted or as may be subsequently amended, the city is not liable for damages under this chapter due to the city's failure to make a final decision within the time limit specified by RCW 36.70B.090 or other applicable law. [Ord. 1174 § 26, 1996.]

18.56.270 Appeals.

(1) Appeals shall conform to the requirements specified by RCW 36.70B.030, 36.70B.060, 43.21C.075, 90.58.180, chapter 36.70C RCW, and other applicable law as presently constituted or as may be subsequently amended.

(2) Appeal of an administrative land use action shall be filed as specified by DMMC

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14.04.130 (Appeals), 16.04.210 (Agency SEPA appeals), 17.12.170 (Appeals), chapter 18.60 DMMC (Amendments, Unclassified Use Permits, Planned Unit Developments, and Appeals), DMMC 18.86.150 (Appeals), and chapter 18.94 DMMC (Hearing Examiner). Appeal of an administrative decision relating to a proposed Type III, Type IV, or Type VI land use action shall be resolved during the required open record public hearing.

(3) Except for appeal of shoreline substantial development and other shoreline decisions, appeal of a hearing examiner land use decision shall be filed as specified by chapter 18.94 DMMC (Hearing Examiner). Appeal of shoreline substantial development and other shoreline decisions shall be filed with the shoreline bearings board as specified by chapter 90.58 RCW as presently constituted or as may be subsequently amended.

(4) Except for appeal of shoreline substantial development and other shoreline decisions, appeal of a planning agency or city council decision and other land use actions for which available remedies have been exhausted shall require the filing of a land use petition in Superior Court of Washington for King County as specified by DMMC 18.94.300 and chapter 36.70C RCW as presently constituted or as may be subsequently amended. Appeal of shoreline substantial development and other shoreline decisions shall be filed with the shoreline hearings board as specified by chapter 90.58 RCW, as presently constituted or as may be subsequently amended. [Ord. 1287 § 8, 2001; Ord. 1174 § 27, 1996.]

(6) Previously Altered Environmentally Sensitive Areas. If any portion of an environmentally sensitive area has been altered from its natural state, the applicant may propose to develop within the altered area pursuant to the following:

(a) Procedure. The city shall process the proposed development exception through the office of the hearing examiner, or if the exception is proposed in conjunction with a development proposal requiring approval of the city council, the exception shall be processed together with that development proposal. The community development director shall serve as the applicable department director and the hearing examiner or city council shall serve as the hearing body.

(b) Decision Criteria. The city shall approve or approve with modifications an application for a development exception within a previously altered environmentally sensitive area only if the applicant demonstrates that:

(i) The environmentally sensitive area was lawfully altered in accordance with the provisions of this code and any state and federal laws at the time the alteration occurred;

(ii) The alteration has significantly disrupted the natural functions of the environmentally sensitive area;

(iii) The proposal utilizes to the maximum extent possible the best available construction, design, and development techniques which result in the least adverse impact on the environmentally sensitive area;

(iv) The proposal incorporates the development standards of DMMC 18.86.070 through 18.86.087 and the surface water design manual to the maximum extent possible; and

(v) The proposal is consistent with the purpose and intent of this chapter. [Ord. 1237 § 3, 1999; Ord. 853 § 9(a), 1990.]

PRELIMINARY
SPECIAL MEETING DES MOINES PLANNING AGENCY

MINUTES

May 12, 2003

The regular meeting of the Des Moines Planning Agency was called to order at 7:00 p.m. by Chairperson Kalve in the Council Chambers, 21630 11th Avenue South, Suite B.

ROLL CALL—Present: Chair Kalve, Vice Chair Mark Proulx, Members Gene White and John Savage. Absent: John Colvard Jr. and Krista Drebeck-Brown: A motion was made and seconded to excuse Members Colvard and Drebeck-Brown and the motion was approved. Also present were Development Services Manager Robert Ruth, City Attorney Linda Marousek, Community Development Director, Judith Kilgore, and Planning Agency Secretary Barbara Coulter.

AGENCY MEMBER BUSINESS

Linda Marousek administered the oath of office to Sven Kalve and to Don Reicks, the new Planning Agency member. She called for nominations for the position of Chair. Sven Kalve was the only person nominated and the nomination was seconded. There was a motion to elect Sven Kalve as Chair, it was seconded, and Sven was elected by a unanimous vote.

Chair Kalve then asked for nominations for Vice Chair. Mark Proulx was nominated and seconded. A motion was made to elect Mark Proulx as Vice Chair; it was seconded and approved by a unanimous vote.

APPROVAL OF MINUTES

None

CORRESPONDENCE

Chair Kalve asked if there was any correspondence and Robert Ruth said that Peter Skelly was submitting additional correspondence to the Planning Agency.

ADMINISTRATIVE REPORTS

Robert gave some updated information about the Tobin/Saltwater Park subdivision project including that they were given 100% credit for their open spaces. He mentioned that the Pacific Place subdivision project was moving forward and that they had obtained a grading permit. Cedarbrook, a PUD project to build 30 attached single-family homes, had not yet begun but was in the hands of the contractors. Mediterranean Heights, another subdivision project, had received a clearing permit and its surface water management provisions have been approved.

Robert noted that the ordinance that would have changed the Planning Agency's duties did not pass so its duties would remain the same.

Planning Agency Meeting Minutes of May 12, 2003

OLD BUSINESS

Sven noted that there was no old business.

NEW BUSINESS

Robert introduced the new business for the meeting, an application by Alex White and Company for an unclassified use permit involving a mixed-use proposal for an area in the Zenith community.

Robert reminded us about four factors: the Agency can recommend or not recommend, with the main application are two accompanying applications (a SEPA appeal and an EIS Development Exception), this is a highly discretionary plan with a large leeway, and that this is a land use matter, rather than one of design.

He mentioned that the plans that Alex White provided were for illustration only and were not binding. They were a tool given so that it could be seen what eight units might look like on the site.

Robert displayed aerial views showing the property and the surrounding area and gave information about the site and its NC zoning as well as the zoning of the surrounding area.

Member Proulx asked for a clearer understanding of a classified and unclassified use. Robert then clarified the differences between the two types of uses.

Robert continued to give details about the proposal and answered various questions put to him by members of the Agency. He said that the most important issue was to determine if the project was of a character that was reasonably compatible with the surrounding area and the NC zoning. He stated that the City staff was recommending approval of the proposal.

Member Savage inquired as to the background of the Zenith Grocery site and Robert gave some history of this site.

Member Riecks voiced some concerns about the use of the right of way that was included in the proposal and Robert noted that there was no street vacation request as part of this application.

Sven introduced that section of the meeting that included the opportunity for the public to be heard.

Linda Marousek read from the "Rules of Conduct: as they relate to a public hearing. She emphasized that the proposed unclassified use permit did not require a public hearing and the rules of a public hearing did not apply. She further added that the rules provided a template of how this meeting could be conducted.

Planning Agency Meeting Minutes of May 12, 2003

Howard Jensen, a representative of Alex White, gave a presentation about the project. He showed drawings of the different changes the project went through as City staff presented areas of concern; i.e., open spaces and setbacks. He responded to different questions and concerns voiced by the Planning Agency members.

Chair Kalve then opened the meeting up for public comment:

The following citizens stepped forward, in turn, to speak about their concerns with the project: Peter Skelly (opposed), Jerry Bergman (opposed) and Robert Bensen (opposed).

Peter Skelly of 23622 7th Avenue South stepped forward and spoke about his concerns that included setbacks, landscaping, and density. (Mr. Skelly provided the Agency with a second document that noted his concerns and an alternative set of recommendations.)

Jerry Bergman of 620 S. 239th Street told that Agency that he had concerns involving the height issue, street access from Marine View Drive South, and residential parking on 7th Avenue South. He submitted photos of the building that had housed the Zenith Grocery.

Mr. Benson, a resident of Des Moines, had concerns about how parking along Marine View Drive would be impacted by the proposal. He indicated that there are only a few parking stalls provided on the west side of Marine View Drive and that they are used by people living in his tri-plex which is immediately south of the project.

Chair Kalve thanked those who had signed up to speak and said that there would now be deliberation. There was discussion among Agency members, with an occasional question put to some of those who had spoken during the public comment period. He then suggested that the discussion be continued at the next meeting.

Member Proulx asked if Agency members could contact City staff if they had any questions and it was agreed that the cutoff day for questions would be this Friday.

Sven asked for a motion to adjourn; the motion was made and seconded.

NEXT MEETING DATE

Next regular meeting to be held on June 2, 2003

ADJOURNMENT

Chair Kalve adjourned the meeting at 8:56 p.m.

Respectfully submitted,

Barbara Coulter
Planning Agency Secretary

PRELIMINARY
REGULAR MEETING DES MOINES PLANNING AGENCY

MINUTES

June 2, 2003

The Des Moines Planning Agency meeting was called to order at 7:00 p.m. in the Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE to the Flag was given.

ROLL CALL - Present: Agency Members Sven Kalve, Gene White, John Colvard, Kristi Drebeck Brown, John Savage and Donald Riecks. Absent: Agency Member Mark Proulx. Also present was Community Development Director Judith Kilgore, Senior Planner Robert Ruth and Land Use Planner II Celeste Carlson.

MOTION was made, seconded and passed unanimously, to excuse Agency Member Proulx.

OATH OF OFFICE

The Oath of Office was administered to newly reappointed members John Covard and Kristi Drebeck Brown.

APPROVAL OF MINUTES

MOTION was made, seconded and passed unanimously, to approve the minutes of July 8, 2002, September 9, 2002 and May 12, 2003.

OLD BUSINESS

Continued Discussion - Unclassified Use Permit for Zenith Viewpointe, File #LUA 2001-015

Upon questioning, Agency Members Colvard and Brown noted for the record that they have reviewed the complete material of record of the meeting they missed on May 12, 2003, regarding this issue and are able to participate in the discussion and deliberation this evening.

Planning Agency Member commented that the three buildings that are planned for the project would tend to cover too much of the property. He would prefer to see two buildings because on the north side of the property where there are two structures, the open space would match. He felt there could be a loss of privacy if there was a large structure in the middle of the proposed three structures, looking down on the open space, the yards of the two houses to the north. His preference would be two structures with three dwelling units per structure.

Agency Member Riecks noted that when this area was annexed, the residents were assured that there would be no major changes in the zoning code. He felt that while this request may meet the code, it does not meet the intent of the residents of the area to remain residential. He felt the scale of project is out of line and will create problems for the residents below the development. He also noted that there is inadequate land for children to play.

Planning Agency Member pointed out that the aerial map shows large residential structures and other complexes. Felt that the owners should be allowed to utilize their property in an acceptable functional way within the neighborhood. However, the function and use proposed causes him some conflict in its overall nature.

Planning Agency Member commented that there is a need to balance community interest with encouraging sound development within the allowable zoning. There is some debate whether this project is in compliance with all that. Feels the design could be made more compatible with the surrounding neighborhood and feels some compromise is in order.

Chairman of the Agency reminded members that the objective this evening is to provide a recommendation to the City Council regarding this matter.

MOTION was made and seconded, to recommend that the City Council approve the proposed Unclassified Use Permit subject to the recommend five (5) conditions of approval as specified on page 7 of the May 12, 2003, Administrative Report.

Senior Planner Ruth advised that should Agency Members decide to reduce the number of buildings from 3 to 2, then staff would go back and amend the SEPA agreement to allow for some flexibility for the size of the buildings to afford more open space.

AMENDING MOTION was made and seconded to add condition number 6, that the development be limited to two buildings to allow more open space and to provide compatibility to surrounding property.

Planning Agency member expressed concern that by restricting one of the buildings to having only 3 living units would make the project less desirable in terms of ownership.

The maker of the motion noted that he did not place a restriction on the number of units. The developer would still be allowed to have the same number of units. The purpose of the motion was to allow more open space.

VOTE ON MOTION: Motion passed four to two.

MOTION was made and seconded, to modify condition number 1 to add the language "subject to the recommended revisions from the Planning Agency". Motion passed unanimously.

MOTION was made, seconded and passed, to accept condition number 2 as written.

MOTION was made and seconded, to accept condition number 3 as written.

Planning Agency member felt that allowing six residential units is too much density for the neighborhood. He noted the surrounding area is single family residential and there are no play grounds in the area for children. He would prefer four units but will accept five.

Agency consensus was to leave the number of residential units at six.

VOTE ON MOTION: Motion passed five to one.

MOTION was made and seconded, to accept condition number 4 as written.

MOTION TO AMEND: Motion was made and seconded, to amend condition 4 to read "no greater than 2000 square feet,".

Planning Agency member expressed concern that by increasing the commercial/office floor space it would decrease the residential space.

VOTE ON MOTION: Motion passed four to two.

MOTION was made and seconded, to adopt condition number 5 as written.

Senior Planner Ruth noted that under the Neighborhood-Commercial zoning the building height is measured from the average finished grade of the surrounding buildings. Condition number 5 was written to make it clear that all of the underlining zoning would be checked.

VOTE ON MOTION: Motion passed unanimously.

FRIENDLY AMENDMENT: It was noted that the main motion now reads to recommend approval subject to the conditions as adopted.

VOTE ON MAIN MOTION: Motion passed unanimously.

Additional Recommendations: Planning Agency members noted the following recommendations that they wish to convey to the City Council in recommending approval of the Unclassified Use Permit:

- Having two buildings would blend with the surrounding neighborhood.
- Some density in the general area appears to be greater than single family.
- Accept staff's recommendation for increased step-setback for light, shadow and privacy.
- The number of proposed dwellings units of eight is too much for the property and would not pass the compatibility test. Six is felt to be the maximum level for this property.
- Home Office as opposed to just allowing open commercial is an important consideration in the traffic factoring.
- The pedestrian stairway shall be maintained in an acceptable standard, with access to the bus stop.

Chairman announced a 5 minute break.

Midway Sub-Area

ADJOURNMENT

The meeting was duly adjourned.

City of Des Moines
Community Development Department

CODE INTERPRETATION

October 29, 2002

To: Interested Parties

From: Judith S. Kilgore, Community Development Director 

Re: Density calculation for the Neighborhood Commercial Zone

Question Presented: Can the square footage of unimproved rights of way in the N-C zone be included as part of the floor area ratio calculations when improvements are made at the developers expense and will primarily serve the proposed project?

Short answer: Yes. The square footage of the unimproved right-of-way may be included in the calculation of the floor area ratio when the area in question is totally contiguous to or within the site that will be wholly improved at the developer's expense and will primarily serve the proposed project.

Background:

DMMC 18.20.040 states that "The maximum permitted floor area to be contained in all buildings on a lot or site in a N-C zone shall not exceed the square foot area of the lot or site upon which the building or buildings are located."

Although there is a clear definition for the term "lot" (DMMC 18.04.390) currently there is no clear definition of the term "site". Therefore developing a formula for calculating floor area ratios is difficult when considering a building site. The Greater Des Moines Comprehensive Plan regulates the maximum dwelling units per acre, but does not specify if that is inclusive or exclusive of streets, parks, drainage tracts or rights-of-way. In subdivisions all of these items are included in computation of density, i.e. they are part of the "site".

Discussion:

In many projects developers are required, as a condition of approval, to improve public areas such as plated, but unimproved, rights of way to current street standards. In addition, many times the developer is required to maintain these now improved rights-of-way. Frequently, these improved and maintained public rights of way primarily serves the developers proposed project.

In this situation it seems reasonable to permit the developer to include the square footage of the improved right- of-way as part of the project "site". In addition, it appears that Comprehensive Plan is silent on excluding rights-of-way and other dedications from computation of density requirements

Conclusion:

Since staff review on any project includes analysis of all the areas to be developed, including those under public ownership, it is not possible to restrict the term "site" to just the land owned by the applicant. Therefore it is my interpretation that when improvements of rights-of-way are required to be developed in the N-C zone as a condition of project approval and these improvements serve primarily the proposed project, it is reasonable to include these areas in the definition of "site" and to use the square footage number as part of the calculation of floor area.

Authority:

This interpretation is made under the authority of DMMC 18.76.010 and shall be considered a Type I land use action.

*Now recitals.
Richard
public sign on property. Scott R.
June June*

AGENDA ITEM

*revised
version
passed 70*

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Continuation of Public Hearing for
Final Assessment Role LID 1-97-9
4th Place South Right-of-Way

ATTACHMENTS:

Draft Ordinance No. 03-125
Attachment 1 - LID Map
Attachment 2 - Cost Summary
Attachment 3 - City Clerk's Notification
Attachment 4 - Final Assessment Roll
Attachment 5 - Protest Letters
Attachment 6 - City Attorney's July 2, 2003 letter
responding to 1st and 2nd protest letters
Attachment 7 - Public Works Director's July 8,
2003 Memorandum re 3rd protest letter
Attachment 8 - City Attorney's July 9, 2003 letter
responding to 3rd protest letter

FOR AGENDA OF: August 14, 2003

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: August 4, 2003

CLEARANCES:

☒ Public Works *[Signature]*

☒ Legal *[Signature]*

☒ Finance *[Signature]*

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this action is to request Council to proceed with the public hearing that was continued from July 10, 2003. The purpose of the hearing is to confirm the final assessment roll of the 4th Place South Right-of-Way Local Improvement District (LID 1-97-9). After the public hearing is closed, it is recommended that Council approve Draft Ordinance No. 03-125.

Recommended Motions:

"I move to suspend Council Rule 26(b) to consider Draft Ordinance No. 03-125 on first reading."

"I move to adopt Draft Ordinance No. 03-125."

Background

Approval of LID:

In July 1997, Council approved Ordinance 1194 establishing Local Improvement District (LID) 1-97-9 to construct road improvements on 4th Place South. There are twelve properties in the LID. Nine property owners signed the LID petition, representing a seventy-five percent approval rate.

Completion of LID:

The construction was completed in November 1998. The improvements consist of a twenty-eight foot wide paved street with five-foot gravel shoulders.

- A map of the improved area is included as Attachment 1.
- A summary of final costs is included as Attachment 2.

Final Assessment:

At the May 22, 2003 meeting, the City Council adopted Resolution No. 952 setting the public hearing for the final assessment roll for June 26, 2003. Timely notification was sent to the assessed property owners within the LID boundaries

- A copy of the notice is included as Attachment 3.
- The Final Assessment Roll is included as Attachment 4.

Protests:

At the June 26, 2003 City Council meeting, staff acknowledged the receipt of three protest letters, included as Attachment 5.

- Two property owners submitting protest letters were present at the hearing and provided testimony that they did not have notification of the existence of the local improvement district assessment when purchasing their properties.
- The third protest letter disputed that the owner's property benefits equally from the improvements in proportion to the other property owners within the LID.

As a result of the protests, the City Council continued the public hearing until July 10, 2003 to give staff an opportunity to respond to the protests.

City's Response:

- A copy of the city attorney's July 2, 2003 response to the first two protests regarding lack of notice is included as Attachment 6.
- A copy of the public works director's response to the third protest letter regarding lack of benefit is included as Attachment 7.
- A copy of the city attorney's July 9, 2003 response to the third protest letter regarding lack of benefit is included as Attachment 8.

Because the city's response to the third protest letter included an invitation for a reply from the protesting property owner, the City Council continued the hearing once again until August 14, 2003 to allow time for the owner's reply.

Protester's Replies to City's Response:

On July 29, 2003, the city received \$1,807.78 from First American Title Insurance Co. for the LID assessment on property owned by protesters Alejandro and Alicia Flores, who had alleged lack of notice.

As of this date there has been no reply from the 2nd protester who alleged lack of notice.

As of this date there has been no reply from the third protester who alleged lack of benefit.

Discussion

The estimated cost of the construction (including financing) to be paid by the twelve property owners was \$22,538, or \$1,878.17 per parcel. The City paid for the engineering and inspection of the improvements. Attachment 2 presents a comparison of estimated to actual costs. The final LID cost is \$21,693.30, which is less than the initial estimate. The City intends to finance the debt internally. Based on the City's current borrowing rate, the interest rate will be approximately 4.1%. As such, the assessment per parcel is \$1,807.78, which computes to an annual payment (assessment and interest) of \$220.67 per year for ten years. The calendar below identifies the key dates of the assessment process:

<i>Date</i>	<i>Action Items</i>
April 16, 2003	Prepare final assessment and file with City Clerk
May 22, 2003	Adopt resolution setting date of public hearing for final assessment
June 5 & June 10, 2003	Publish notice of public hearing
June 10, 2003	Mail notices of public hearing to L.I.D. participants
June 26, 2003	Conduct final assessment roll hearing
July 10, 2003	Continue final assessment roll hearing
August 14, 2003	Council adopts ordinance confirming final assessment roll
August 15 to August 24, 2003	Appeal period for L.I.D. participants
August 25 to September 23, 2003	Thirty-day prepayment period for L.I.D. participants

Alternatives

1. Council may close the public hearing, waive rule 26(b), and adopt the LID assessment roll ordinance on the first reading.
2. Council may close the public hearing and adopt the final assessment roll ordinance at a subsequent second reading of the ordinance.
3. Council may direct staff to revise the assessment roll and set another public hearing date for the revised assessments.

Financial Impact

The City's Arterial Street Fund paid the construction costs associated with this LID at the time of construction in 1998. Because of the relatively small amount of debt, financing internally saved the LID participants debt issuance costs.

Recommendation

Staff recommends alternative #1, closing the public hearing and adopting the assessment roll at the first reading of Draft Ordinance No. 03-125.

DRAFT ORDINANCE NO. 03-125

CITY ATTORNEY'S FIRST DRAFT, 6-16-03

CITY ATTORNEY'S SECOND DRAFT, 7-3-03

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to Local Improvement District No. 1-97-9, approving and confirming the assessments and assessment roll of Local Improvement District No. 1-97-9, which has been created and established for the purpose of construction of a paved street within the 4th Place South right-of-way in the City of Des Moines, Washington; and levying and assessing the costs and expense thereof against the several lots, tracts, parcels of land, and other property shown on the roll.

WHEREAS, the assessment roll levying the special assessments against properties located in Local Improvement District No. 1-97-9 in the City of Des Moines, Washington (the "city"), has been filed with the city clerk as provided by law, and

WHEREAS, notice of the time and place of hearing thereon and of making objections and protests to the roll was duly published at and for the time and in the manner provided by law fixing the time, date, and place of hearing for the 26th day of June, 2003, at the hour of 7:30 p.m., local time, in the Council Chambers, Des Moines, Washington, and further notice thereof was duly mailed by the city clerk to each property owner shown on the roll, and

WHEREAS, at the time and place fixed and designated in the notice, the hearing was duly held and written protests received were resolved and no one appeared at such hearing; now therefore,

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

Sec. 1. The assessments and assessment roll of Local Improvement District No. 1-97-9 which has been created and established for the purpose of construction of a paved street within the 4th Place South right-of-way in the city, as provided by Ordinance No. 1194 as the same now stands be and the same are in all things and respects approved and confirmed in the total amount of \$21,693.30.

Sec. 2. Each of the lots, tracts, parcels of land, and other property shown upon the roll is determined and declared to be specially benefited by this improvement in at least the amount charged against the same and the assessment appearing against the same is in proportion to the several assessments appearing upon the roll. There is hereby levied and assessed against each lot,

tract, parcel of land and other property appearing upon the roll the amount finally charged against the same thereon.

Sec. 3. The assessment roll as approved and confirmed shall be filed with the treasurer of the city for collection and the treasurer is authorized and directed to publish notice as required by law stating that the roll is in the treasurer's hands for collection and payment of any assessment thereon or any portion of the assessment ((can)) may be made at any time within thirty days from the date of the first publication of such notice without penalty, interest, or cost, and that thereafter the sum remaining unpaid may be paid in ten equal annual installments. The estimated interest rate on the whole unpaid sum is stated to be four point one percent (4.1%) per annum. The first installment of assessments on such assessment roll shall become due and payable during the thirty-day period succeeding the date one year after the date of first publication by the city treasurer of notice that the assessment roll is in her hands for collection and annually thereafter each succeeding installment shall become due and payable in like manner. If the whole or any portion of the assessment remains unpaid after the thirty-day period, interest upon the whole unpaid sum shall be charged at the rate as determined above and each year thereafter one of such installments, together with interest due on the whole of the unpaid balance, shall be collected. Any installment not paid prior to the expiration of the thirty-day period during which the installment is due and payable shall thereupon become delinquent. All delinquent installments shall be subject to a charge of interest at the rate as determined above and for additional charge of six percent (6%) penalty levied upon both principal and interest due upon such installment or installments. The collection of such delinquent installments shall be enforced in the manner provided by law.

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.

Ordinance No. ____
Page 3 of ____

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

Sec. 3. 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:

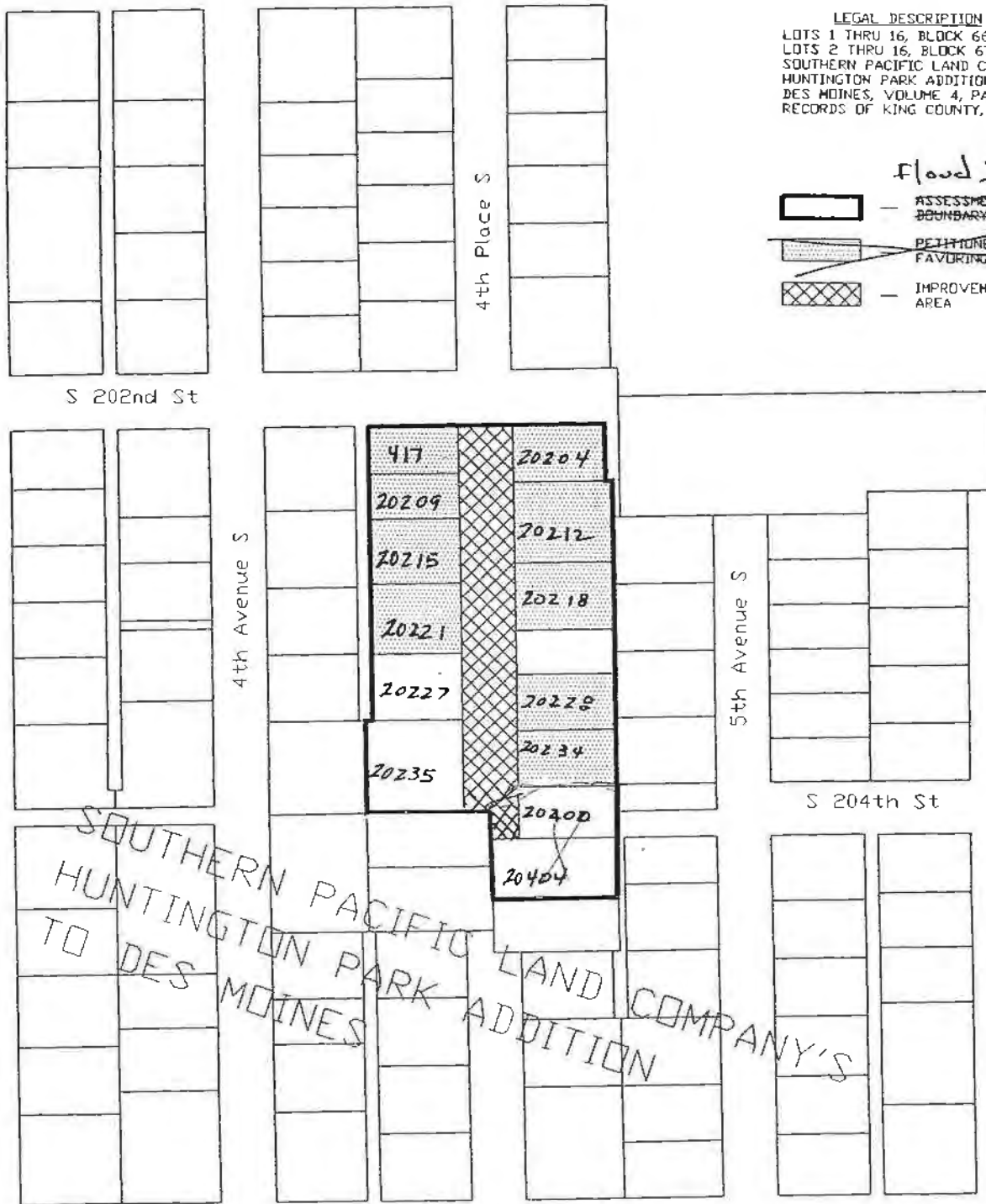
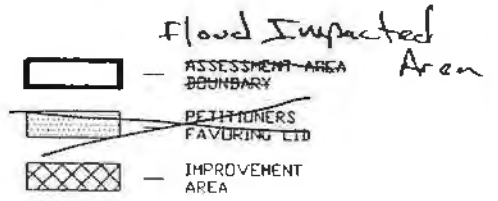
City Attorney

ATTEST:

City Clerk

Published: ____, 2003
DRAFTORD/03-125

LEGAL DESCRIPTION
 LOTS 1 THRU 16, BLOCK 66 AND
 LOTS 2 THRU 16, BLOCK 67 OF
 SOUTHERN PACIFIC LAND COMPANY'S
 HUNTINGTON PARK ADDITION TO
 DES MOINES, VOLUME 4, PAGE 24,
 RECORDS OF KING COUNTY, WASHINGTON



City of Des Moines

4th Place South LID
 Asphalt Pavement

Filename: 4thPLLID

SHT 1 OF 1

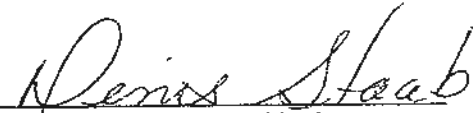
ATTACHMENT 1

4th Place LID Cost Summary

	Estimate	Actual	Variance Favorable (Unfavorable)
Construction	\$17,864.00	\$19,593.30	(\$1,729.30) See Attached
Debt Issue Costs	\$1,954.00	\$0.00	\$1,954.00
County Filing Fees	\$1,320.00	\$600.00	\$720.00
City Administration	\$1,400.00	\$1,500.00	(\$100.00)
Total LID	\$22,538.00	\$21,693.30	\$844.70
Number of Parcels	12	12	
Principal per parcel	\$1,878.17	\$1,807.78	\$70.39

CERTIFICATE OF MAILING

I, Denis Staab, City Clerk of the City of Des Moines, declare under penalty of perjury that on the 23rd day of May, 2003, I mailed a "Notice of Public Hearing for LID No. 1-97-9 Final Assessment Roll" attached to this certificate, to the property owners named therein, who are the owners within Local Improvement District No. 1-97-9.


Denis Staab, City Clerk

CITY OF DES MOINES, WASHINGTON
NOTICE OF PUBLIC HEARING

LID NO. 1-97-9 FINAL ASSESSMENT ROLL

NOTICE IS HEREBY GIVEN to the owners or reputed owners of lots, tracts, and parcels of land or other property that has been specially benefited, that a public hearing is scheduled for June 26, 2003, at 7:30 p.m., or as soon thereafter as the hearing may be held, in the Des Moines City Council Chambers, 21630 11th Avenue South, Des Moines, Washington 98198.

All persons desiring to object to the final assessment are hereby notified to make such objection in writing and to file the same with the City Clerk on or before the date fixed for such hearing. Such protest should be signed by the property owner and should state the property by address, lot and block or other appropriate description.

The nature of the street improvements consisted of a twenty-eight (28) foot wide paved street with five (5) foot gravel shoulders. The total cost of the improvements is \$21,693.30.

Below is the final assessment against the property here listed, of which you are shown on the rolls of the King County Assessor to be the owner(s).

Account #

1

Name & Address

Salvador Berbera
20204 4th Place South
Des Moines, WA 98198

Legal Description

Lot 1 thru 3, Block 66

Final Assessment

\$1,807.78

City of Des Moines
LID 4TH PLACE (LID 1-97-9) FINAL ASSESSMENT ROLL - TREASURY INFORMATION

County Tax #	Account #	Name Address and Legal	Final Assessment
7893204870	1	Salvador Verbera 20204 4th PI So Des Moines WA 98198 Lot 1 thru 3, Block 66	\$ 1,807.78
7893204881	2	Jill and Jon Brehmer 20212 4th PI So Des Moines WA 98198 Lot 3 thru 6, Block 66	\$ 1,807.78
7893204880	3	James R. & Shannon E. Brattkus 20218 4th PI So Des Moines WA 98198 Lot 7 thru 9, Block 66	\$ 1,807.78
7893204931	4	Ronnie D. Felix 20228 4th PI So Des Moines WA 98198 Lot 12 thru 14, Block 66	\$ 1,807.78
7893204930	5	Tony C. Wilson 20234 4th PI So Des Moines WA 98198 Lot 15 thru 16, Block 66	\$ 1,807.78
7893204950	6	Lynn D. Cluck 417 So 202nd Street Des Moines WA 98198 Lot 1 thru 2, Block 67	\$ 1,807.78
7893204960	7	Jack W. and Mary Jean Benner 20209 4th PI So Des Moines WA 98198 Lot 3 thru 4, Block 67	\$ 1,807.78
7893204970	8	Sylvia Ruth Church 20215 4th PI So Des Moines WA 98198 Lot 5 thru 7, Block 67	\$ 1,807.78
7893204975	9	Glendon L. and Darlene M. Dixon 20221 4th PI So Des Moines WA 98198 Lot 8 thru 10, Block 67	\$ 1,807.78
7893204981	10	Roger L. and Sharon L. Collicott 20227 4th PI So Des Moines WA 98198 Lot 11 thru 13, Block 67	\$ 1,807.78
7893204980	11	Phay and Phanphimon Vilaysom 20235 4th PI So Des Moines WA 98198 Lot 14 thru 16, Block 67	\$ 1,807.78
7893204920	12	Alejandro and Alicia M. Flores 20222 4th PI So Des Moines WA 98198 Lot 10 thru 11, Block 66	\$ 1,807.78

September 16, 2002

RECEIVED

63 JUN 12 AM 10:37

CITY OF DES MOINES

June 10, 2003

Alejandro & Alicia M. Flores
20222 4th Place South
Des Moines, WA 98198
Lot 10 thru 11, Block 66

RE: LID NO. 1-97-9 FINAL ASSESSMENT ROLL

Dear City of Des Moines,

We are in receipt of an assessment of \$1,807.78 against our property for the paving of 4th Place South. We purchased our home in July of 1999. 4th Place South was paved prior to the construction of our home. The road was existing when we purchased our home and we are therefore objecting to put forth money for an expense we were unaware of at the time of purchase, and an expense that we cannot afford. Isn't this an expense that should typically be paid for out of property taxes?

Alejandro Flores

Alejandro Flores

Alicia M. Flores

Alicia M. Flores

CC: City Clerk of Des Moines

ATTACHMENT 5

Lynn D. Cluck
417 So. 202nd St.
Des Moines. WA. 98198

RECEIVED

03 JUN 26 PM 7:15

6/24/03

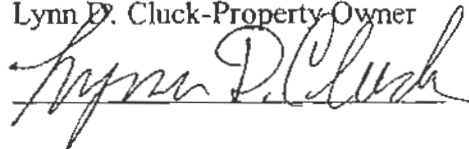
Des Moines City Council:

CITY OF DES MOINES

I, Lynn D. Cluck, at this time, declare my objection to the assessment on my property, legal description Lot 1 thru 2 Block 67 Southern Pacific Land Company Huntington Park Addition to Des Moines. Although I acknowledge the benefits of the LID improvements, I do not believe that my property benefits from these improvements equally in proportion to the other property owners affected by LID No. 1-97-9. My home address is on South 202nd Street, which was already paved through to the intersection of 4th Place South. The homes that are to the South of my house, on 4th Place South, were constructed several years later than mine, by the same developer. 4th Place South, from the intersection at South 202nd Street, to South 204th, was left unpaved, with only gravel, and a very unacceptable, open ditch for managing surface water. The developer, JB Development, borrowed several millions of dollars, for their development projects, and defaulted on the loan obligation, leaving this project, and others unfinished.

It is my contention that had none of the other homes been built, requiring access, and extension of 4th Place South where 4th Place South did not connect to South 204th, that none of the improvements comprising LID 1-97-9 would have been necessary. My neighbor to the East, at 20204 4th Place South, is the only other home that predates my home. His driveway is not even located on 4th Pl So. Nor does the pavement extend up So. 202nd St. I believe that neither of our homes benefit, to the extent of the homes to our South, from the paving 4th Pl So. My assessed amount of \$1,807.78, should be waived, or at the very least substantially reduced.

Lynn D. Cluck-Property Owner



RECEIVED

03 JUN 26 AM 7:04

CITY OF DES MOINES

June 25, 2003

Des Moines City Council
21630 11th Avenue South
Des Moines, WA 98198

RE: Public Hearing for LID #1-97-9

Dear Council:

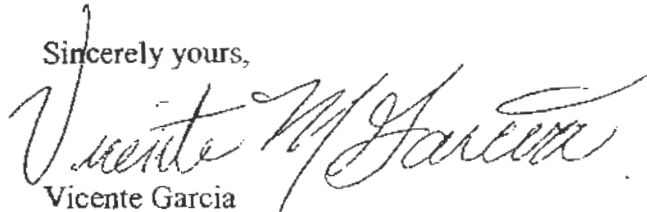
On April 30, 2003, my wife and I purchased a house located at 20228 4th Place South. The buying procedure included the usual title search process. The title report indicated no lien against the property. The family we purchased the house from had only owned it for approximately two years so it is possible that they also were not aware of the pending LID assessment.

On May 9, 2003, my neighbor showed me a copy of the Public Hearing notice that he had received in the mail. Since the notice for my property was apparently forwarded to the previous owner, I contacted City Hall and requested a copy of the notice.

In light of the fact that the assessment did not appear on my title and that, if it had, the assessment price would have been included in the negotiation process for the purchase price, I respectfully ask that no assessment be levied against my property. If a copy of the title report is necessary, please contact me at (206) 878-7352.

Thank you for your assistance in this matter.

Sincerely yours,


Vicente Garcia

ATTACHMENT 5



City of Des Moines

OFFICE OF THE CITY ATTORNEY
21630 11TH AVENUE SOUTH, SUITE C
DES MOINES, WASHINGTON 98198-6398
(206) 870-6553 FAX: (206) 870-4387



July 2, 2003

Alejandro & Alicia M. Flores
20222 4th Place South
Des Moines WA 98198

Re: LID No. 1-97-9
Lots 10 & 11, Block 66

Dear Mr. & Mrs. Flores:

After investigation of the facts and review of your protest, as stated in your letter of June 10, 2003 and at the public hearing on June 26, 2003, it is my opinion that your property is subject to the above LID assessment.

I have recommended to the City Council that, at the continued public hearing on July 10, 2003, they approve the proposed final assessment, including the assessment against your property. My recommendation is based upon the following:

- 1) Proper notice was given to the owners of all affected properties prior to the formation of the LID and the preliminary assessment;
- 2) The City is not required to record the ordinance establishing the LID and did not do so in this case.
- 3) Even though the ordinance establishing the LID was not recorded, the fact that the LID had been established and that the properties were subject to the LID assessment should have been disclosed by anyone selling the properties and should have been discovered and disclosed by the title insurance companies. The title companies all subscribe to a service that reports newly formed LIDs;
- 4) If homes subject to the LID assessment were sold subsequent to the preliminary assessment and the new purchasers were not made aware of the LID assessments, the properties are still subject to the assessments because the properties benefited from the improvements;
- 5) The new purchasers may claim that the benefit from the improvement was figured into the purchase price of their home when they purchased it. While this may very well be true, the purchasers still have a remedy to recover the amount

of the assessment, either from the seller from whom they purchased the property or from their title insurance company that failed to notify them of the assessment lien.

Hopefully this will answer your questions regarding the LID assessment. Please do not hesitate to contact me if you have further questions.

Yours very truly,

A handwritten signature in black ink, appearing to read "Richard S. Brown", with a long horizontal flourish extending to the right.

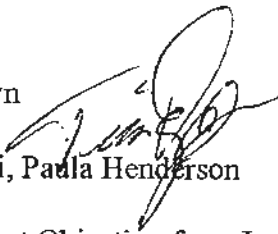
Richard S. Brown
Assistant City Attorney

RSB/rsb

July 8, 2003

MEMO

TO: Richard Brown
FROM: Tim Heydon
COPY: Tony Piasecki, Paula Henderson



Re -- 4th Place LID Assessment Objection from Lynn D. Cluck-Property Owner

I have evaluated the Cluck's objection to the assessment on their property as a result of the 4th Place S. Local Improvement District (LID) dated June 24, 2003, and submitted to the City of Des Moines on June 26, 2003, at 7:15PM. Given the fact that the owner's lot is a corner lot on the intersection of S. 202nd Street and 4th Place S., and given the fact that S. 202nd Street is paved, the owner felt that they did not benefit to the same degree as did properties which were fronting only on 4th Place S.

My findings are as follows:

1. Unpaved roads are often dusty in the summer, a condition that negatively affects all the properties which abut such public right of ways; and
2. Unpaved roads have particularly uneven surfaces which cause additional vehicular noise and can cause road material and storm water to negatively affect abutting properties; and
3. Whereas, paved roads, in addition to minimizing the above problems, also improve the overall appearance of the area; and
4. Whereas, due to the above reasons, paved roads have been proven to increase property values of abutting properties; and
5. Whereas, it is the developer's responsibility to improve right of ways within the City of Des Moines as per the Des Moines Municipal Code Section 12.40.010, including corner lots situated on paved and unpaved streets [12.40.085(2)]; and
6. Whereas, 4th Place S. was a substandard development which was constructed under King County jurisdiction before annexation to the City of Des Moines; and
7. Whereas, a majority of the property owners along 4th Place S. wished to improve their neighborhood with a paved street, which brings the area closer to compliance with City standards; and
8. Whereas, the length of the Cluck's property which abutted the unpaved portion of 4th Place S. was very similar to the length of other properties located along the improvement project; and
9. Whereas, their property will benefit from the street improvement in a similar manner to the other properties within the LID for the reasons listed above;
10. It is my finding that evenly distributing the cost of the LID between the abutting properties is fair and equitable.

I trust that this letter will clear up any questions the owner may have regarding my analysis on fairly distributing the cost of the 4th Place S. LID.

ATTACHMENT 7



City of Des Moines

OFFICE OF THE CITY ATTORNEY
21630 11TH AVENUE SOUTH, SUITE C
DES MOINES, WASHINGTON 98198-6398
(206) 870-6553 FAX: (206) 870-4387



July 9, 2003

Mr. Lynn D. Chuck
417 South 202nd Street
Des Moines WA 98198

Re: LID No. 1-97-9
Lots 10 & 11, Block 66

Dear Mr. Chuck:

Thank you for your letter of June 24, 2003. It has been given to me for response and as I understand your protest to the final assessment of this LID you are questioning the amount of benefit that your property has received from the improvement.

My preliminary investigation into your protest is that the length of your property abutting the previously unpaved portion of 4th Place South is very similar in length to other properties located along the improvement project. In the LID assessment process the City is entitled to a presumption that your property is benefited to the same extent as other properties and, unless this presumption is nullified by expert testimony such as an appraisal, the presumption will hold. (RCW 35.44.100)

The City Council has authority to revise or amend the final assessment roll as it sees fit, however a downward adjustment to any property assessment will require additional money from another source to make up for the reduced assessment. The difference could be made up from public funds or by re-assessing the remaining property owners in the LID, which would require a new hearing and additional costs, including additional interest and notification costs. For these reasons the City Council cannot revise or amend the final assessment without clear evidence that your property has not benefited to the same extent as the other properties.

The proper procedure, if you choose to proceed with your protest, is for you to submit an expert opinion rebutting the presumption of the benefit to your property. The City must then counter with its own expert opinion substantiating the benefits of the improvement to your property. The City Council then makes the final determination without taking additional testimony.

This process has been explained to the City Manager and will be explained to the City Council at or prior to the continued hearing on this matter, now set for the meeting of July 10, 2003. My recommendation will be that they continue the public hearing on the final assessment until a meeting sometime in August to allow you time to proceed with your protest if you choose to do so following the procedure outlined above.

Yours very truly,

A handwritten signature in black ink, appearing to read "Richard S. Brown", written over a horizontal line.

Richard S. Brown
Assistant City Attorney

RSB/rsb

cc: Linda A. Marousek, City Attorney
Anthony Piasecki, City Manager
Tim Heydon, Public Works Director
Paula Henderson, Finance Director
City Council

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 Chaufy.

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 Chaufly.

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. Chaufy
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 this movement of funds will not be done through a formal budget amendment, as normally recommended by staff. She felt the reason the formal budget process was not used is because it would require a 5 to 2 favorable vote. She also noted concern that citizens will not be able to track where this money was spent if money for the ACC is paid from the general account and does not show up under payments to the Airport Defense Fund.

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). The City Attorney had advised the Council in a prior meeting that the vote to withdraw money from the 2003 budget for the ACC constituted a withdrawal of the City from

the ACC. She noted that she maintained that the City is still a member and questioned legal staff on the issue.

City Attorney Marousek stated that several months ago she had summarized that since the Council withdrew funding of ACC that the City was no longer a member.

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 the scope of the ACC agreement as it appears to be more than just the third runway and includes regional transportation issues. She questioned whether the City may be delegating its authority to negotiate on important issues over and above the airport by being bound by decisions made by the ACC Executive Committee.

Councilmember Sherman interjected that the Agenda for tonight's meeting did not include the ACC agreement and that it is his belief the Council could not discuss it and should vote on the funding motion on the table.

City Attorney Marousek stated that after further review of the agreement she has determined that the City is still a member of ACC. She agreed with Councilmember Sherman 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.

Mayor Steenrod stated that at the time the special meeting notices were issued, the Councilmembers were under advice from the City Attorney that the City was not a party to the Acc agreement. While she will move forward with a vote on the motion, she noted that she would like the opportunity to discuss the agreement in its entirety at a future date.

VOTE ON MOTION: Motion passed 4 to 2 with Mayor Steenrod and Councilmember Petersen opposed.

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

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

July 31, 2003

The regular 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.

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

ROLL CALL - Present: Mayor Maggie Steenrod, Councilmembers Gary Petersen, Bob Sheckler, Dan Sherman and Susan White. Absent: Mayor Pro Tem Richard Benjamin and Councilmember Scott Thomasson. Also in attendance were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Public Works Director Tim Heydon, Assistant City Engineer Maiya Andrews, Parks and Recreation Director Patrice Thorell, Acting Chief of Police Commander Kevin Tucker and City Clerk Demis Staab.

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

COMMENTS FROM THE PUBLIC

Bob Pond, 23116 30th Avenue South

Mr. Pond informed Council that the gang members have been evicted from the Woodhaven Apartment complex. He thanked Police Commander Tucker for helping to put pressure on the owners of the complex who live in California. He noted that there are still some improvements that need to be made, such as a chain link fence.

David Goretski, 1520 South 268th Street (President of SODA - Save Our Dog Areas)

Mr. Goretski introduced Sonja Kreshel, a Des Moines resident. He spoke in support of Council joining the Interlocal Agreement for a off-leash dog area at Grandview Park that is on the agenda tonight for Council consideration. He advised that he represents the group SODA who have made an agreement with the City of SeaTac to adopt the Grandview Park to use as an off-leash dog area. He felt the off-leash dog area will be a feature destination in south King County and will benefit Des Moines by people stopping for coffee, food and visiting the Marina. He noted that the cost to Des Moines is only \$1,400 which will help install garbage containers, restrooms, signage and fencing. He concluded by informing Council that he will be in charge of the Park operations.

Alli Larkin, 21937 7th Avenue South

Ms. Larkin read a letter to Council and staff noting her concern regarding the Des Moines Beach area. She advised that she serves as a volunteer in the Beach Naturalist program and at the Seattle Aquarium. The Beach Naturalist program mission statement is: To expand knowledge of, inspire interest in, and encourage stewardship of the aquatic wildlife and habitats of Puget Sound and the Northwest. She noted the same evening that Council approved an ordinance granting Comcast an easement to install a fiber optic cable by bringing in heavy equipment on the beach, the Seattle Parks & Recreation Board voted to make specific areas of Seattle Beach Parks Marine Reserves. She concluded by inviting everyone to join her on Sunday, August 10th

at 10 .m. at Des Moines Beach Park, to see and get to know some of the marine life that will surely be put in jeopardy by the construction of the optic cable.

BOARD & COMMITTEE REPORTS

Steven J. Underwood Memorial Park Opening Ceremony

Councilmember Sherman reported attending the ceremonies of the opening of the Park on Friday, July 25th. He noted this is a result of many years of planning and it is a great facility that should prove to be an economic help to the community by bringing people into Des Moines. He stated he is very proud of the Park.

PRESIDING OFFICER'S REPORT

Steven J. Underwood Memorial Park Opening Ceremony

Mayor Steenrod expressed her compliments to the Parks and Recreation staff for their efforts at the new Park. She noted she was really impressed with how wonderful the grass looked and enjoyed seeing the kids excited about the ball field.

Waterland Festival

Mayor Steenrod thanked the Chamber of Commerce and the many volunteers for a successful Waterland Festival.

King County Mayors Meeting

Mayor Steenrod reported attending a meeting of King County Mayors recently. She advised one of the topics of discussion involved the fact that King County gets a large portion of property taxes but is removing a lot of the services that they provide to cities. Another topic was concern over State mandated issues that provide no funding. She advised that the mayors will be tackling this issues in the near future. She also noted that the County is pushing for pockets of unincorporated areas to be annexed into neighboring cities. Another item of concern was raised by Seattle Mayor Nichols that was discovered during the recent emergency management drill. The problem arose that government officials did not understand some of the terminology and procedures that the emergency management team were using. She felt it is very important, not to just Fire and Police, but all officials to review emergency management procedures.

ADMINISTRATION REPORTS

Police Vehicle Accident

At the request of Mayor Steenrod, City Manager Piasecki advised that the Des Moines Police Officer involved in a traffic accident last night at South 216th and Pacific Highway South, has been released from the hospital and is at home recovering.

Steven J. Underwood Memorial Park Opening Ceremony

City Manager Piasecki thanked Parks & Recreation Director Thorell and her staff for a job well done in a very tasteful manner in the dedication of the new Park in the memory of fallen Des Moines Police Officer Underwood.

4th of July Report

City Manager Piasecki informed Council that a written report regarding the 4th of July has been placed in Council's boxes.

Redondo Boat Launch Project

City Manager Piasecki announced that the Redondo Boat Launch Project will be underway soon and closure of the area will occur in early September.

Field House Construction

City Manager Piasecki reminded everyone that the Des Moines Field House is open during construction improvements to the facility.

Application for Initiative Petition

City Manager Piasecki advised that the City has received an application for an Initiative Petition to reduce the Utility Tax from 4% to 2%. He requested City Attorney Marousek provide an update on the status of this request.

City Attorney Marousek informed Council that she and Assistant City Attorney Brown have reviewed and researched the request to repeal taxes. She advised that the conclusion is that both State statute and Des Moines Municipal code are clear that the request is not appropriate subject to an initiative.

Traffic Unit Update - Status Report

City Manager Piasecki noted that because of missing data, he is not ready to present a full report to Council as requested. He advised that the City is working with the Administrator of the State Court to merge a data base to obtain the data that is necessary in order to present Council with a full comprehensive report. Hopefully the report will be ready for Council in early September.

CONSENT CALENDAR was read by City Clerk Staab.

1. Motion is to approve the minutes of July 10 and 17, 2003.
2. Motion is to approve the Contract with Lakeridge Paving Company in the amount up to \$31,980.00 plus tax and authorize the City Manager to sign the contract substantially in the form as submitted. And to authorize the City Manager to approve change orders not to exceed 10% of the total contract amount.
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.~~ [ED NOTE: This item was removed at the request of Mayor Steenrod.]
4. Motion is to approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-33625-6 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.
5. Motion is to approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19389-6 KNT and to authorize the City's counsel to approve said Judgment and Decree and present it to the court, for approval and entry, substantially in the form as submitted.

Councilmember Petersen announced that he is recusing himself from Consent Items number 4 and 5.

Mayor Steenrod removed Item #3 from the Consent Calendar.

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

REMOVED CONSENT ITEM

Consent Item #3 - Interagency Agreement with City of Kent for Pacific Highway South Joint Use of Stormwater Facility

Mayor Steenrod advised that she has visited the site and is satisfied that it is down a steep embankment and will not be visible from the road. However, she sees no changes in the agreement that Council had requested.

Public Works Director Heydon drew the Mayor's attention to the fact that the old agreement is in Council's packet, but the new agreement is the last item contained within the packet. He pointed out that the two changes requested by Council have been addressed in the latest version of the agreement.

MOTION was made by Councilmember Sherman, seconded by Councilmember White and passed unanimously, to enter into the 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 further to authorize the City Manager to sign said agreement substantially in the form as submitted.

PUBLIC HEARING

Draft Ordinance No. 03-032 [ASSIGNED ORDINANCE NO. 1327] Comcast Cable TV Franchise - 1st Reading

Mayor Steenrod introduced the subject. She read the procedures into the record for conducting the Public Hearing and declared the Hearing open.

Assistant City Manager Loch, along with the City's Consultant Lon Hurd of 3-H Cable Communications Consultants, reviewed the following items in Council's packets:

- Term - 6 years, with possible 2 year extension
- Franchise Fee - %5 of gross revenues
- Street Restoration
- Relocation - Shall remove or relocate facilities at City's direction
- Refunds for outages
- \$140,000 PEG Contribution
- Internet Excluded from Agreement
- Upon termination Comcast shall removed all facilities
- \$10,000 application fee (partial reimbursement to City for negotiation expenses)

PROPOSERS:

James Stewart, 24812 9th Place South

Mr. Stewart noted that Comcast internet service billing is combined with the TV Cable bill. He questioned whether the City does receive utility taxes on the internet billing.

OPPONENTS - None

As there were no further speakers, Mayor Steenrod questioned whether Administration had any further comments.

Mr. Hurd informed Council that the FCC has ruled that internet usage is an information service and therefore is not eligible to be taxed.

Mayor Steenrod declared the Hearing closed.

Upon questioning by Councilmember Petersen, Mr. Hurd advised that Comcast customers will be billed approximately 30 cents per month for Comcast to recoup the \$140,000 PEG contribution as allowed by law.

Mayor Steenrod questioned Administration as to what are the plans for the proposed improvements using the \$140,000.

Assistant City Manager Loch noted that the PEG funds can only be used for capital improvements to the City's public, education, and government broadcast system. He advised that shortly an RFQ or RFP will be put out regarding installation and design of improvements. This will be brought to council to make final determination of equipment and scheduling of installation.

MOTION was made by Councilmember Sheckler, seconded by Councilmember Petersen and passed unanimously, to suspend Council Rule 26(b) to allow enactment of Draft Ordinance No. 03-032 on first reading.

MOTION was made by Councilmember Sheckler, seconded by Councilmember Sherman to enact Draft ordinance No. 03-032 granting Comcast a six year renewal for a cable television franchise.

Councilmember Sherman stated that he is looking forward to the improvements of lighting and sound in the Council chambers. He noted that Council has received much feed-back over the years as to the poor quality of the video re-broadcasts of Council meetings.

Councilmember Sheckler commented that the agreement gives Comcast 90 days to make the capital contributions payment and questioned how this will effect staff's requests for RFQs or RFPs.

Assistant City Manager Loch advised that he expects the time frame to work out about the same to process any requests for proposals.

Upon questioning by Council, City Manager Piasecki advised that revenues received from Comcast have remained relatively stable and that the only increase usually comes from an increased rate charged to customers.

VOTE ON MOTION: The motion passed unanimously by a roll call vote.

8:23 p.m. Mayor Steenrod called for a 10 minute break.

NEW BUSINESS

Final Draft 2003 Parks, Recreation & Sr. Services Master Plan

Parks & Recreation Director Thorell noted that the purpose of this agenda item is for the Ad Hoc Parks, Recreation & Senior Services Master Plan Citizens Committee to transmit the revised Draft Master Plan. She introduced Shelly Parker, Chairperson of the Committee.

Ms. Parker advised that the Master Plan is a comprehensive plan that covers the next 12 years. She noted that based on Council input the Committee revised its Capital Policy Recommendations as follows:

- Dedicate a sustainable portion of Real Estate Excise Tax as an ongoing capital funding source for the major capital maintenance of existing recreation buildings and park facilities.
- Consider Levy Lid Lift funding for multiple park projects throughout Des Moines. A Citizen Voted Bond Issue to fund the future Community Center project should be postponed until improved economic times.
- Actively seek joint use and shared cost opportunities.
- Support economic development through creation of a more aesthetically pleasing environment.
- Provide adequate parking at all recreational facilities.
- Support Marina and Redondo Waterfront Improvement Plans capitalizing on Des Moines best recreational features, its waterfront amenities.

To meet the above recommendations, Ms. Parker noted that the Committee proposes the following:

- With traffic mitigation fees to be initiated in Des Moines in 2005 and the continued appropriation of King County transportation funds, funds taken from parks projects and reprogrammed to arterial streets should be returned to park projects as needed to accomplish urgent Master Plan needs.
- The City's investment in the remodeled Activity Center may fill the need for a Community Center for the next decade or until Des Moines' economic picture improves. The Committee recommends that the property on 24th Ave. S and South 220th Street should be utilized for the construction of a soccer field to complete Steven J. Underwood Memorial Park.

Ms. Parker noted the CIP projects approved for the years 2004-2008 and detailed the Priority 1 urgent Master Plan projects as follows:

- 1.a - Activity Center Acoustics, Walks & Landscaping
- 1.b - Activity Center Sidewalk to 216th & Patio
- 2.a - Beach Park Master Plan
- 2.c - Beach Park (Play Area, Paths, Picnic Shelter, Restroom Repair)
- 3.a - Midway Park Play Area Improvements
- 3.b - Midway park Expansion
- 4.a - Underwood Park Phase 1B 1 Field & Restrooms
- 4.b - Alternate 1B Lighting for 1 Field
- 4.c - Underwood Phase II Soccer Field \$1,079,085

After reviewing the priority projects funding plan for the next five years, Ms. Parker concluded by informing Council that the Committee recommends that the City accept the Plan and forward it to the Planning Agency for review and recommendations.

MOTION was made by Councilmember Sheckler, seconded by Councilmember White, to accept the Parks Recreation and Senior Services master Plan, and to forward it to the Planning Agency for review and recommendation under DMMC 4.28.040 as to adoption by the City Council of the Parks, Recreation and Senior Services Master Plan as a Type VI land use action amending the City's Comprehensive Plan.

Councilmember White complimented the Ad Hoc Committee on an exceptional job. She questioned whether they had considered adding the Redondo Board Walk as a project.

Parks & Recreation Director Thorell noted that the Redondo Board Walk is part of the Marina and would be addressed through the Marina Master Plan.

Councilmember Sherman felt that due to the high cost of installing a soccer field where the Community Center will one day be located, does not seem to make economic sense.

Parks & Recreation Director Thorell advised that the Activity Center was created at an investment of ½ a million dollars and is expected to last at least 10 years. If a soccer field was installed on near 24th Avenue South, it too would expect to need to be redone in about the same time period.

In response to questioning by Councilmember Sherman, City Manager Piasecki advised that the Supreme Court is expected to make a decision within the next couple of months as to the legality of I-776 which could free up funds. He noted that the Traffic Impact Fees can only be used for new street projects due to growth, not for street maintenance or repairs.

Councilmember Sherman stated that the Ad Hoc Committee has done a great job and he may look favorably on continuing the Committee's existence.

Upon questioning by Mayor Steenrod, Parks & Recreation Director Thorell advised that some off-setting revenues should be realized from tournament league fees and selling sponsorships to various sport leagues, but most likely would be 50% or less of the actual costs.

Mayor Steenrod voiced concern over any use of unreserved funds as these should be maintained for emergency purposes.

Councilmember Sherman noted that maintenance costs can be quite high and encouraged fee comparisons with King County to help ensure adequate funds coming in.

VOTE ON MOTION: Motion passed unanimously.

Interlocal Agreement Off-Leash Dog Area at Grandview Park

Parks & Recreation Director Thorell informed Council that the Ad Hoc Des Moines Parks, Recreation & Senior Services Master Plan Citizens Committee and Administration recommends entering into a one year Interlocal Agreement with South King County cities and King County for promoting and facilitating the development and operation of a regional off-leash dog area.

She noted that the City of SeaTac has agreed to enter into an agreement with Save Our Dog Areas, a Washington non-profit corporation, to use Grandview Park located just east of I-5 and Military Road, and it is scheduled to open September 6th. She advised that there is a one time cost of \$1,463 to Des Moines based on population, and a maximum of sixteen hours of personnel time and sixteen hours of equipment and tool use. She advised that there is a real need for this type of facility in South King County and it will be good to tell citizens who allow their dogs to run in Des Moines' parks that there is a place for this type of activity near by. She stated that the Interlocal is subject to renewal at the end of one year.

MOTION was made by Councilmember White, seconded by Councilmember Sherman to enter into an Interlocal Agreement with the Cities of Auburn, Burien, Federal Way, Kent, Renton, Tukwila, SeaTac and King Count for the purpose of promoting and facilitating the development and operation of a regional off-leash dog area and to authorize the City Manager to sign the Agreement substantially in the form as submitted.

Upon questioning, Parks & Recreation Director Thorell noted that the sixteen hours of personnel and tools would be an approximate cost of \$500.00.

Councilmember Sherman stated that he has noticed that Grandview Park has not been maintained as the County has closed it due to budget concerns. He stated that he hopes pet owners will help support this effort as there is a need for revenue sources.

VOTE ON MOTION: Motion passed unanimously.

Draft Ordinance No. 02-126 Graffiti

Police Commander Tucker addressed Council stating that the draft ordinance was brought to Council a year ago and was mandated to the Public Safety and Transportation Committee and is now ready for full Council review and recommendations. He advised Council that there still is graffiti problems in the City and feels the draft ordinance will provide Community Development and the Police Department with additional tools to help fight this problem.

City Attorney Marousek pointed out that Sections 2 through 4 of the draft ordinance deal with criminal misdemeanors, and Sections 5 through 8 are civil violations, which can be appealed through the Hearing Examiner.

Councilmember Sheckler question what resources are available as mentioned in Section 7 of the draft ordinance.

Police Commander Tucker demonstrated items that were found in possession of an individual that were used in an actual graffiti case. He noted that items can be more than just spray paint and showed that chemicals can be put in shoe shine bottles, among other items.

In regards to Section 5, Mayor Steenrod stated that she does not want to see the victim being penalized. She noted that clean-up can be expensive and feels that the City needs someone knowledgeable and able to identify what was used to help the property owner in the clean-up process. She thought that seven days may be too short of a time frame.

Police Commander Tucker noted that the purpose of Section 5 was to encourage and recommend clean-up as this does help deter it from recurring. He felt the City's Code Enforcement Officer,

along with Police Department Personnel, can aid in identifying the proper method for removal of the offending graffiti.

City Manager Piasecki noted that a resource site can be set-up on the City's web site, and City Currents can be used to educate citizens.

MOTION was made by Councilmember Sheckler, seconded by Councilmember Petersen, to pass Draft ordinance No. 02-126 to a second reading on the next available consent calendar. [ED NOTE: Motion was later changed by friendly amendment.]

Councilmember Sherman stated he would like to see the offender have to take some responsibility for removing the graffiti. He further advised that he is not satisfied with penalizing the property owners. The graffiti is not a matter of public health, but one of visual blight. He agreed with Mayor Steenrod that he has a problem with fining someone who has been victimized. He suggested that the City establish a clean-up fund to help citizens. He noted it would not have to be a great deal of money, and when it is depleted it is not renewed until the following budget year.

Police Commander Tucker advised that graffiti is not just a visual blight when it comes to gang graffiti and activities, and it needs to be removed as soon as possible.

9:43 p.m. Mayor Steenrod called for a 5 minute break.

City Attorney Marousek reminded Council that the property owners are given every opportunity to voluntarily correct the graffiti before any citations would be issued.

City Manager Piasecki stated that clarifying language can be added to provide ample opportunities for citizens to work with the City to abate the problem, and that he can meet with staff to find budget funds to establish a "clean-up fund". He suggested that the motion be amended to allow staff to address these two issues and bring the ordinance back in September for a second reading.

FRIENDLY AMENDMENT: City Manager's suggestion was acceptable to the maker and seconder of the motion.

VOTE ON MOTION: Motion passed unanimously.

NEXT MEETING DATE

Mayor Steenrod announced that there will be no study session on August 7th and that the next regular meeting will be August 14, 2003.

ADJOURNMENT

At 9:52 p.m. **MOTION** was made by Councilmember Sheckler, seconded by Councilmember Sherman and passed unanimously, to adjourn.

Respectfully submitted,

Demis Staab, City Clerk

AGENDA ITEM

SUBJECT: Extension of Existing
Photocopier Equipment
Agreement

AGENDA OF: August 14, 2003

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: July 29, 2003

ATTACHMENTS:

1. Agreement
2. Department Listing of Copy Machines &
Costs - Existing Equipment vs. New
3. Comparison Spread Sheet Showing
IKON, & Three Other Vendors

CLEARANCES:

[] _____
[] _____
[] _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation:

The purpose of this agenda item is to seek Council authority to extend the City's Photocopying Agreement with IKON Office Solutions for an additional two years.

Suggested Motion:

The following motion will appear on the Consent Calendar:

"Motion is to authorize an extension of two (2) years to the City's Photocopying Agreement with IKON Office Solutions in the amount of minimum monthly payments of \$1,764.00 and authorize the City Manager to sign the extension Agreement substantially in the form as submitted."

Background:

Prior to expiration of an existing agreement regarding copiers in the year 2000, department representatives began an exhausting two month research and evaluation of equipment available from various vendors via the State contract for copies. After reviewing capabilities/functions, price and references all departments, except for Legal/Court requested digital copiers from IKON for a lease term of 36 months. On August 15, 2000, the City entered into the existing agreement with IKON for our photocopying needs.

Discussion:

During the three years of our existing agreement, all departments have reported few, if any, problems with their copiers. The Administration copier was set up to act as a printer. This significantly reduces the amount of printing sent to the laser printers, and the cost per copy/page printed is less than the cost of printing from the laser.

The new monthly cost will be \$2,716.90 which will equate to a savings of approximately \$5,096 over the next 24 months. The monthly charge covers all toner, staples, service needs and costs per copying charge. We could upgrade all of our existing equipment for the same 2 year extension at a cost of \$2,835.48, for a savings of \$2,013. However, staff is very satisfied with existing equipment and is not recommending an upgrade of equipment at this time. We have been assured by IKON that if any copier should fail during this two year extension the equipment would be replaced at no additional charge to the City. After the two year extension has expired, another thorough review and evaluation will be made before requesting a new agreement.

The City Clerk researched three other companies that offer photocopying machines comparable to what the City is currently using, through the Washington State Current Contract information which offers government pricing. The three companies compared were Konica at \$3,319.55 a month, Sharp at \$3,090.00 per month and Xerox at \$3,11.90 per month. (Note: All contracts are for a 3 year period and that two year contracts are only available at higher costs.) Details are contained on Attachment 4.

Alternatives:

Council could choose to not renew the extension, in which case staff would need to dedicate time and energy to reviewing and evaluating potential copier agreements. This would require an immediate response as our current agreement will expire August 15, 2003.

Council could direct that the extension be granted with upgraded equipment. Savings would be less substantial and there would be some disruption of the office as equipment is "swapped-out".

Financial Impact:

By extending the existing agreement two years, the City will realize a cost savings of approximately \$5,096.

Recommendation/Conclusion:

Staff has concluded that IKON Office Solutions has provided the City with superior equipment and backup services, and therefore is recommending that Council approve the extension of the existing contract with IKON and authorize the City Manager to sign the agreement.

Concurrence:

The following departments concur with the recommendation to extend the existing agreement with IKON: Park Maintenance, Marina, Senior Center, Police Department Records and Detectives, Community Development, Parks, Engineering/SWM and City Hall.



The Way Business
Gets Communicated™

IOSCapitalSM

an IKON Office Solutions Company
P.O. Box 9115, Macon, GA 31208-9115

Product Schedule Image Management Plus

Product Schedule Number: _____

To Master Agreement Number: _____

This Schedule is made part of the Master Agreement ("Master Agreement") identified on this Schedule between IOS Capital, Inc. ("we" or "us") and City of Des Moines, as Customer ("you"). All terms and conditions of the Master Agreement are incorporated into this Schedule and made a part hereof. It is the intent of the parties that this Schedule be separately enforceable as a complete and independent agreement, independent of all other Product Schedules to the Master Agreement.

CUSTOMER INFORMATION

<u>City of Des Moines</u>				Product Location			
<u>21630 11th Ave SE, Suite A</u>				Address			
<u>Des Moines King WA 98198</u>				City County State Zip			
Customer Contact Name:				Customer Telephone Number:		Marketplace:	
<u>Denis Staab</u>				<u>(206) 878-4595</u>		<u>Washington</u>	

PRODUCT DESCRIPTION

Quantity	Description: Make, Model & Serial Number	Quantity	Description: Make, Model & Serial Number
	<u>see attached</u>		

PAYMENT SCHEDULE

Minimum Term (mos.) <u>26</u>	Cost Per Image \$ <u>n/a</u>	Cost of Additional Images \$ <u>various</u>	Guaranteed Minimum Monthly Images <u>0</u>	Meter Reading/Billing For Additional Images ☒ Monthly ☐ Quarterly ☐ Other
Minimum Payment Without Sales, Use and Property Tax \$ <u>1764.00</u>	Payment Due: ☒ Monthly ☐ Annually ☐ Quarterly ☐ Other		Advance Payment (with tax) ☐ Apply to 1 st Payment ☐ Other <u>0</u>	

Sales Tax Exempt ☐ Yes (Attach Exemption Certificate) Customer Billing Reference Number (P.O.#, etc.) _____

Addendum Attached ☐ Yes (Check if yes and indicate total number of pages: _____)

TERMS AND CONDITIONS

- The first Payment will be due on the Effective Date. The delivery date is to be indicated by signing a separate acceptance form.
- You, the undersigned Customer, have applied to us, IOS Capital, Inc., to rent the above described items ("Products") for commercial (non-consumer) purposes. **THIS IS AN UNCONDITIONAL, NON-CANCELABLE AGREEMENT FOR THE MINIMUM TERM INDICATED ABOVE.** If we accept this Product Schedule, you agree to rent the above Product(s) from us, and we agree to rent such Product(s) to you, on all the terms hereof, including the Terms and Conditions on the Master Agreement. **THIS WILL ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS SCHEDULE AND THE MASTER AGREEMENT AND HAVE RECEIVED A COPY OF THIS SCHEDULE AND THE MASTER AGREEMENT.**
- Image Charges/Meters:** In return for the Minimum Payment, you are entitled to use the number of Guaranteed Minimum Monthly Images. If you use more than the Guaranteed Minimum Monthly Images in any month, you will additionally pay a charge equal to the number of additional metered images times the Cost of Additional Images. If we determine that you have used more than 20% over the manufacturer's recommended specifications for supplies, you agree to pay reasonable charges for those excess supplies. The meter reading frequency is the period of time (monthly, quarterly, semi-annually or annually) for which the number of images used will be reconciled. The meter reading frequency and corresponding additional charges, if any, may be different than the Minimum Payment frequency. You will provide us or our designee with the actual meter reading upon request. If such meter reading is not received within 7 days, we may estimate the number of images used. Adjustments for estimated charges for additional images will be made upon receipt of actual meter readings. Notwithstanding any adjustment, you will never pay less than the Minimum Payment.
- Additional Provisions (if any) are: This is a 24-month extension to contract # 954221-150907CML; see attached addendum; no increases.

Printed Name of Authorized Signer: _____ Accepted in Macon, Georgia by:
IOS Capital, Inc.

X _____ Title: _____ Date: _____ **X** _____ Title: _____ Date: _____
Authorized Signer Authorized Signer
[Tear on perforation]

DELIVERY AND ACCEPTANCE: With respect to Product Schedule Number _____ to Master Agreement Number _____ between IOS Capital, Inc. and _____, as customer ("you"), you hereby certify that each Product described on such Product Schedule has been delivered, installed and accepted and you agree that each such Product is in good condition and satisfactory for all purposes of the Product Schedule and the Master Agreement.

CUSTOMER **X** _____ Title: _____
Authorized Signer

ATTACHMENT 1

City of Des Moines
 Tony Piasecki/Denis Staab
 July 21, 2003

Location		Inventory		Avg Monthly	Monthly	Cost Per
#	Address	Model	Serial#	Volume	Lease	Copy
1	Park Maintenance	NP 7130	NVF19738	400	\$ 17.10	\$0.0260
2	Marina	iR210, feeder, 2 paper drawers, 10 bin stapler/sorter	NPR15275	2,300	\$ 121.50	\$0.0180
3	Legal - Court	n/a		-	\$ -	\$0.0000
4	Senior Center	iR330, feeder, 2 paper drawers, finisher (stapling)	NNY14302	3,500	\$ 152.10	\$0.0130
5	Police Dept. - Records	iR400, feeder, 6 paper drawers, finisher (stapling)	NQG16501	14,000	\$ 232.20	\$0.0110
6	Comm. Dev.	iR400, feeder, 4 paper drawers, 3,000 sheet paper deck, finisher (stapling)	NQG16494	7,000	\$ 257.40	\$0.0110
7	Parks	iR400, feeder, 4 paper drawers, finisher (stapling)	NQG16478	21,600	\$ 194.40	\$0.0110
8	Engineering / SWM	iR330, feeder, 4 paper drawers, finisher (stapling)	NNY14307	5,000	\$ 169.20	\$0.0130
9	City Hall	iR600, feeder, finisher (stapling), network printing	NLE14746	30,000	\$ 537.30	\$0.0100
10	Police Dept. - Detectives	iC2210, cabinet, fax	NLV01747	1,000	\$ 82.80	\$0.0220
Totals:				84,800	\$ 1,764.00	

 Authorized Signature

 Authorized Signer Printed Name

 Date

City of Des Moines
Tony Piasecki/Denis Staab
July 21, 2003

Location		Inventory	
#	Address	Model	Serial#
1	Park Maintenance	NP 7130	
2	Marina	iR210, feeder, 2 paper drawers, 10 bin stapler/sorter	
3	Legal - Court		
4	Senior Center	iR330, feeder, 2 paper drawers, finisher (stapling)	
5	Police Dept. - Records	iR400, feeder, 6 paper drawers, finisher (stapling)	
6	Comm. Dev.	iR400, feeder, 4 paper drawers, 3,000 sheet paper deck, finisher (stapling)	
7	Parks	iR400, feeder, 4 paper drawers, finisher (stapling)	
8	Engineering / SWM	iR330, feeder, 4 paper drawers, finisher (stapling)	
9	City Hall	iR600, feeder, finisher (stapling), network printing	
10	Police Dept. - Detectives	iC2210, cabinet, fax	

Totals:

Avg Monthly	Monthly	Cost Per	Total	Proposed	Monthly	Cost Per	Total
Volume	Lease	Copy	Payment	Model	Lease	Copy	Payment
400	\$ 19.00	\$0.0260	\$ 29.40	iR 1310	\$19.70	\$0.0148	\$ 25.62
2,300	\$ 135.00	\$0.0180	\$ 176.40	iR2200, feeder, 4 paper drawers, finisher (stapling)	\$155.33	\$0.0144	\$ 188.45
-	\$ -	\$0.0000	\$ -			\$0.0000	\$ -
3,500	\$ 169.00	\$0.0130	\$ 214.50	iR3300, feeder, 4 paper drawers, finisher (stapling)	\$187.80	\$0.0104	\$ 224.20
14,000	\$ 258.00	\$0.0110	\$ 412.00	iR5000, finisher, n/w print	\$349.57	\$0.0088	\$ 472.77
7,000	\$ 286.00	\$0.0110	\$ 363.00	iR3300, feeder, 4 paper drawers, 3,500 sheet paper deck, finisher (stapling)	\$365.22	\$0.0104	\$ 438.02
21,600	\$ 216.00	\$0.0110	\$ 453.60	iR5000, finisher	\$259.85	\$0.0088	\$ 449.93
5,000	\$ 188.00	\$0.0130	\$ 253.00	iR3300, feeder, 4 paper drawers, finisher (stapling)	\$188.64	\$0.0104	\$ 240.64
30,000	\$ 597.00	\$0.0100	\$ 897.00	iR7200, feeder, finisher (stapling), network printing	\$540.90	\$0.0070	\$ 750.90
1,000	\$ 92.00	\$0.0220	\$ 114.00	iR1370, cabinet	\$30.15	\$0.0148	\$ 44.95
84,800	\$ 1,960.00		\$ 2,912.90		\$2,097.16		\$ 2,835.48

Summary:	<u>Total Savings (over 24 months)</u>	
Renew July 2003	\$	5,096
Upgrade July 2003	\$	2,013

ATTACHMENT 2

City of Des Moines
Tony Piasecki/Denis Staab
August 1, 2003

*IKON-
Existing
EQUIPMENT*

*IKON-
New EQUIPMENT*

Location		Inventory		Avg Monthly		Monthly	Cost Per	Total	Proposed		Monthly	Cost Per	Total
#	Address	Model	Serial#	Volume	Lease	Copy	Payment		Model	Lease	Copy	Payment	
1	Park Maintenance	NP 7130		400	\$ 17.10	\$0.0260	\$ 27.50		IR 1310	\$19.70	\$0.0148	\$ 25.62	
2	Marion	IR210, feeder, 2 paper drawers, 10 bin stapler/separator		2,300	\$ 121.50	\$0.0180	\$ 162.90		IR2200, feeder, 4 paper drawers, finisher (stapling)	\$155.33	\$0.0144	\$ 188.45	
3	Legal - Court			-	\$ -	\$0.0000	\$ -				\$0.0000	\$ -	
4	Senior Center	IR330, feeder, 2 paper drawers, finisher (stapling)		3,500	\$ 152.10	\$0.0130	\$ 197.60		IR3300, feeder, 4 paper drawers, finisher (stapling)	\$187.80	\$0.0104	\$ 224.20	
5	Police Dept. - Records	IR400, feeder, 6 paper drawers, finisher (stapling)		14,000	\$ 232.20	\$0.0110	\$ 386.20		IR5000, finisher, n/w print	\$349.57	\$0.0088	\$ 472.77	
6	Courts Dev.	IR400, feeder, 4 paper drawers, 3,000 sheet paper deck, finisher (stapling)		7,000	\$ 257.40	\$0.0110	\$ 334.40		IR3300, feeder, 4 paper drawers, 3,500 sheet paper deck, finisher (stapling)	\$365.22	\$0.0104	\$ 438.02	
7	Parks	IR400, feeder, 4 paper drawers, finisher (stapling)		21,600	\$ 194.40	\$0.0110	\$ 432.00		IR5000, finisher	\$259.85	\$0.0088	\$ 449.93	
8	Engineering/SWM	IR330, feeder, 4 paper drawers, finisher (stapling)		5,000	\$ 169.20	\$0.0130	\$ 234.20		IR3300, feeder, 4 paper drawers, finisher (stapling)	\$188.64	\$0.0104	\$ 240.64	
9	City Hall	IR600, feeder, finisher (stapling), network printing		30,000	\$ 537.30	\$0.0100	\$ 837.30		IR7200, feeder, finisher (stapling), network printing	\$540.90	\$0.0070	\$ 750.90	
10	Police Dept. - Detectives	IC2210, cabinet, fax		1,000	\$ 82.80	\$0.0220	\$ 104.80		IR1370, cabinet	\$30.15	\$0.0148	\$ 44.95	
Totals:				84,300	\$ 1,764.00		\$ 2,716.90			\$2,097.16		\$ 2,835.48	

KONICA

SHARP

XEROX

Konica	Monthly	Cost Per	Total	Sharp	Monthly	Cost Per	Total	Xerox	Monthly	Cost Per	Total
Model	Lease	Copy	Payment	Model	Lease	Copy	Payment	Model	Lease	Copy	Payment
7115	\$74.00	\$0.0190	\$ 81.60	AR-164	\$67.70	\$0.0175	\$ 74.70	WorkCentre 15i	\$49.00	\$0.0175	\$ 56.00
7022, feeder, PS-107, Base	\$270.00	\$0.0125	\$ 298.75	AR-207	\$119.90	\$0.0175	\$ 160.15	DC425AC	\$272.00	\$0.0060	\$ 285.80
	\$0.0000	\$ -			\$0.0000	\$ -			\$0.0000	\$ -	
7135	\$290.00	\$0.0100	\$ 325.00	AR-337	\$252.50	\$0.0125	\$ 296.25	DC432AS	\$316.00	\$0.0060	\$ 337.00
7145	\$312.00	\$0.0095	\$ 445.00	AR-M450-U	\$321.60	\$0.0110	\$ 475.60	DC545SH	\$399.00	\$0.0060	\$ 483.00
7135	\$326.00	\$0.0100	\$ 396.00	AR-337	\$273.80	\$0.0125	\$ 361.30	DC432AS	\$316.00	\$0.0060	\$ 358.00
7145	\$312.00	\$0.0095	\$ 517.20	AR-M450-U	\$321.60	\$0.0110	\$ 559.20	DC545SH	\$399.00	\$0.0060	\$ 528.60
7135	\$290.00	\$0.0100	\$ 340.00	AR-337	\$252.50	\$0.0125	\$ 315.00	DC432AS	\$316.00	\$0.0060	\$ 346.00
7155	\$524.00	\$0.0090	\$ 794.00	AR-507	\$394.40	\$0.0113	\$ 733.40	DC555SH	\$471.00	\$0.0060	\$ 651.00
7115, Tax	\$105.00	\$0.0190	\$ 122.00	AR-164, Tax	\$96.90	\$0.0175	\$ 114.40	WorkCentre 15i (no fax)	\$49.00	\$0.0175	\$ 66.50
	\$2,501.00		\$ 3,319.55		\$2,100.90		\$ 3,090.00		\$2,587.00		\$ 3,111.90

A G E N D A I T E M

SUBJECT: Commute Trip Reduction:
Interlocal Agreement

AGENDA OF: August 14, 2003

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: August 6, 2003

ATTACHMENTS:

1. Draft Interlocal Agreement.

CLEARANCES:

[X] LEGAL

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL

Purpose and Recommendation:

The purpose of this agenda item is to renew an interlocal agreement with King County for services required by the Commute Trip Reduction (CTR) Act.

Administration recommends approval of the interlocal agreement. A motion consistent with the staff recommendation is provided below:

"I move the City Manager be authorized to sign the Interlocal Agreement with King County for commute trip reduction services through June 30, 2005."

Background:

This is a renewal of an existing interlocal agreement. The Washington State Commute Trip Reduction Act (RCW 70.94.521-551) mandates that Des Moines promote the use of modes of transportation other than the single-occupant vehicle (SOV), and to reduce the number of vehicle miles traveled (VMT) per employee for affected employers in Des Moines.

To partially offset the cost of implementing CTR programs, the State allocates CTR grant funds to local jurisdictions. Des Moines has one major employer, Highline Community College, and the College and the City of Des Moines are considered affected worksites. Des Moines' annual CTR allocation is approximately \$1,500 per worksite per year. The exact amount may change, depending upon participation levels of other cities in King County. Also, the City is eligible to receive a one-time disbursement of approximately \$2,000 for the Congestion Mitigation/Air Quality (CM/AQ) program.

The Congestion Mitigation/Air Quality Improvement Program (CM/AQ) was established under ISTEA. The CM/AQ Program provides funds to states for transportation programs and projects that are likely to contribute to the attainment of national ozone, carbon monoxide or particulate ambient air quality standards. Examples of such projects include: programs for improved transit; construction of HOV lanes or roads; employer-based transportation management plans; trip-reduction ordinances; traffic flow improvement programs; carpool and vanpool programs; flexible work schedule programs; and non-motorized transportation facilities. Like CTR, King County will fulfill Des Moines' CM/AQ project requirements in return for the City's CM/AQ funds.

Discussion:

The attached interlocal agreement between Des Moines and King County will allow Des Moines to receive CTR funds for this biennium (July 1, 2003 through June 30, 2005). In past years, we have used similar interlocal agreements as the one provided within this packet. Staff recommends the City Council authorize the City Manager to sign the new CTR interlocal agreement with King County.

In the past, King County has provided CTR services on behalf of the City. In return, Des Moines has relinquished its State CTR funds to King County. This arrangement has worked well since administrative and promotional obligations associated with CTR are considerable. As in past years, the interlocal agreement does not specify the dollar amount to be relinquished since Des Moines' allocation may change slightly, depending upon participation rates of other jurisdictions. Since the amount of funds is relatively small, this method is preferred since it eliminates the need for invoices and amendments to the interlocal agreements. The total amount of funds managed by this interlocal is not expected to exceed \$6,000 for the period from July 1, 2003 through June 30, 2005.

Alternatives:

1. Approve the interlocal agreement as written.
2. Do not approve the interlocal agreement and allocate City resources to satisfying the requirements of the CTR Act.

Financial Impact:

Administration believes the City could not provide the services covered by the interlocal agreement for \$3,000. By contracting with multiple cities, King County is able to realize economies of scale not available to Des Moines.

Recommendation/Conclusion:

Approve the interlocal agreement as written.

Concurrence:

NA

COMMUTE TRIP REDUCTION ACT INTERLOCAL AGREEMENT

This Agreement is entered into by and between King County (the "County") and the City of Des Moines ("City"), both of which entities may be referred to hereinafter as "Parties."

WHEREAS, the Legislature enacted RCW 70.94.521-551, commonly known as the Commute Trip Reduction Act, to require local governments in those counties experiencing the greatest automobile-related air pollution and traffic congestion to develop and implement plans to reduce single-occupant vehicle commute trips; and

WHEREAS, King County and the cities within King County having within their boundaries one or more "major employers" as defined by RCW 70.94.524(1) are required to develop and implement commute trip reduction plans; and

WHEREAS, the local jurisdiction commute trip reduction plans are required to be coordinated and consistent with plans of adjacent jurisdictions and applicable regional plans; and

WHEREAS, the Legislature appropriated funds to provide technical assistance funding to local jurisdictions required to develop and implement commute trip reduction plans; and

WHEREAS, King County in its agreement with the State has the authority to receive CTR funds on behalf of jurisdictions and retain such funds as payment for work performed by the County on behalf of a jurisdiction to satisfy that jurisdiction's obligations under the Commute Trip Reduction Act; and

WHEREAS, the City desires to have King County perform the work necessary to satisfy the City's statutory obligations under the Commute Trip Reduction Act and to retain the City's allocation of state funds as payment for those services; and

WHEREAS, the City desires to have King County perform the work necessary to satisfy the City's Congestion Mitigation Air Quality (CMAQ) project and to retain the City's CMAQ funds as payment for those services; and

WHEREAS, the Parties hereto are authorized to enter into this Agreement pursuant to RCW 70.94.527(6) and Chapter 39.34 RCW--the Interlocal Cooperation Act;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

SECTION 1.0 PURPOSES

The purposes of this Agreement are: (1) To set forth the responsibilities of the Parties, including the County's role as the City's designee for CTR purposes and (2) to continue a cooperative approach between the City and the County in order to address interjurisdictional issues and to meet the statutory requirements for coordination and consistency among the jurisdictions' respective commute trip reduction plans.

SECTION 2.0 DEFINITIONS

The following definitions shall apply to this Agreement:

"Administrative Representative" means a person responsible for being the central administrative contact for issues related to this Agreement as designated pursuant to Section 3.4 of the Agreement.

"Affected Employer" means a private or public employer that, for at least twelve continuous months during the year, employs one hundred or more full-time employees at a single worksite who begin their regular workday between 6:00 a.m. and 9:00 a.m. on weekdays on two or more weekdays.

"Commute Trip Reduction Act" means Chapter 202, Washington Laws of 1991, codified as RCW 70.94.521-. 551, as amended.

"Commute Trip Reduction Plan (CTR Plan)" means a plan designed to achieve reductions in the proportion of single-occupant vehicle commute trips and the vehicle miles traveled as described in RCW 70.94.527.

"Commute Trip Reduction Program (CTR Program)" means a program designed by an affected employer to achieve reductions in the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled as described in RCW 70.94.531, as amended.

"CTR Funds" means state funds authorized by RCW 70.94.544 to assist counties and cities implementing commute trip reduction plans.

"State" is the Washington State Department of Transportation or its successor agency unless otherwise noted.

SECTION 3.0 SCOPE OF WORK

3.1 Scope of Work: The scope of work to be completed by the City, and by the County on the City's behalf, in accordance with this Agreement is described in Exhibit A: Scope of Work, which by reference is made a part of this Agreement.

- 3.2 Separate Agreements for CTR Services:** Consistent with applicable State and local laws and regulations, the City may enter into separate agreements with the County and other public agencies or consultants to perform the following CTR tasks under contract: (1) assist employers in developing CTR programs; (2) review and approve CTR programs, annual reports, requests for exemptions, modifications or other actions submitted by employers; and (3) establish and maintain records and produce required reports.
- 3.3 Evaluation and Monitoring:** The City shall cooperate with and freely participate in any monitoring or evaluation activities conducted by the State that are pertinent to its performance of the Scope of Work and its responsibilities under the Commute Trip Reduction Act.
- 3.4 Administrative Representatives:** Immediately following their execution of this Agreement, the County and the City shall each designate one person to be the central administrative contact for matters pertaining to this Agreement, and shall make such designation, as well as any subsequent changes in such designation, known to each other in writing, immediately after such designation.

SECTION 4.0 CHANGE IN FUNDS

- 4.1** If an increase in funding by the funding source augments the City's allocation of funding under this Agreement, the City and County agree to enter into an amendment to this Agreement providing for an appropriate change in the Scope of Work and/or the project amount in order to reflect any such increase in funding.
- 4.2** If a reduction of funding by the funding source reduces the City's allocation of funding under this Agreement, the City and County agree to enter into an amendment to this Agreement providing for an appropriate change in the Scope of Work and/or the project amount in order to reflect any such reduction of funding and/or the Parties may terminate the Agreement, as provided in Section 7.3(b) of this Agreement.

SECTION 5.0 WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by an authorized representative of the entity making such waiver.

SECTION 6.0 LEGAL RELATIONS

- 6.1 It is understood and agreed that this agreement is solely for the benefit of the Parties hereto and gives no right to any other entity. No joint venture or partnership is formed as a result of this Agreement.
- 6.2 Each party shall defend, indemnify and hold harmless the other party, its officers, officials and employees from all claims, demands, suits, actions and liability of any kind which arise out of, are connected with or result from any errors, omissions or negligent acts of the other party, its contractors, employees or agents in the performance of the work of this Agreement; provided, however, that if any such liability is the result of the concurrent negligence of the parties, the obligations under this section shall be allocated in proportion to the percentage of negligence attributed to each party. Each party agrees that its obligations under this provision extend to any claim, demand or cause of action brought by its own employees. The foregoing indemnity is specifically and expressly intended to constitute a waiver of the indemnifying party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnification of claims made by the indemnifying party's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.
- 6.3 The City agrees that the WSDOT and the State of Washington are not liable for damages or claims arising from the City's performance or activities under this agreement. The City further agrees to include in each contract for services or activities using funds provided in whole or in part by this Agreement a provision in which the contractor agrees that the WSDOT and the State are not liable for damages or claims from damages arising from any subcontractor's performance or activities under this Agreement.
- 6.4 In the event any party incurs attorney's fees, costs or other legal expenses to enforce provisions of this section against another party, all such fees, costs, and expenses shall be recoverable by the prevailing party.
- 6.5 This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of King County, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.
- 6.6 The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to expiration or termination.

SECTION 7.0 TERM, DURATION, MODIFICATION AND TERMINATION

- 7.1 **Term of Agreement:** This Agreement shall be effective July 1, 2003. The expiration date for purposes of performing substantive work and for incurring costs hereunder shall be June

30, 2005, and for final accounting purposes shall be July 31, 2005, unless terminated earlier or extended pursuant to the provisions hereof.

7.2 Extension / Modification. This Agreement may be amended or otherwise altered only by written agreement of the County Executive or his/her designee and an authorized representative of the City. Exhibit C: Format for Agreement to Extend and/or Modify the CTR (ILA), which is attached to this Agreement and incorporated herein, may be used for such action.

7.3 Termination

(a) Each Party may terminate its obligations under this Agreement upon thirty (30) days advance written notice of the termination to the other Party.

(b) If at any time during the Agreement period the State acts to terminate, reduce, modify, or withhold the CTR Funds allotted to the County, then either Party may terminate this Agreement upon giving thirty (30) days written notice to the other Party. The County shall have the authority and responsibility to ensure that upon termination of this Agreement, any remaining CTR Funds are made available to the City or returned to the State.

SECTION 8.0 CHANGE IN STATUS

If the City finds it is no longer affected by Chapter 70.94 RCW and is therefore no longer required to implement a CTR plan, it may continue to be a Party to this Agreement for purposes of participating in the CTR Coordinating Committee for information sharing, but shall not receive CTR Funds effective with the quarter following the change in status.

SECTION 9.0 SEVERABILITY

In the event any term or condition of the Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, condition or application. To this end the terms and conditions of this agreement are declared severable.

SECTION 10.0 ENTIRE AGREEMENT

This document contains all terms, conditions and provisions agreed upon by the Parties hereto. Any oral or written representations or understandings not incorporated herein are excluded.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by having their authorized representatives affix their signatures below.

Approved as to form:

THE CITY OF DES MOINES

By _____
City Attorney

By _____
City Manager _____

Date: _____

KING COUNTY:

By _____
Rick C. Walsh, General Manager, Metro Transit
Date: _____

EXHIBIT A: Scope of Work

Attachment - Format for Quarterly Reports

EXHIBIT B: Methodology for Allocating Funds

EXHIBIT C: Format for Agreement to Extend and/or Modify the CTR ILA

EXHIBIT A: SCOPE OF WORK

City Tasks:

1. General Program Administration

Maintain and administer a CTR ordinance and plan for affected employers in the jurisdiction.

2. Public Hearing Notice

Provide WSDOT with a public hearing notice and copies of any proposed amendments to the CTR ordinance, plan, and/or administrative guidelines within the first week of the public review period and final copies of all actions within one (1) month of adoption.

3. Appeals

Maintain an appeals process. This process must be consistent with RCW 70.94.534(6) and procedures contained in the Commute Trip Reduction Task Force Guidelines.

County Tasks:

1. Annual Expenditure Report

Within thirty (30) days after June 30, 2004, and thirty (30) days after June 30, 2005, submit to WSDOT a report summarizing overall costs incurred in implementing the CTR ordinance and plan. Costs shall be reported in a format provided by WSDOT.

2. Exemptions and Modifications

The County will submit requests for exemptions or modifications, including requests for goal modifications, to WSDOT for review and comment within five (5) days of receiving such requests, and shall allow WSDOT five (5) working days to provide comments prior to approving or denying the request.

3. Technical Guidance and Support

Work collaboratively with and provide technical guidance and support to affected employers. The County will provide the basic services identified in the Commute Trip Reduction Task Force Guidelines in order to achieve trip reduction goals.

4. Survey Processing

Notify WSDOT prior to sending any surveys to the University of Washington, Office of Educational Assessment for processing. The notification must include the name of the worksite, employer identification code, and type of survey for each survey being submitted for processing. The notification shall be submitted as an electronic spreadsheet via electronic mail. The County agrees to wait for confirmation from WSDOT prior to sending or delivering the surveys for processing.

5. Database Updates

Provide WSDOT with updated lists of affected worksites and jurisdiction contacts on a quarterly basis. These updates will be submitted electronically in a format specified by WSDOT.

6. Employer Annual Reports

Within 30 days from the date of approval, submit to WSDOT one electronic or hard copy of any approved employer annual reports.

7. Employer Exemptions and Goal Modifications

Within 30 days from the date of approval, submit to WSDOT the name and employer identification code for any worksite that has been granted an exemption or goal modification. Include information about the duration of all exemptions and information on the type of goal modification granted.

8. Progress Report and Invoice

Submit to WSDOT periodic progress reports, as detailed in the Attachment to Exhibit A, along with any invoice or request for reimbursement.

9. CMAQ Project

Provide technical guidance and support as well as new and enhanced programs and services to affected employers. The County will provide the services identified in the Commute Trip Reduction Implementation Plans and Enhancement agreement (entered into between WSDOT and the County).

ATTACHMENT
to Exhibit A
Quarterly Report Format

- Name of the Organization Submitting Report
- Submitted on behalf of following Jurisdiction(s)
- Contact Person Name
- Contact Person Phone and Fax Number
- Contact Person e-mail

1. CTR activities:

A brief summary of activities undertaken

2. Expenditures This Quarter

List actual total expenditures on the last line of the following table. Estimate expenditures by category as indicated.

Categories	CTR Fund Expenditures Since Last Report	CTR Fund Expenditures Year To Date
Program administration	\$	\$
Training	\$	\$
Employer support and services	\$	\$
Other (Specify)	\$	\$
Total	\$	\$

EXHIBIT B: METHODOLOGY FOR ALLOCATING CTR FUNDS**Funding Allocation Methodology**

TO BE UPDATED WHEN INFORMATION BECOMES AVAILABLE FROM WSDOT-----

Funding allocated by WSDOT for local implementation of CTR activities is based on the following formula:

1. ~~80% of total available state funding for local CTR implementation will be allocated based on the number of affected worksites in each county, provided that each county receives a minimum of \$80,000 per year. The number of affected worksites in each county shall be based on information contained in WSDOT database as of May 1 of each year.~~
2. ~~20% of total available state funding for local CTR implementation will be allocated based on the number of commute trips reduced by worksites in each county between each worksite's base year survey and its most recent survey. For the period July 1, 2001 through June 30, 2002, the most recent survey period will be 1999. For the period July 1, 2002 through June 30, 2003, the most recent survey period will be 2001.~~

July 1, 2001 – June 30, 2002 Allocation

County	Number of Worksites	Trips Reduced/Day	80% Worksite Allocation	20% Performance Allocation	Total Allocation
Clark	47	578	\$80,000.00	\$13,493.27	\$93,493.27
King	612	8,238	\$749,311.68	\$192,314.10	\$941,625.78
Kitsap	34	0	\$80,000.00	\$0	\$80,000.00
Pierce	81	2,968	\$99,173.60	\$69,287.24	\$186,460.84
Snohomish	95	1,158	\$116,314.72	\$27,033.23	\$143,347.95
Spokane	98	2,238	\$119,987.81	\$52,245.56	\$172,233.37
Thurston	99	796	\$121,212.19	\$18,582.42	\$139,794.61
Whatcom	33	183	\$80,000.00	\$4,272.09	\$84,272.09
Yakima	20	183	\$80,000.00	\$4,272.09	\$84,272.09
TOTAL	1119	16,342	\$1,526,000.00	\$381,500.00	\$1,907,500.00

Any distribution of funds to jurisdictions within a county shall be done on the basis of the number of affected worksites in each jurisdiction. For example, if there are two jurisdictions in a county, each with fifty percent of the total number of affected worksites in the county, any division of funds within the county should provide each of the two jurisdictions with fifty percent of the total county funding allocation.

**EXHIBIT C: FORMAT FOR AGREEMENT TO EXTEND AND/OR MODIFY THE
CTR INTERLOCAL AGREEMENT**

This general format shall be followed to carry out the provisions of Section 7.2 to extend or modify the agreement.

The Honorable _____
Mayor, City of _____
Address _____
City, WA xxxxx

RE: Renewal/Modification of Commute Trip Reduction Act Interlocal Agreement

Dear Mayor _____:

The Commute Trip Reduction Act (CTR) Interlocal Agreement (ILA), which describes required implementation activities, provided in ... *(select one of the following paragraphs or combine as appropriate)* . . .

... Section 7.2 that the ILA "may be amended, altered, or extended only by written agreement of the County Executive and authorized representative of the City." I propose that the ILA be amended as follows (or, as in Attachment).

...I propose that the Agreement be extended, as provided in Section 7.2, for a two year period beginning June 30, _____, with modifications to Exhibit A: Scope of Work as attached.

Please indicate your concurrence with this proposal by signing where indicated below and returning this to me.

Sincerely,

Ron Sims
King County Executive

I concur with the proposed action.

Mayor, City of _____

Date _____



AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Des Moines Activity Center
Parking Lot Paving Project Contract

FOR AGENDA OF: August 14, 2003

DEPT. OF ORIGIN: Parks, Recreation and
Senior Services

DATE SUBMITTED: August 6, 2003

ATTACHMENTS:

- A. Draft Contract between the City of Des Moines and (name to be inserted on Tuesday, August 12)
- B. Parking Lot Paving Bid Tabulation (to be provided on Tuesday, August 12)

CLEARANCES:

- ☒ Parks & Recreation Director
- ☒ City Attorney

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

Purpose and Recommendation:

The purpose of this agenda item is to award a Small Works Project for the installation of parking lot pavement and striping at the Des Moines Activity Center Parking Lot.

Motion: "I move to approve the Contract for the Des Moines Activity Center Paving Project with (name to be inserted) in the amount of up to (\$ amount to be inserted) plus tax and authorize the City Manager to sign the contract, substantially in the form as submitted. And to authorize City Manager to approve change orders not to exceed 10% of the total contract amount."

Background:

The Des Moines City Council approved Capital Improvement Program funds in the amount up to \$45,418.00 for the paving and striping of the Des Moines Activity Center parking lot at their meeting on July 17, 2003. The Paving Project was advertised for bid to contractors on the City's Small Works Roster with a public bid opening on Monday, August 11, 2003 at 10:00 a.m.

Discussion:

The Parking Lot Paving Small Works project consists of asphalt paving of approximately 22,500 square feet paving area over existing compacted base course and includes striping 62 parking spaces (includes 3 handicapped spaces) and 338 feet of thickened edge. Additional work will include the installation parking stall tire stops. Work is to be done per Washington State Department of Transportation specifications. The city received bids by paving contractors for the work (see Attachment B Parking Lot Paving Bid Tabulation to be provided on Tuesday, August 12). (Name to be inserted) submitted the lowest and best bid for the project.

Alternatives:

None Provided

Financial Impact:

The Parking Lot Paving Project is budgeted as part of the 2003 Municipal Capital Improvement Plan as authorized by City Council at its meeting on July 17, 2003. The City Engineer's estimate for the bid portion of the project is \$40,000.

Recommendation/Conclusion:

Staff recommends approval of the Parking Lot Paving Project contract with (name to be inserted).

Concurrence

The Activity Center Parking Lot Paving Project was authorized in the 2003 Capital Improvement Program as approved by City Council. Plans were reviewed and approved by the City Engineer.

SECTION 2 - CONTRACT DOCUMENTS

**DES MOINES ACTIVITY CENTER
PARKING LOT PAVING PROJECT**

CONTRACT CHECKLIST

THE FOLLOWING FORMS ARE TO BE EXECUTED AFTER THE CONTRACT IS AWARDED:

(a) Agreement

This agreement to be executed by the successful bidder. Four (4) copies are required.

(b) Performance and Payment Bond

To be executed by the successful bidder and his surety company. Four (4) copies are required.

(c) Certificate of Insurance

All insurance certificates must show thirty (30) days cancellation notice by certified mail and Hold Harmless Statement. Insurance certificates are required for the prime contractor and all subcontractors prior to commencement of any work.

(d) Progress Schedule

Prior to beginning any work on site, a progress schedule, either in the form of a C.P.M. or Bar Chart, shall be submitted showing: (1) each element of work; (2) dates each element of work will be accomplished; and (3) materials order and delivery dates.

(e) Department of Labor and Industries Fees

The Contractor is responsible for all fees relating to the processing of the Department of Labor and Industries: (1) Intent to Pay Prevailing Wages, (2) Certificate of Prevailing Wages Paid.

PROPOSED AGREEMENT

(This document is a proposed form of agreement. It is subject to revision by agreement of both parties, following award of the bid, and prior to execution of the final contract.)

THIS AGREEMENT made and entered into this _____ day of _____, 20____, by and between The City of Des Moines, Washington, hereinafter called the "Owner", and _____, hereinafter called the "Contractor".

WITNESSED that the Owner and the Contractor for the hereinafter established consideration agree as follows:

- I. The work to be performed under this Contract shall be known as the Owner's "DES MOINES ACTIVITY CENTER PARKING LOT PAVING PROJECT".
The Contract shall be performed and completed under the supervision of and subject to the approval of the Owner or its authorized representative. The Contractor agrees to furnish all materials, tools, labor, equipment and other incidentals, and to perform all services and work as described in this Agreement and the contract documents, which consist of this Agreement and the following items, which are by this reference incorporated herein:

Exhibit A: Bid Documents
Exhibit B: Contract Documents
Exhibit C: General Conditions
Exhibit D: General Special Provisions & Technical Specifications
Appendix A: Prevailing Wages
Appendix B: Contract Plans

Standard Specifications for Road, Bridge and Municipal Construction, 2002, including the Division 1 APWA Supplement, prepared by the Washington State Department of Transportation and the American Public Works Association – Washington State Chapter.

- II. In consideration for the complete and faithful performance of the Contract, the Contractor shall be paid in accordance with the unit prices and/or lump sum prices set forth in the Bid Proposal. Payment shall be made for the actual quantities of work performed at the unit prices set forth in the bid. Actual quantities may be more or less than the estimated quantities set forth in the bid, for purposes of comparing bids, and the Contractor shall make no claim for anticipated profits for any decreases in the quantities. Quantities may be increased or decreased by the Owner.

IN WITNESS THEREOF, four (4) identical counterparts of this Agreement, 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, WASHINGTON
(Owner)

By: _____
Anthony Piasecki, City Manager

By direction of the Des Moines City Council

At an open public meeting on _____, 2003.

ATTEST:

This _____ day of _____, 20____

City Clerk

APPROVED AS TO FORM:

Linda A. Marousek, City Attorney

Contractor

By:

Title:

Address:

(Corporate Seal)

ATTEST: (If Corporation):

Title:

WITNESS (If individual or partnership)

GENERAL CONDITIONS

G-1. CONTRACT DOCUMENTS

The intent of these documents is to include all labor, material, appliances, transportation, utilities, and services necessary for the proper execution of the work and the terms and conditions of payment therefore. The documents are to be considered as one, and whatever is called for by one shall be binding as if called for by all of them.

G-2. MATERIALS, APPLIANCES, EMPLOYEES

The Contractor shall provide and pay for all labor, materials, tools, transportation, utilities, bonds, permits, insurance, and all other things necessary to properly and safely complete the work, unless otherwise provided in the Technical Provisions. Unless otherwise specified, all materials shall be new, and both materials and workmanship shall be of good quality. The Contractor shall only utilize workmen and subcontractors who are experienced and skilled in their trade.

G-3. ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. He shall defend any and all suits or claims for infringement of any patent or copyrights and shall save the Owner harmless from loss on account thereof.

G-4. PROTECTION OF WORK AND PUBLIC

The Contractor shall be responsible for any damage or claims resulting from her/his act or negligence while performing the work under this Contract. Materials delivered and work performed as well as adjacent property and the general public shall be adequately protected.

G-5. INSPECTION AND DEFECTIVE WORK

The Contractor shall permit and facilitate inspection of the work by the Owner and his agents and public authorities at all times. Any work which does not conform with the requirements of the Contract shall be repaired or replaced to the satisfaction of the Engineers. Any defects due to faulty materials or workmanship which become apparent within one (1) year from the date of final acceptance by the Owner shall be repaired or replaced unless otherwise provided in the Special Conditions.

G-6. CHANGES IN THE WORK

During the period when this Contract is in force, the Owner may find it necessary or advisable to make additions to, deductions from, or other changes in the nature of the work. No change shall be made without the prior written approval of the Owner establishing the nature of the change and compensation therefore. All changes involving an increase in the contract amount or time of completion will require a written Change Order.

G-7. FAILURE TO PERFORM THE WORK

In the event the Contractor should fail or refuse to prosecute the work properly, or fail to perform any provision of the Contract, the Owner may, after ten (10) days written notice to the Contractor, without prejudice to any other remedy he may have, make good the deficiencies and may deduct the cost thereof from the payment due or which thereafter may become due the Contractor, or, at his option, may terminate the Contract and take possession of all materials, tools, facilities, and appliances which may be on the site of the work and finish the work by such means which, in his opinion, are the most expeditious, and at the expense of the Contractor, shall be liable to the Owner for any excess costs or other damages occasioned by the Owner thereby.

G-8. PAYMENTS TO THE CONTRACTOR/RETAINAGE

At the end of each month, or other period as set forth in the Special Provisions, the Engineer will approve an estimate of the value of work satisfactorily performed to that time. Payment will be made in the amount said estimate less the total of all previous payments and retainage, payable on or before the 15th of the following month or as near after the first of the following month as the legally established regular meeting times of the governing and disbursing agencies will permit. All payments shall be in accordance with the laws of the place where the work is being performed. Payments due may be withheld on account of defective work not remedied, liens filed, damage by the Contractor to others not adjusted, or failure to make payments properly to subcontractors, or for material or labor.

Consistent with RCW 60.28.011, the City of Des Moines shall reserve a contract retainage of 5% (five percent) of the moneys earned by the Contractor as a trust fund for the protection and payment of claims by any person arising under the Contract and/or State of Washington, with respect to taxes imposed pursuant to Title 82 RCW which may be due from such Contractor.

As provided in WAC 82-32-010, the Contractor shall be required to exercise its option in writing on whether or not monies reserved from the amounts due the Contractor shall be retained by the public body, deposited by the public body in an interest bearing account in a bank, mutual savings bank, or saving and load association, or placed in escrow by the public body. This provision shall constitute official notice informing the Contractor of the options available and the method for exercising the option selected. Said option must be exercised prior to or at the time of submission of invoices for the first progress payment to be made under the contract. No progress payment shall be made until the Contractor has exercised its option in writing.

G-9. FINAL PAYMENT APPLICATION

Final payment to the Contractor will be made upon completing or receiving the following items:

1. Items specified for completion after substantial completion certification.
2. Ensure in writing that all claims have or will be settled.

3. Transmittal of required project construction records to the Owner.
4. Proof that taxes, wages, fees, and similar obligations were paid (certificates from Labor and Industries and the Department of Revenue.)
5. A signed Lien Release in a form acceptable to the Owner signed by all subcontractors and major suppliers.
6. Removal of all temporary facilities, markings, rubbish and similar elements.

G-10 THE ENGINEERS' STATUS

The Engineers shall have general supervision of the work. They have authority to stop the work, if necessary in their opinion, to ensure its proper execution. The Contractor shall comply with instructions given by the Engineers in accordance with the terms of the Contract, or by their authorized representatives acting within the scope of the duties assigned to them.

G-11. SURVEYS, PERMITS, AND REGULATIONS

The Engineers will furnish control points sufficient to properly control the construction of the work.

G-12. INSURANCE & INDEMNIFICATION REQUIREMENTS

Indemnification / Hold Harmless

The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Insurance

The Contractor 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 Contractor, their agents, representatives, employees, or subcontractors.

A. Minimum Scope of Insurance

Contractor 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 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, products-completed operations, personal injury and advertising injury, and liability assumed under an insurance contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City, and the City's consulting design engineer, R.W. Beck, Inc., shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO additional insured endorsement CG 20 10 11 85 or a substitute endorsement providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washing.
4. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

B. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. The Contractor'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 Contractor's insurance and shall not contribute with it.
2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, or forty-five (45) days prior written notice by regular U.S. Mail to the City Manager, has been given to the City.

D. Contractor's Insurance For Other Losses

The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

E. Waiver of Subrogation

The Contractor and the City waive all rights against each other any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other periods to the extend covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

F. Acceptability of Insurers

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

G. Verification of Coverage

Contractor 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 Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

H. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall finish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Contractor.

G-13. COMPLIANCE WITH APPLICABLE LAWS

The Contractor agrees to fully comply with all applicable Federal, State and local laws, orders, rules, regulations and ordinances, including but not limited to workmen's compensation, pension and social security laws, safety standards and building codes, and the Contractor shall indemnify and save harmless the Owner from any claim, liability or expense by reason of the failure of the Contractor or any of his subcontractors to comply with such laws, orders, rules, regulations or ordinances.

G-14. PERMITS AND REGULATIONS

The Contractor shall obtain and pay for all permits and licenses, but not permanent easements required in connection with the work, and shall give all notices, pay all fees and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Engineer in writing and any necessary changes shall be adjusted. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the Engineer, he shall bear all costs arising therefrom.

G-15. WAGE RATES

In conformity with the R.C.W. 39.12, no laborer, workman or mechanic employed in the performance of this Contract either by the Contractor or a subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by this Contract shall be paid less than the minimum hourly rate for his trade or occupation hereinafter set forth or, if none is set forth, the minimum hourly wage rates for his trade or occupation which prevail in the locality where the work is to be performed, and the Contractor agrees

that no such laborer, workman or mechanic shall be paid less than such rate. In case any dispute arises to what are the prevailing rates of wages for work of a similar nature and it cannot be adjusted by the parties involved, the matter shall be referred to the Director of Labor & Industries and his decision shall be final. These rates are subject to change to reflect increases and decreases in the rates which may prevail in the area from time to time during the performance of the Contract. No change in these rates or the rates actually paid by the Contractor shall constitute the basis for a change in the Contract Price.

G-16. RELATIONS WITH OTHER CONTRACTORS

The Contractor shall cooperate with all other contractors who may be performing work in behalf of the Owner on any work in the vicinity of the work to be done under this Contract, and he shall so conduct his operations as to interfere to the least possible extent with the work of such contractors. He shall promptly make good, at his own expense, any injury or damage that may be sustained by other contractors at his hands. Any difference or conflict which may arise between the Contractor and other contractors in regard to their work shall be adjusted and determined by the Engineer. If the work of the Contractor is delayed because of any acts or omissions of any other contractor or contractors, the Contractor shall have no claim against the Owner on that account other than for an extension of time.

When two or more contracts are being executed at one time in such manner that work on one contract may interfere with that on another, the Engineer shall decide which contractor shall cease work and which shall continue, or whether the work on both contracts shall progress at the same time, and in what manner.

When the territory of one contract is the necessary or convenient means of access for the transportation or movement of men, material, or appliances required for the execution of another contract; such privileges of access or any other reasonable privilege may be granted by the Engineer to the contractor so desiring, to the extent and amount, in the manner, and at the time, which may be reasonably necessary.

G-17. MEDIATION/ARBITRATION CLAUSE

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

G-18. VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

All questions related to this Agreement shall be resolved under the laws of the State of Washington. In the event that either party deems it necessary to institute legal action arising from this Agreement, such action shall be instituted in the King County Superior Court. The parties each consent to the personal jurisdiction of such court. Except as otherwise provided by law, it is expressly understood that neither party can institute legal

action against the other based on this Agreement until the parties have exhausted the mediation and arbitration procedures required by the previous paragraph.

G-19. 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. The Contractor is entitled to retain a complete set of work project for historical and evidentiary purposes. All information concerning the City and said project, which is not otherwise a matter of public record by law to be made public, is confidential and the Contractor will not, in whole or in part, now at any time, disclose that information without the express written consent of the City.

AGENDA ITEM

SUBJECT:

Custom Street and Area Lighting Agreement with Puget Sound Energy (PSE) for the Pacific Highway South Redevelopment Project

ATTACHMENTS:

1. PSE Street and Area Lighting Authorization Letter
2. PSE Custom Street Lighting Order
3. PSE Schedule 52

AGENDA OF: August 14, 2003

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: August 6, 2003

CLEARANCES:

☒ Finance

☒ Public Works

☒ Legal

**APPROVED BY CITY MANAGER
FOR SUBMITTAL:**

Purpose and Recommendation:

The purpose of this item is to enter into agreements with Puget Sound Energy to cover materials, installation, energy and maintenance costs of the street and sidewalk lighting associated with the Pacific Highway South Redevelopment Project.

Suggested Motions

The following motion will appear on the Consent Calendar:

- 1) "I move to enter into the attached agreements with Puget Sound Energy to cover the costs of the materials, installation, energy and maintenance of the street and sidewalk lighting associated with the Pacific Highway South Redevelopment Project and further to authorize the City Manager to sign said agreements 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 utility purveyors to inform them of the City's plans, and to request their input and participation on the project. Early on, Puget Sound Energy agreed to participate in the joint utility trench to be shared with the City, Qwest, and Comcast (formerly AT&T Broadband). They also agreed to work with the City on design and construction of lighting improvements.

As part of the Pacific Highway South Redevelopment Project, the City plans on upgrading and enhancing the street and sidewalk lighting along the corridor. This not only aids the traveling motorists, transit riders, and pedestrians; it also acts as a crime deterrent feature for the businesses that are located along the corridor.

Discussion:

The Custom Street Lighting Order provides for payment to Puget Sound Energy for the installation of these upgraded and enhanced street and sidewalk lighting improvements; it also provides for payment to Puget Sound Energy for the monthly facilities and energy charges for these improvements. These lighting improvement rates are governed by Puget Sound Energy Electric Tariff G, Schedule 52, as currently exists, or as may be amended in the future by the Washington Utilities and Transportation Commission (WUTC). A copy of the most current version of Schedule 52 is included in this agenda packet as Attachment 3.

The City is choosing Option B on the Custom Street Lighting Order, which includes the up-front cost of the lights and installation. By choosing Option B, some of these costs can be charged to existing grants. The City could not use any existing grants if Option A were chosen.

Alternatives:

The City could elect to choose Option A, and complete the Pacific Highway South Redevelopment Project without being able to use existing grant monies to help pay for the costs of the upgraded and enhanced street and pedestrian lighting improvements. The City could also elect not to include the pedestrian lighting in the project.

Financial Impact:

Per this agreement, the City will agree to pay Puget Sound Energy for both the installation costs and the monthly facilities and energy charges for the upgraded and enhanced street and pedestrian lighting improvements as part of the City's Pacific Highway South Redevelopment Project. The up-front cost for the added lighting installations will be \$694,311. The ongoing monthly utility bill is estimated to be \$2620. Both amounts are based on the current plan for the number of lights to be installed. Our current utility bill for this same area is approximately \$510 per month.

Recommendation/Conclusion:

Staff recommends that we enter into this agreement with Puget Sound Energy.

Concurrence:

Legal and Finance are in agreement that the City should enter into this agreement with Puget Sound Energy.

Intolight

Lighting Services from Puget Sound Energy

STREET & AREA LIGHTING AUTHORIZATION LETTER

April 17, 2003

Maiya Andrews
Public Works Department
Des Moines, WA

Project Name: Pacific Highway (UG Conversion)
Project Location: From South 216th Street to SR 516, Des Moines

Your request for a street/area service at the above location has been received. Your cost based on the description of the system in the Custom Street Lighting Order is \$694,310.91.

1. Invoicing and Payment: Payment of \$694,310.91 by customer to Puget Sound Energy shall be due and payable for work completed upon submission of and invoice. Invoice not paid within thirty days from issuance shall bear interest at the rate of twelve percent (12%) per annum, or, if less the maximum permitted by law.

The following contingencies must be completed before construction of the system.

2. Sign this letter and return to PSE with original signed copy of Custom Street Lighting Order.
3. Customer will install all concrete footings to meet PSE specifications. PSE will provide all anchor bolts to contractor.
4. Customer is responsible for selection of pole, luminaire, and pole location.
5. Right-of-way and/or Easements may also be required from you or adjacent property owners.

By signing this letter, you are stating that you will comply with these requirements and authorize us to do the work. When the contingencies have been met, this order will be released to construction for scheduling and poles and luminaires ordered. If you have any questions, please call me at (425) 456-2413.

Sincerely,



Del Haydon
Account Manager, Street & Area Lighting

The above contingencies are accepted and authorization is given:

By:

Title:

Date

ATTACHMENT 1

INTOLIGHT

Project: Pacific Highway (UG Conversion)
Location: From South 216th Street to SR 516, Des Moines WA

Order #

CUSTOM STREET LIGHTING ORDER

This order dated _____ to PUGET SOUND ENERGY, Inc. (PSE) from City of Des Moines, (Customer) covers the installation of custom lighting authorized by this order. Billing will be on a Monthly basis and in accordance with the terms and conditions contained in PSE's Schedule 52, and any future modifications of such Schedule as may be approved by the Washington Utilities and Transportation Commission. Ownership of all conductors, poles, fixtures, lamps and accessory equipment installed as a result of this order shall remain with PSE. The number, size and type of lights ordered are summarized below.

<u>High Pressure Sodium Vapor</u>	<u>Number</u>
100 Watt	147
310 Watt	51

Description:

Luminaires:

51 – 310 watt HPS, Sterner Bellweather decorative, w/ button PE control and side entry for normal 2" arm. Painted RAL 5013 – blue.

147 – 100 watt HPS, Sterner Bellweather decorative w/ button PE control and side entry for normal 2" arm. Painted RAL 5013 – blue.

Poles & Arms:

*9 – Ameron 3 bolt fixed base round, tapered, galvanized steel poles with 2 – 10 foot arms (180 degrees) at 40 feet. All painted RAL 5013 blue.

*2 – Ameron 3 bolt slip base round tapered, galvanized steel poles with 1 – 8 foot arm at 40 feet. All painted RAL 5013 blue.

*5 – Ameron 3 bolt fixed base round tapered, galvanized steel poles with 1 – 8 foot arm at 40 feet and 1 – 5 foot Des Moines style pedestrian arm at 16 feet. All painted RAL 5013 blue.

*20 – Ameron 3 bolt slip base round, tapered, galvanized steel poles with 1 – 8 foot arm at 40 feet and 1 – 5 foot Des Moines style pedestrian arm at 16 feet. All painted RAL 5013 blue.

*6 – Ameron 3 bolt slip base round tapered, galvanized steel poles with 1 – 8 foot arm at 40 feet and 1 – 5 foot Des Moines style pedestrian arm at 16 feet. Also, single bell receptacle w/ cover at 10 feet for Metro Transit control. All painted RAL 5013 blue.

*104 – Ameron 3 bolt slip base round non-tapered 5" diameter, galvanized steel pole with 1 – 5 foot Des Moines style pedestrian arm at 16 feet. All painted RAL 5013 blue.

*4 – Ameron 3 bolt fixed base round non-tapered 5" diameter, galvanized steel pole with 1 – 5 foot Des Moines Style pedestrian arm at 16 feet. All painted RAL 5013 blue.

*8 – Ameron 3 bolt fixed base round non-tapered 5" diameter, galvanized steel pole with 1 – 5 foot Des Moines Style pedestrian arm at 16 feet. Also, with 10 ¾ inch pole extension above arm for installation of Des Moines Signature element. All painted RAL 5013 blue.

CUSTOM STREET LIGHTING ORDER – Pacific Highway (UG Conversion) (Continued)

The installation charge of the listed lighting units was estimated to be \$765,410.91. Value of the system used to determine the facilities charge is \$694,310.91 (Installation cost less concrete bases).

The basis of the monthly facilities charge under Rate Schedule 52, is as follows:

☐ Option A - No up-front payment of installation charge.

Monthly facilities is equal to 1.57% X installation charge.

$$.0157 \times \$ -0- = \$ -0-$$

☒ Option B - Full payment of installation charge paid up front.

Monthly facilities charge is equal to 0.24% x installation charge.

$$.0024 \times \$694,310.91 = \$1,666.35$$

The basis of the monthly energy charge under Rate Schedule 52, is as follows:

$$147 - 100 \text{ watt high pressure sodium units} \times \$3.05 = \$448.35$$

$$51 - 310 \text{ watt high pressure sodium units} \times \$9.95 = \$507.45$$

Total monthly energy charge	<u>\$955.80</u>
-----------------------------	-----------------

The total monthly charge for this installation is:

Monthly facilities charge	\$1,666.35
Monthly energy charge	\$ 955.80
Total monthly charge	<u>\$2,622.15</u> or 13.24 ea

Non-standard facilities are not kept in PSE inventory for the purpose of maintenance, therefore replacement of non-standard components may not be within the same time as replacement of standard components. Enter X, if non-standard components are included in this order, enter here X

This order, executed by customer's duly authorized representative as of the date first written above is for service, as described above, under PSE's Schedule 52.

Customer: City of Des Moines

By:

Title:

Accepted: PSE

By:

Title:

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 52
CUSTOM LIGHTING SERVICE
COMPANY OWNED**AVAILABILITY:**

1. This schedule is available to all Customers contracting for Company owned and maintained sodium vapor or metal halide lighting service for illumination of streets, highways, and other areas.
2. Service under this schedule may be pursuant to a service agreement, which shall be consistent with this schedule and shall be of a standard form provided by and satisfactory to the Company.
3. All non-standard equipment is subject to approval by the Company prior to installation.
4. Service under this schedule is effective for a minimum period of fifteen (15) years for lights installed by the Company on or after August 1, 2000, unless
 - (a) a subsequent customer requests service or;
 - (b) the facilities are removed, whereupon appropriate removal charges shall be paid.After expiration of such term, service shall continue on a year-to-year basis until terminated upon one (1) year's notice in writing.
5. Where necessary, the Customer shall obtain for, or grant to, the Company necessary permits and/or operating rights to place and/or maintain lighting facilities on public streets, highways, and public areas without expense to the Company. In conditions where it is necessary to place any lighting facilities on private property, the customer shall obtain and furnish suitable easements without expense to the Company.
6. Service under this schedule is available only for newly constructed Company owned lighting systems utilizing underground circuitry, decorative or custom lighting systems utilizing overhead circuitry, or existing lighting systems upon purchase by the Company. The Company will furnish all necessary labor, material and supplies for the installation, servicing and maintenance of lights under this schedule, except as provided in paragraph 8 of the Special Terms and Conditions herein.

TYPE OF SERVICE:

Service under this schedule applies to dusk-to-dawn lighting of streets, alleys, and other areas which can be served from the Company's distribution system.

MONTHLY RATES:

The sum of Lamp and Facilities charges:

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By:


Steve Secrist

Director, Rates & Regulation

PUGET SOUND ENERGY
Electric Tariff G**SCHEDULE 52**
CUSTOM LIGHTING SERVICE
COMPANY OWNED
(Continued)**Lamp Charges:**

Sodium Vapor Lamp Wattage	Base Rate per Month per lamp	Low Income Program	Effective Rate
50	\$1.48	\$0.01	\$1.49
70	\$2.15	\$0.02	\$2.17
100	\$3.02	\$0.03	\$3.05
150	\$4.40	\$0.04	\$4.44
200	\$5.84	\$0.06	\$5.90
250	\$7.25	\$0.07	\$7.32
310	\$9.86	\$0.09	\$9.95
400	\$11.29	\$0.11	\$11.40

(N)

(I)

(I)(N)

Metal Halide Lamp Wattage	Base Rate per Month per lamp	Low Income Program	Effective Rate
175	\$4.97	\$0.05	\$5.02
250	\$6.76	\$0.07	\$6.83
400	\$10.59	\$0.11	\$10.70
1000	\$25.33	\$0.27	\$25.60

(N)

(I)

(I)(N)

Facilities Charge:**Options A and B Terms:**

1. Estimated Installed Cost: The Estimated Installed Cost is the estimated installed cost of the lighting system, including but not limited to, luminaires, poles, distribution facilities, labor, overheads and includes the effect of applicable taxes (when applicable).
2. Estimated System Cost: The Estimated System Cost is the estimated installed cost of the lighting system including, but not limited to, luminaires, poles, distribution facilities, labor, overheads but excludes the effect of applicable taxes.

Amounts of the facilities charges:

(D)

(D)

Option A:

1.64% times the Estimated System Cost per month.

(I)

Under Option A the Customer makes no payment up-front. The monthly facilities charge covers taxes, depreciation, insurance, return and routine maintenance. At any time, upon notice to the Company, the Customer may pay the unamortized balance of the Estimated Installed Cost and thereafter pay the monthly facilities charge under Option B for the remainder of the term.

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By:



George Pohndorf

Title: Director, Rates & Regulation

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 52
CUSTOM LIGHTING SERVICE
COMPANY OWNED
(Continued)**Option B:**

0.24% times the Estimated System Cost per month.

(l)

Under Option B the Customer pays the Estimated Installed Cost up-front. The monthly facilities charge covers routine maintenance.

SPECIAL TERMS AND CONDITIONS:

1. Notification of Inoperable Lights: For lights where the Company provides routine maintenance, it shall be the responsibility of the Customer to notify the Company of Custom lights that are not working. Upon notification, within seventy-two (72) hours, excluding Saturdays, Sundays and holidays, the Company will investigate and take corrective action if such action is the responsibility of the Company. If such Company investigation/corrective action is not taken within seventy-two (72) hours for each such light, the Customer's billing shall be credited an amount equal to the monthly Lamp Charges normally billed for that light. This seventy-two (72) hour guarantee of service is in lieu of the provisions of Schedule 130 which are not available under this schedule. The Company will be excused from providing maintenance service within seventy-two (72) hours in the event of significant adverse events, such as storms, earthquakes, or other events beyond the Company's control including those enumerated in Schedule 80, paragraph 12.a. of this tariff.
2. Hours of service: Service under this schedule is for dusk-to-dawn lighting, or lighting service for the average number of hours of darkness per month (approximately 4,200 hours per year).

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PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 52
CUSTOM LIGHTING SERVICE
COMPANY OWNED
(Continued)

3. Removal, Relocation or Modification of Lighting Facilities: Lighting facilities will be removed, turned off, relocated or modified by the Company only after receipt of a letter signed by the Customer or its assignee who is in authority to order such action. Only the Company may remove, relocate or modify Company owned lighting facilities. Modification includes changes in type of lighting fixture or changes in bracket length or mounting height due to Customer, city, county or state requests or requirements. Relocation includes relocation of supporting poles and conversion of the serving distribution facilities to underground due to Customer, city, county or state request or requirement. In advance of any removal, relocation or modification, the Customer shall pay an amount equal to the estimated cost of such removal, relocation or modification. This estimated charge shall include the cost of removal of facilities that now serve lighting load only. All facilities installed or removed remain the sole property of the Company. The cost of removal, relocation or modification also includes any costs of traffic control or other associated costs. At the time when no Customer is taking service for lights under this schedule, the Company, at its sole option, may remove all facilities used in providing service. Lights that are removed because there is no longer a Customer to accept service will be considered removals requested by the last Customer of record for the purposes of assessing the charges contained in this schedule.
4. Additional Removal Charges: In addition to the charge for the cost of the removal, relocation or modification the following charges apply:
- If a light to be removed has been installed for less than ten (10) years and was installed prior to August 1, 2000; or a light installed after July 31, 2000, has been installed for less than fifteen (15) years, a charge equal to the total original estimated installed cost less (i) any up-front customer contribution toward the cost of salvageable items and (ii) estimated salvage value of the facilities removed.
 - If lights to be removed were transferred to Company ownership for nominal compensation, there will be no additional charge upon removal.

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Steve Secríst

Director, Rates & Regulation

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 52
CUSTOM LIGHTING SERVICE
COMPANY OWNED
(Continued)

5. Other Loads on Lighting System: Where unmetered lighting circuits include provisions for other or additional usage such as electric outlets (festoon outlets) the Company may require that service be metered and billed under the appropriate general service schedule.
6. Billing Information to be Provided by the Company: For each type and wattage of light the Company shall provide the total number of lights billed and the total dollar amount for the month by lamp size and type.
7. Ownership of Facilities: The Company shall own, operate, and maintain all facilities installed under this schedule.
8. Non-Standard Equipment: Non-Standard Equipment ("Non-Standard Equipment") is defined herein as: equipment which is not standard to the Company and not included in the Company's inventory for maintenance. Non-Standard Equipment (including but not limited to poles, arms and luminaires) installed under this Schedule is subject to the following conditions.
 - a. Non-Standard Equipment will not be kept in the Company's inventory for the purpose of maintenance. The Customer may choose to keep an inventory of such Non-Standard Equipment and make it available to the Company. If the Customer inventory is made available to the Company at costs that the Company would otherwise pay for such equipment, the Company will use the Customer inventory and reimburse the Customer for materials used within thirty days after receipt of a bill therefore.
 - b. If Non-Standard Equipment is not available for maintenance from the Customer as described in 8.a. above, and it is necessary to provide temporary lighting service, when requested by the Customer in writing, the Customer shall be responsible for all costs the Company incurs for such temporary facilities. The Customer shall reimburse the Company for such costs within thirty (30) days after receipt of a bill therefore. If Non-Standard Equipment is not available for maintenance the Company will not be obligated to comply with paragraphs 1 and 2 of the Special Terms and Conditions section of this schedule.

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Director, Rates & Regulation

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 52
CUSTOM LIGHTING SERVICE
COMPANY OWNED
(Continued)

- c. Should the Non-Standard Equipment become unavailable for purchase and require custom fabrication or special ordering, the Facilities Charge shall be adjusted to reflect any increase in cost.

INDEMNIFICATION:

The Customer shall indemnify and hold harmless the Company, its successors and assigns, from and against all claims, actions, liability, cost and expense by reason of injury to or death of persons or damage to property arising or resulting from (a) any interruption of modification of service requested or caused by the Customer; (b) any defects in any Non-Standard Equipment; (c) a failure or inability of the Customer to provide necessary Non-Standard Equipment components in a timely fashion that allows Company to meet its obligations under paragraph 1. of the Special Terms And Conditions of this schedule when so requested by the Company; or (d) any lighting, requested or approved by Customer or third party, which does not conform to the Illuminating Engineering Society (IES) Standards.

TREE TRIMMING:

It shall be the responsibility of the Customer to provide tree trimming services in areas that are below the height of luminaires installed under this schedule except when luminaires are installed within the area of energized electrical wires that is restricted to qualified utility workers. The Company shall be responsible for tree trimming within this restricted area.

ADJUSTMENTS:

Rates in this schedule are subject to adjustment by such other schedules in this tariff as may apply.

THIRD PARTY DAMAGE:

If Custom lighting facilities experience malicious and/or recurring damage caused by actions of third parties the Company may remove such facilities or, alternatively, such facilities may remain in place upon payment by the Customer for such damage.

GENERAL RULES AND PROVISIONS:

Service under this schedule is subject to the General Rules and Provisions contained in this tariff.

(K) & (M) Transferred from and to Sheet No. 52-e

Issued: June 26, 2000

Effective: August 1, 2000

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By:



Steve Secrist

Director, Rates & Regulation

AGENDA ITEM

SUBJECT: Agreement with Puget Sound Energy for Construction Work Associated with Undergrounding on the Pacific Highway South Redevelopment Project

AGENDA OF: August 14, 2003

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: August 7, 2003

ATTACHMENTS:

1. PSE Schedule 74
2. PSE Project Construction Agreement
3. Project Plan with Scope of Work
4. Cost Estimate

CLEARANCES:

[] Finance

[X] Public Works

[X] Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

Purpose and Recommendation:

The purpose of this item is to enter into an agreement with Puget Sound Energy for the construction work associated with the distribution undergrounding work on the Pacific Highway South Redevelopment Project.

Suggested Motions

The following motion will appear on the Consent Calendar:

- 1) "I move to enter into the attached agreement with Puget Sound Energy which compensates them in the amount of \$528,161.64, for the construction work associated with undergrounding the power distribution system on Pacific Highway South and further to authorize the City Manager to sign said agreement substantially in the form as submitted, plus authorize the City Manager or his designee to approve change orders up to an amount of 10% of the contract amount."

Background:

Over the past two years, the City has been involved in a legal case with Puget Sound Energy concerning distribution system underground conversion projects. As was presented to council in July 2002, this case was settled and the result of the settlement was new tariffs filed with the Washington Utilities and Transportation Commission (WUTC) for undergrounding work. During the settlement negotiation, the City entered into an interim agreement with Puget Sound Energy in order to keep design work moving forward on the Pacific Highway South Redevelopment Project.

Discussion:

The interim agreement approved by Council on April 25, 2002, and signed by the City requires that we comply with the outcome of the settlement of the lawsuit. In November of 2002, the City entered into the new design agreement to conform to the new tariff.

We are now requesting authority to enter into the new construction agreement (Attachment "B" to Schedule 74 – included as Attachment 2) which is now included as part of the new undergrounding tariff (Schedule 74 – included as Attachment 1) filed with the WUTC. The construction agreement consists of Attachments 2, 3 and 4 and all plans and specifications referenced therein.

Alternatives:

The City could choose to delete the undergrounding work at this time. However, under the existing design agreement, the City would have to pay the costs incurred to date, and further delay this project by an undeterminable amount of time while a redesign is done. The contract for the main Pacific Highway project with Ceccanti would have to be revised by change order.

Financial Impact:

This agreement will obligate the City to pay for the costs of construction associated with undergrounding the distribution system for this project as required by the tariff filed with the Washington Utilities and Transportation Commission (WUTC). The costs have been negotiated with PSE and staff feels the amounts are appropriate. The tariff sets how the costs are distributed. Under the tariff, the City pays for the costs of trenching, shoring, flagging, restoration, job coordination, and surveying; the City pays 40% of the costs for design, installation of ducts and vaults, removal of existing wiring, installation of new wiring, and acquisition of needed property. All costs are for the undergrounding portion of the work only; the actual relocation of facilities laterally (away from the street) is PSE's responsibility under the existing franchise. Per this agreement, the City will pay 40% (\$528,161.64) of the total shared costs (\$1,320,404.11) as shown on Attachment 4. This work has been included in the project budget at a slightly lower amount of \$475,000 (for the 40% City portion). This was the best estimate that could be made at the time, since the tariff setting the costs was under negotiation during the design of the project.

Recommendation/Conclusion:

Staff recommends that we enter into this construction agreement with Puget Sound Energy to keep the project moving forward.

Concurrence:

Legal has reviewed the agreement and concurs.

PUGET SOUND ENERGY
Electric Tariff G**SCHEDULE 74**
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES

(N)

1. AVAILABILITY

The Company shall install an Underground Distribution System and shall remove the existing overhead electric distribution system of 15,000 volts or less together with Company-owned poles following removal of all utility wires therefrom under this Schedule when all of the following conditions are met:

- a. The Government Entity has determined that installation of an Underground Distribution System is or will be required and has notified the Company in writing of such determination, and the Company and such Government Entity have agreed upon the provisions of the Design Agreement and the Construction Agreement pursuant to which the Company shall design and install an Underground Distribution System and provide service under this Schedule.
- b. The Company has the right to install, construct, operate, repair and maintain an electrical distribution system (including an Underground Distribution System) within the Public Thoroughfare in the Conversion Area pursuant to a franchise previously granted by the Government Entity requesting such installation and executed by the Company, or, if there is no such franchise, or if such franchise does not provide such right, pursuant to some other grant of rights mutually agreed upon by the Company and the Government Entity.
- c. All customers served by the Company within the Conversion Area will receive electric service through Underground Service Lines from the Underground Distribution System, unless the Company explicitly agrees to other electric service arrangements.

Government Entities that are eligible to receive service under this Schedule are not eligible for service under Schedule 73 of the Company's Electric Tariff G.

2. AGREEMENT PROVISIONS

The Company shall provide and install an Underground Distribution System within the Conversion Area subject to the terms and conditions of a Schedule 74 Design Agreement (the "Design Agreement") and a Schedule 74 Construction Agreement (the "Construction Agreement"), and the following shall apply:

(N)

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By:



George Pohndorf

Title: Director, Rates & Regulation

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)

(N)

- a. The Design Agreement and the Construction Agreement shall (i) be consistent with this Schedule, and (ii) be substantially in the forms of Attachment A and Attachment B hereto, which attachments are by this reference incorporated in this Schedule as if fully set forth herein. Without limiting the possibility that the Company and the Government Entity may (consistent with this Schedule) mutually agree upon terms that are in addition to those contained in the forms set forth in Attachments A and B hereto, neither the Government Entity nor the Company shall be required to agree to additional terms as a condition of service under this Schedule.
- b. The Design Agreement and the Construction Agreement shall:
- (1) except as otherwise provided in Section 2.b(2), obligate the Government Entity to pay the Company 40% of the total Cost of Conversion and the Company to pay 60% of the total Cost of Conversion;
 - (2) obligate the Government Entity to pay (i) 100% of the total Cost of Conversion for conversion of that portion, if any, of the existing overhead distribution system located, as of the date on which the Government Entity provides the notice referred to in Section 4.a or the date on which the Government Entity commences acquisition or condemnation of real property to facilitate construction of any public improvements related to the conversion project, whichever occurs first, (A) outside of the Public Thoroughfare or (B) pursuant to rights not derived from a franchise previously granted by the Government Entity or pursuant to rights not otherwise previously granted by the Government Entity, less (ii) the distribution pole replacement costs (if any) that would be avoided by the Company on account of such conversion, as determined consistent with the applicable Company distribution facilities replacement program, plus (iii) just compensation as provided by law for the Company's interests in real property on which such existing overhead distribution system was located prior to conversion;
 - (3) obligate the Government Entity to pay the Company 100% of the costs of (i) cancellation as provided herein; (ii) any facilities installed at the time of the conversion to provide Temporary Service, as provided for herein; and (iii) removal of any facilities installed to provide Temporary Service (less salvage value of removed equipment);
 - (4) obligate the Company to pay 100% of the cost of obtaining the rights referred to in Section 3.b; and
 - (5) obligate the Government Entity to (i) perform or to cause to be performed (A) all Trenching and Restoration and job coordination required for the installation of the Underground Distribution System and (B) all surveying for alignment and grades of vaults and ducts and (ii) to pay 100% of the cost of performance under clause (i) of this Section 2.b(5).

(N)

Issued: June 26, 2002

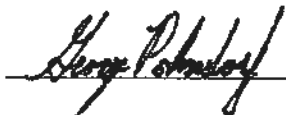
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**PUGET SOUND ENERGY
Electric Tariff G**

**SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)**

(N)

- c. The Government Entity may, at its option, install ducts and vaults, provided that (i) pursuant to the Design Agreement and the Construction Agreement the Government Entity and the Company have mutually agreed upon (A) the cost of such installation to be included in the Cost of Conversion and (B) the specifications and standards applicable to such installation, and (ii) such installation is accomplished by the Government Entity in accordance with the applicable design and construction specifications provided by the Company for such installation pursuant to the Design Agreement. To the extent the Government Entity installs any of the Facilities pursuant to the Construction Agreement, the Company shall not be required to do so under this Schedule.
- d. A Government Entity that is a municipality shall notify all persons and entities within the Conversion Area that electric service to such persons and entities must be converted from overhead to underground (as provided for in the Company's Electric Tariff G) within the applicable statutory period following written notice from the Government Entity that service from underground facilities is available in accordance with RCW 35.96.050. The Government Entity shall exercise its authority to order disconnection and removal of overhead facilities with respect to persons and entities failing to convert service lines from overhead to underground within the timelines provided in RCW 35.96.050.
3. **INSTALLATION AND OPERATING RIGHTS:**
- a. The Company may install all of the Facilities within a Public Thoroughfare in the locations provided for in a franchise previously granted by the Government Entity or otherwise provided for in the grant of rights referred to in Section 1.b. The Government Entity shall act in good faith and shall use its best efforts to provide space sufficient for the safe and efficient installation, operation, repair and maintenance of all of the Facilities ("Sufficient Space") within the Public Thoroughfare in the Conversion Area, and the Company shall act in good faith and shall use its best efforts to install Facilities in such space within the Public Thoroughfare. If the Company and the Government Entity agree that there is not or will not be Sufficient Space within the Public Thoroughfare in the Conversion Area, then the Government Entity shall provide Sufficient Space by obtaining additional Public Thoroughfare or other equivalent rights mutually agreeable to the Government Entity and the Company, title to which shall be in the Government Entity's name.

(N)

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PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)

(N)

- b. If, notwithstanding the use of best efforts by each of the Government Entity and the Company as provided in Section 3.a, the Government Entity and the Company do not agree whether there is or will be Sufficient Space within the Public Thoroughfare in the Conversion Area, the Company shall install those Facilities, for which there is not Sufficient Space within the Public Thoroughfare, on property outside the Public Thoroughfare, the rights for which shall be obtained by the Company at its sole expense. Subject to the other provisions of this Schedule, nothing in this section shall excuse the Company from complying with any work schedule agreed to by the Government Entity and the Company pursuant to the Design Agreement and the Construction Agreement.
- c. If the Government Entity requires the relocation of any Facilities installed pursuant to this Schedule in a Public Thoroughfare within five (5) years from the date of the energization for service of such Facilities, the Government Entity shall reimburse the Company for all costs incurred by the Company in connection with the relocation and reinstallation of facilities substantially equivalent to the relocated Facilities.
- d. If the Government Entity requires (or takes any action that has the effect of requiring) a third party not acting as an agent or a contractor of Government Entity to relocate any Facilities installed pursuant to this Schedule in a Public Thoroughfare within five (5) years from the date of the energization for service of such Facilities, the Government Entity shall require the third party, as a condition to the Company's performance of any relocation, to pay the Company for all costs incurred by the Company in connection with the relocation and reinstallation of facilities substantially equivalent to the relocated Facilities.

4. GENERAL

- a. **Timing:** The Company shall commence performance (as contemplated in the forms of Design Agreement and Construction Agreement attached hereto as Attachments A and B) within ten (10) business days of written notice from a Government Entity of its determination that it requires installation of an Underground Distribution System under this Schedule.
- b. **Ownership of Facilities:** Except as otherwise provided in the Company's Electric Tariff G, the Company shall own, operate, and maintain the Underground Distribution System installed or provided pursuant to this Schedule.
- c. **Prior Contracts:** Nothing herein contained shall affect the rights or obligations of the Company under any previous agreements pertaining to existing or future facilities of greater than 15,000 Volts within any Conversion Area.

(N)

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PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)

(N)

- d. **Temporary Service:** Temporary Service shall not exceed a term of 18 months from the date on which service from the Underground Distribution System is available, unless the Company acting reasonably agrees to extend such term. Should a Temporary Service not be removed within such 18-month period or such other period of time that has been approved by the Company acting reasonably, a Government Entity that is a municipality shall exercise its authority under RCW 35.96.050 to order such Temporary Service disconnected and removed within the applicable statutory period following the date of mailing of the Government Entity's notice under RCW 35.96.050. Otherwise, if a Temporary Service is not disconnected or removed within such time approved by the Company acting reasonably, the Government Entity shall pay either (i) 100% of the Cost of Conversion for the entire Underground Distribution System or (ii) 100% of the costs of converting only the Temporary Service to underground, whichever the Government Entity may elect.

5. USE BY OTHER UTILITIES OF TRENCHES PROVIDED BY GOVERNMENT ENTITY

Other utilities may be permitted by the Government Entity to use trenches provided by the Government Entity pursuant to this Schedule for the installation of such other utilities' facilities, so long as such facilities, or the installation thereof, do not interfere (as determined pursuant to the Company's electrical standards) with the installation, operation or maintenance of the Company's Facilities located within such trenches.

6. CANCELLATION

If by written notice or other official action a Government Entity cancels or suspends indefinitely or takes similar official action regarding a conversion project undertaken under this Schedule prior to completion of the conversion to an Underground Distribution System, the Government Entity shall pay the Company all of the costs incurred by the Company to the date of such cancellation consistent with the termination provisions of the Design Agreement and Construction Agreement.

7. STREET LIGHTING

Removal and replacement of existing street lighting or installation of new street lighting within the Conversion Area suitable for service from the Underground Distribution System installed pursuant to this Schedule shall be arranged separately as provided in the Company's Electric Tariff G.

(N)

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PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)

(N)

8. UNDERGROUND SERVICE LINES

Underground Service Lines shall be installed, owned, and maintained as provided in the Company's Electric Tariff G.

9. GENERAL RULES AND PROVISIONS

Service under this Schedule is subject to the General Rules and Provisions contained in Schedule 80 of the Company's Electric Tariff G.

10. DEFINITIONS

The following terms when used in this Schedule, the Design Agreement or the Construction Agreement shall, solely for purposes of this Schedule and such agreements, have the meanings given below:

- a. **Conversion Area:** The geographical area in which the Company replaces its overhead electric distribution system with an Underground Distribution System.
- b. **Cost of Conversion:** The cost of converting an existing overhead distribution system to an Underground Distribution System shall be the sum of:
 - (i) the actual, reasonable costs to the Company for labor, materials and overheads and all other reasonable costs, not including mark-up or profit of the Company, for design of the Underground Distribution System, such costs to be determined in accordance with the Design Agreement; plus
 - (ii) the actual costs to the Company for labor, materials and overheads and all other costs, not including mark-up or profit of the Company, to construct and install the Underground Distribution System, up to a maximum amount determined in accordance with the Construction Agreement; plus
 - (iii) the actual reasonable design costs to the Company (including costs for labor, materials and overheads and all other reasonable costs), and the actual construction and installation costs to the Company (including costs for labor, materials and overheads and all other costs), less the salvage value to the Company of the facilities removed, up to a maximum amount determined in accordance with the Construction Agreement, in each case not including mark-up or profit of the Company, for removal of the existing electrical facilities; plus

(N)

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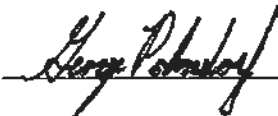
Effective: July 1, 2002

Advice No.: 2002-12

By Authority of the Washington Utilities and Transportation Commission in Docket Nos. UE-011570 & UG-011571

Issued By Puget Sound Energy

By:



George Pohndorf

Title: Director, Rates & Regulation

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)

(N)

- (iv) the actual costs to the Government Entity (if any) of installation of ducts and vaults or other Facilities that the Government Entity has agreed to install for the Underground Distribution System pursuant to the Construction Agreement, up to a maximum amount determined in accordance with the Construction Agreement; plus
- (v) the actual, reasonable costs to the Government Entity (if any) of obtaining Public Thoroughfare or other equivalent rights for the Facilities pursuant to Section 3.a.

The Cost of Conversion shall not include any costs of Trenching and Restoration, or of the Company's obtaining rights pursuant to Section 3.b of this Schedule. Company upgrades and expansions, Government Entity requested changes and requested upgrades, the cost of delays and overtime labor costs shall be as provided for in the Design Agreement and the Construction Agreement.

- c. Facilities: All components of the Underground Distribution System, including but not limited to, primary voltage cables, secondary voltage cables, connections, terminations, pad-mounted transformers, pad-mounted switches, ducts, vaults and other associated components.
- d. Government Entity: The municipality, county or other government entity having authority over the Public Thoroughfare in the Conversion Area.
- e. Public Thoroughfare: Any municipal, county, state, federal or other public road, highway or thoroughway, or other public right-of-way or other public real property rights allowing for electric utility use.
- f. Temporary Service: Temporary Service shall have the meaning set forth in the General Rules and Provisions of the Company's Electric Tariff G and, in addition, shall mean (i) limited overhead facilities that, at the request of the Government Entity, the Company may elect in its sole discretion to leave in place within the Conversion Area after installation of the Underground Distribution System and/or (ii) limited overhead or underground facilities that, at the request of the Government Entity, the Company may elect in its sole discretion to install concurrently with the installation of the Underground Distribution System, and that, in each case, shall be used to provide overhead distribution service within the Conversion Area for such period as may be approved by the Company acting reasonably under the circumstances, (e.g., to accommodate other demolition or construction projects within the Conversion Area).

(N)

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PUGET SOUND ENERGY
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FOR GOVERNMENT ENTITIES
(Continued)

(N)

- g. Trenching and Restoration: Includes, but is not limited to, any or all of the following, whether in Public Thoroughfares or on other property: breakup of sidewalks, driveways, street surfaces and pavements; disturbance or removal of landscaping; excavating for vaults; trenching for ducts or cable; shoring, flagging, barricading and backfilling; installation of select backfill or concrete around ducts (if required); compaction; and restoration of Public Thoroughfares and other property; all in accordance with the specifications applicable thereto set forth in the Design Agreement and the Construction Agreement.
- h. Underground Distribution System: An underground electric distribution system, excluding "Underground Service Lines" as such term is defined herein, that is comparable to the overhead distribution system being replaced. The Underground Distribution System includes the Facilities as defined herein. For purposes of this Schedule, a "comparable" system shall include, unless the Government Entity and the Company otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less) of such diameter and number as may be specified and agreed upon in the Design Agreement and Construction Agreement necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced.
- i. Underground Service Lines: The underground electric cables and associated components extending from the service connections at the outside of the customers' structures to the designated primary voltage or secondary voltage service connection points of an Underground Distribution System.

(N)

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PUGET SOUND ENERGY

Attachment "B" – Project Construction Agreement

SCHEDULE 74 UNDERGROUND CONVERSION AGREEMENT

THIS Agreement, dated as of this ____ day of _____, 200__, is made by and between _____, a _____ (the "Government Entity"), and PUGET SOUND ENERGY, Inc., a Washington Corporation (the "Company").

RECITALS

A. The Company is a public service company engaged in the sale and distribution of electric energy, and pursuant to its franchise or other rights from the Government Entity, currently locates its electric distribution facilities within the jurisdictional boundaries of the Government Entity.

B. The Government Entity has determined that it is necessary to replace the existing overhead electric distribution system within the area specified in the Project Plan (as defined below) (the "Conversion Area") with a comparable underground electric distribution system, all as more specifically described in the Project Plan (the "Conversion Project").

C. The Government Entity and the Company have previously entered into a Project Design Agreement dated as of _____ (the "Design Agreement"), pursuant to which the parties completed certain engineering design, cost assessment, operating rights planning and other preliminary work relating to the Conversion Project and, in connection with that effort, developed the Project Plan.

D. The Government Entity and the Company wish to execute this written contract in accordance with Schedule 74 of the Company's Electric Tariff G ("Schedule 74") to govern the completion of the Conversion Project, which both parties intend shall qualify as an underground conversion under the terms of Schedule 74.

AGREEMENT

The Government Entity and the Company therefore agree as follows:

1. Definitions.

(a) Unless specifically defined otherwise herein, all terms defined in Schedule 74 shall have the same meanings when used in this Agreement, including, without limitation, the following:

- i) Cost of Conversion;
- ii) Public Thoroughfare;
- iii) Temporary Service;
- iv) Trenching and Restoration;
- v) Underground Distribution System; and
- vi) Underground Service Lines.

(b) "Company-Initiated Upgrade" shall mean any feature of the Underground Distribution System which is required by the Company and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For purposes of the foregoing, a "comparable" system shall include, unless the Parties otherwise

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agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less) of such diameter and number as may be specified and agreed upon in the Project Plan necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced.

- (c) "Estimated Reimbursable Private Conversion Costs" shall mean the Company's good faith estimate of the Reimbursable Private Conversion Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (d) "Estimated Reimbursable Temporary Service Costs" shall mean the Company's good faith estimate of the Reimbursable Temporary Service Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (e) "Estimated Reimbursable Upgrade Costs" shall mean the Company's good faith estimate of the Reimbursable Upgrade Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (f) "Estimated Shared Company Costs" shall mean the Company's good faith estimate of the Shared Company Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (g) "Estimated Shared Government Costs" shall mean the Government Entity's good faith estimate of the Shared Government Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (h) "Government-Requested Upgrade" shall mean any feature of the Underground Distribution System which is requested by the Government Entity and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For purposes of the foregoing, any empty ducts installed at the request of the Government Entity shall be a Government-Requested Upgrade.
- (i) "Party" shall mean either the Company, the Government Entity, or both.
- (j) "Private Property Conversion" shall mean that portion, if any, of the Conversion Project for which the existing overhead electric distribution system is located, as of the date determined in accordance with Schedule 74, (i) outside of the Public Thoroughfare, or (ii) pursuant to rights not derived from a franchise previously granted by the Government Entity or pursuant to rights not otherwise previously granted by the Government Entity.
- (k) "Project Plan" shall mean the project plan developed by the Parties under the Design Agreement and attached hereto as Exhibit A, as the same may be changed and amended from time to time in accordance with Section 6, below. The Project Plan includes, among other things, (i) a detailed description of the Work that is required to be performed by each Party and any third party, (ii) the applicable requirements and specifications for the Work, (iii) a description of the Operating Rights that are required to be obtained by each Party for the Conversion Project (and the requirements and specifications with respect thereto), (iv) an itemization and summary of the Estimated Shared Company Costs, Estimated Shared Government Costs, Estimated Reimbursable Private Conversion Costs (if any), Estimated Reimbursable Temporary Service Costs (if any) and Estimated Reimbursable Upgrade Costs (if any), and (v) the Work Schedule.

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- (l) "Operating Rights" shall mean sufficient space and legal rights for the construction, operation, repair, and maintenance of the Underground Distribution System.
- (m) "Reimbursable Private Conversion Costs" shall mean (i) all Costs of Conversion, if any, incurred by the Company which are attributable to a Private Property Conversion, less (ii) the distribution pole replacement costs (if any) that would be avoided by the Company on account of such Private Property Conversion, as determined consistent with the applicable Company distribution facilities replacement program, plus (iii) just compensation as provided by law for the Company's interests in real property on which such existing overhead distribution system was located prior to conversion; provided that the portion of the Reimbursable Private Conversion Costs attributable to the Costs of Conversion under subparagraph (i) of this paragraph shall not exceed the Estimated Reimbursable Private Conversion Costs without the prior written authorization of the Government Entity.
- (n) "Reimbursable Temporary Service Costs" shall mean all costs incurred by the Company which are attributable to (i) any facilities installed as part of the Conversion Project to provide Temporary Service, as provided for in Schedule 74, and (ii) the removal of any facilities installed to provide Temporary Service (less salvage value of removed equipment); provided that the Reimbursable Temporary Service Costs shall not exceed the Estimated Reimbursable Temporary Service Costs without the prior written authorization of the Government Entity.
- (o) "Reimbursable Upgrade Costs" shall mean all Costs of Conversion incurred by the Company which are attributable to any Government-Requested Upgrade; provided that the Reimbursable Upgrade Costs shall not exceed the Estimated Reimbursable Upgrade Costs without the prior written authorization of the Government Entity.
- (p) "Shared Company Costs" shall mean all Costs of Conversion (other than Reimbursable Upgrade Costs, Reimbursable Private Conversion Costs and Reimbursable Temporary Service Costs) incurred by the Company in connection with the Conversion Project; provided, however, that the Shared Company Costs shall not exceed the Estimated Shared Company Costs without the prior written authorization of the Government Entity. For the avoidance of doubt, the "Shared Company Costs" shall, as and to the extent specified in the Design Agreement, include the actual, reasonable costs to the Company for the "Design Work" performed by the Company under the Design Agreement.
- (q) "Shared Government Costs" shall mean all Costs of Conversion incurred by the Government Entity in connection with (i) any duct and vault installation Work which the Parties have specified in the Project Plan is to be performed by the Government Entity as part of the Government Work, and (ii) the acquisition of any Operating Rights which the Parties have, by mutual agreement, specified in the Project Plan are to be obtained by the Government Entity for the Conversion Project, but only to the extent attributable to that portion of such Operating Rights which is necessary to accommodate the facilities of the Company; provided, however, that the Shared Government Costs shall not exceed the Estimated Shared Government Costs without the prior written authorization of the Company.
- (r) "Total Shared Costs" shall mean the sum of the Shared Company Costs and the Shared Government Costs. For the avoidance of doubt, the Total Shared Costs shall not include, without limitation, (i) costs to the Government Entity for Trenching and Restoration, or (ii) costs associated with any joint use of trenches by other utilities as permitted under Section 3(b).

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- (s) "Work" shall mean all work to be performed in connection with the Conversion Project, as more specifically described in the Project Plan, including, without limitation, the Company Work (as defined in Section 2(a), below) and the Government Work (as defined in Section 3(a), below).
- (t) "Work Schedule" shall mean the schedule specified in the Project Plan which sets forth the milestones for completing the Work, as the same may be changed and amended from time to time in accordance with Section 6, below.

2. Obligations of the Company.

- (a) Subject to the terms and conditions of this Agreement, the Company shall do the following as specified in, and in accordance with the design and construction specifications and other requirements set forth in, the Project Plan (the "Company Work"):
 - i) furnish and install an Underground Distribution System within the Conversion Area (excluding any duct and vault installation or other Work which the Parties have specified in the Project Plan is to be performed by the Government Entity);
 - ii) provide a Company inspector on-site at the times specified in the Work Schedule to inspect the performance of any duct and vault installation Work which the Parties have specified in the Project Plan is to be performed by the Government Entity; and
 - iii) upon connection of those persons or entities to be served by the Underground Distribution System and removal of facilities of any other utilities that are connected to the poles of the overhead system, remove the existing overhead system (including associated wires and Company-owned poles) of 15,000 volts or less within the Conversion Area except for Temporary Services.
- (b) Upon request of the Government Entity, the Company shall provide periodic reports of the progress of the Company Work identifying (i) the Company Work completed to date, (ii) the Company Work yet to be completed, and (iii) an estimate regarding whether the Conversion Project is on target with respect to the Estimated Shared Company Costs, the Estimated Reimbursable Private Conversion Costs (if any), the Estimated Reimbursable Temporary Service Costs (if any), the Estimated Reimbursable Upgrade Costs (if any) and the Work Schedule.
- (c) Except as otherwise provided in the Company's Electric Tariff G, the Company shall own, operate and maintain all electrical facilities installed pursuant to this Agreement including, but not limited to, the Underground Distribution System and Underground Service Lines.
- (d) Subject to the terms and conditions of this Agreement, the Company shall perform all Company Work in accordance with the Project Plan, the Work Schedule and this Agreement.

3. Obligations of the Government Entity.

- (a) Subject to the terms and conditions of this Agreement, the Government Entity shall do the following as specified in, and in accordance with the design and construction specifications and other requirements set forth in, the Project Plan (the "Government Work"):
 - i) provide the Trenching and Restoration;
 - ii) perform the surveying for alignment and grades for ducts and vaults; and
 - iii) perform any duct and vault installation and other Work which the Parties have specified in the Project Plan is to be performed by the Government Entity.

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- (b) Other utilities may be permitted by the Government Entity to use the trenches provided by the Government Entity for the installation of their facilities so long as such facilities or the installation thereof do not interfere (as determined pursuant to the Company's electrical standards) with the Underground Distribution System or the installation or maintenance thereof. Any such use of the trenches by other utilities shall be done subject to and in accordance with the joint trench design specifications and installation drawings set forth or otherwise identified in the Project Plan, and the Government Entity shall be responsible for the coordination of the design and installation of the facilities of the other utilities to ensure compliance with such specifications and drawings.
- (c) Upon request of the Company, the Government Entity shall provide periodic reports of the progress of the Government Work identifying (i) the Government Work completed to date, (ii) the Government Work yet to be completed, and (iii) an estimate regarding whether the Conversion Project is on target with respect to the Estimated Shared Government Costs and the Work Schedule.
- (d) The Government Entity shall be responsible for coordinating all work to be performed in connection with the street improvement program within the Conversion Area.
- (e) Subject to the terms and conditions of this Agreement, the Government Entity shall perform all Government Work in accordance with the Project Plan, the Work Schedule and this Agreement.

4. Work Schedule.

- (a) The Government Entity and the Company have agreed upon the Work Schedule as set forth in the Project Plan. Changes to the Work Schedule shall be made only in accordance with Section 6, below.
- (b) Promptly following the execution of this Agreement, and upon completion by the Government Entity of any necessary preliminary work, the Government Entity shall hold a preconstruction meeting involving all participants in the Conversion Project to review project design, coordination requirements, work sequencing and related premobilization requirements. Following the preconstruction meeting, the Government Entity shall give the Company written notice to proceed with the Work at least ten (10) business days prior to the commencement date specified in the Work Schedule.
- (c) Subject to the terms and conditions of this Agreement, each Party shall perform the Work assigned to it under this Agreement in accordance with the Work Schedule. So long as the Company performs the Company Work in accordance with the Work Schedule, the Company shall not be liable to the Government Entity (or its agents, servants, employees, contractors, subcontractors, or representatives) for any claims, actions, damages, or liability asserted or arising out of delays in the Work Schedule.

5. Location of Facilities.

All facilities of the Company installed within the Conversion Area pursuant to this Agreement shall be located, and all related Operating Rights shall be obtained, in the manner set forth in the applicable provisions of Schedule 74, as specified by the Parties in the Project Plan.

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6. Changes.

- (a) Either Party may, at any time, by written notice thereof to the other Party, request changes in the Work within the general scope of this Agreement (a "Request for Change"), including, but not limited to: (i) changes in, substitutions for, additions to or deletions of any Work; (ii) changes in the specifications; drawings and other requirements in the Project Plan, (iii) changes in the Work Schedule, and (iv) changes in the location, alignment, dimensions or design of items included in the Work. No Request for Change shall be effective and binding upon the Parties unless signed by an authorized representative of each Party.
- (b) If any change included in an approved Request for Change would cause a change in the cost of, or the time required for, the performance of any part of the Work, an equitable adjustment shall be made in the Estimated Shared Company Costs, the Estimated Shared Government Costs, the Estimated Reimbursable Private Conversion Costs (if any), the Estimated Reimbursable Temporary Service Costs (if any), the Estimated Reimbursable Upgrade Costs (if any) and/or the Work Schedule to reflect such change. The Parties shall negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If the Parties are unable to agree upon the terms of the equitable adjustment, either Party may submit the matter for resolution pursuant to the dispute resolution provisions in Section 10, below.
- (c) The Work Schedule, the Estimated Shared Company Costs, the Estimated Shared Government Costs, the Estimated Reimbursable Private Conversion Costs, the Estimated Reimbursable Temporary Service Costs and/or the Estimated Reimbursable Upgrade Costs shall be further equitably adjusted from time to time to reflect any change in the costs or time required to perform the Work to the extent such change is caused by: (i) any Force Majeure Event under Section 11, below, (ii) the discovery of any condition within the Conversion Area which affects the scope, cost, schedule or other aspect of the Work and was not known by or disclosed to the affected Party prior to the date of this Agreement, or (iii) any change or inaccuracy in any assumptions regarding the scope, cost, schedule or other aspect of the Work which are expressly identified by the Parties in the Project Plan. Upon the request of either Party, the Parties will negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If, at any time thereafter, the Parties are unable to agree upon the terms of the equitable adjustment, either Party may submit the matter for resolution pursuant to the dispute resolution provisions in Section 10, below.
- (d) Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, each Party shall, if requested by the other Party, proceed with the Work in accordance with any approved Request for Change. Any request to proceed hereunder must be accompanied by a written statement setting forth the requesting Party's reasons for rejecting the proposed equitable adjustment of the other Party.

7. Compensation and Payment.

- (a) Subject to and in accordance with the terms and conditions of this Agreement (including, without limitation, the payment procedures set forth in this Section 7), payment in connection with the Conversion Project and this Agreement shall be as follows:
 - i) The Total Shared Costs shall be allocated to the Parties in the following percentages: (A) sixty percent (60%) to the Company, and (B) forty percent (40%) to the Government Entity.

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- ii) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Private Conversion Costs, if any.
 - iii) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Upgrade Costs, if any.
 - iv) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Temporary Service Costs, if any.
 - v) The Government Entity shall pay one hundred percent (100%) of the costs it incurs to perform that portion of the Government Work specified in Section 3(a)(i) and (ii) (i.e., Trenching and Restoration and surveying).
 - vi) The Company shall pay one hundred percent (100%) of the costs it incurs to design, provide and construct any Company-Initiated Upgrade.
 - vii) The Company shall pay one hundred percent (100%) of the costs it incurs to obtain Operating Rights outside the Public Thoroughfare.
- (b) Based on the allocation of responsibilities set forth in Section 7(a), above, the Parties shall determine the net amount payable by the Government Entity or the Company, as applicable, to the other Party under this Agreement (the "Net Amount"). The Net Amount shall be determined by using the amount of the Total Shared Costs allocated to the Government Entity under Section 7(a)(i), and adjusting such amount as follows:
- i) Subtracting (as a credit to the Government Entity) the amount of the Shared Government Costs.
 - ii) Adding (as a credit to the Company) the amount of all Reimbursable Private Conversion Costs, Reimbursable Upgrade Costs and Reimbursable Temporary Service Costs.
 - iii) Subtracting (as a credit to the Government Entity) any payments previously made to the Company by the Government Entity under the Design Agreement which, under the terms of the Design Agreement, are to be credited to the Government Entity under this Agreement.
- The Net Amount, as so calculated, (A) will be an amount payable to the Company if it is a positive number, and (B) shall be an amount payable to the Government Entity if it is a negative number.
- (c) Within sixty (60) business days of completion of the Conversion Project, the Government Entity shall provide the Company with an itemization of the Shared Government Costs (the "Government Itemization"), together with such documentation and information as the Company may reasonably request to verify the Government Itemization. The Government Itemization shall, at a minimum, break down the Shared Government Costs by the following categories, as applicable: (i) property and related costs incurred and/or paid by the Government Entity, including any costs of obtaining Operating Rights, and (ii) construction costs incurred and/or paid by the Government Entity, including and listing separately inspection, labor, materials and equipment, overhead and all costs charged by any agent, contractor or subcontractor of the Government Entity.
- (d) Within thirty (30) business days after the Company's receipt of the Government Itemization and requested documentation and information, the Company shall provide the Government Entity a written statement (the "Company Statement") showing (i) an itemization of the Shared Company Costs, (ii) the Parties' relative share of the Total Shared Costs based on the Company's itemization of the Shared Company Costs and the Government Entity's itemization of the Shared Government Costs set forth in the Government Itemization, (iii) any Reimbursable Private Conversion Costs, (iv) any Reimbursable Upgrade Costs, (v) any Reimbursable Temporary Service Costs, (vi) any credits to the Government Entity for payments previously made to the Company by the Government Entity under the Design Agreement which, under the terms of the

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Design Agreement, are to be credited to the Government Entity under this Agreement, and (vii) the Net Amount, as determined in accordance with Section 7(b), above, together with such documentation and information as the Government Entity may reasonably request to verify the Company Statement. The itemization of the Shared Company Costs included in the Company Statement shall, at a minimum, break down the Shared Company Costs by the following categories, as applicable: (i) design and engineering costs, and (ii) construction costs, including and listing separately inspection, labor, materials and equipment, overhead and all costs charged by any agent, contractor or subcontractor of the Company.

- (e) Within thirty (30) business days after the Government Entity's receipt of the Company Statement and requested documentation and information, the Net Amount shall be paid by the owing Party to the other Party, as specified in the Company Statement.

8. Indemnification.

- (a) The Government Entity releases and shall defend, indemnify and hold the Company harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by or arising out of any negligent act or omission or willful misconduct of the Government Entity in its performance under this Agreement. During the performance of such activities the Government Entity's employees or contractors shall at all times remain employees or contractors, respectively, of the Government Entity.
- (b) The Company releases and shall defend, indemnify and hold the Government Entity harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by or arising out of any negligent act or omission or willful misconduct of the Company in its performance under this Agreement. During the performance of such activities the Company's employees or contractors shall at all times remain employees or contractors, respectively, of the Company.
- (c) Solely for purposes of enforcing the indemnification obligations of a Party under this Section 8, each Party expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, and agrees that the obligation to indemnify, defend and hold harmless provided for in this Section 8 extends to any such claim brought against the indemnified Party by or on behalf of any employee of the indemnifying Party. The foregoing waiver shall not in any way preclude the indemnifying Party from raising such immunity as a defense against any claim brought against the indemnifying Party by any of its employees.

9. Conversion of Service to Customers within Conversion Area.

- (a) Upon commencement of the Work, the Government Entity shall notify all persons and entities within the Conversion Area that service lines to such customers must be converted from overhead to underground service within the applicable statutory period following written notice from the Government Entity that service from underground facilities are available in accordance with RCW 35.96.050. Upon the request of any customer, other than a single family residential customer, within the Conversion Area, the Company shall remove the overhead system and connect such persons' and entities' Underground Service Lines to the Underground Distribution System.
- (b) The Parties acknowledge that single family residences within the Conversion Area must (i) provide a service trench and conduit, in accordance with the Company's specifications, from the underground meter base to the point of service provided during the conversion, and (ii) pay for the secondary service conductors as defined in Schedule 85 of the Company's Electric Tariff G. The Government Entity shall exercise its authority to order disconnection and removal of overhead

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facilities with respect to owners failing to convert service lines from overhead to underground within the timelines provided in RCW 35.96.050.

10. Dispute Resolution.

- (a) Any dispute, disagreement or claim arising out of or concerning this Agreement must first be presented to and considered by the Parties. A Party who wishes dispute resolution shall notify the other Party in writing as to the nature of the dispute. Each Party shall appoint a representative who shall be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute. Any dispute that is not resolved within ten (10) business days of the date the disagreement was first raised by written notice shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event the senior management are unable to resolve the dispute within twenty (20) business days (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute through other legal means consistent with the terms of this Agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.
- (b) Any claim or dispute arising hereunder which relates to any Request for Change or any equitable adjustment under Section 6, above, or the compensation payable by or to either Party under Section 7, above, and which is not resolved by senior management within the time permitted under Section 10(a), above, shall be resolved by arbitration in Seattle, Washington, under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The decision(s) of the arbitrator(s) shall be final, conclusive and binding upon the Parties. All other disputes shall be resolved by litigation in any court or governmental agency, as applicable, having jurisdiction over the Parties and the dispute.
- (c) In connection with any arbitration under this Section 10, costs of the arbitrator(s), hearing rooms and other common costs shall be divided equally among the Parties. Each Party shall bear the cost and expense of preparing and presenting its own case (including, but not limited to, its own attorneys' fees); provided, that, in any arbitration, the arbitrator(s) may require, as part of his or her decision, reimbursement of all or a portion of the prevailing Party's costs and expenses (including, but not limited to, reasonable attorneys' fees) by the other Party.
- (d) Unless otherwise agreed by the Parties in writing, the Parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute.

11. Uncontrollable Forces.

In the event that either Party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a Party, its contractors or a third party; or any failure or delay in the performance by the other Party, or a third party who is not an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with the Work or this Agreement. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited

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manner under this Agreement or procure a substitute for such obligation. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

12. Insurance.

- (a) PSE shall, and shall require each of its contractors to, secure and maintain in force throughout the duration of the Conversion Project (or, if sooner, until termination of this Agreement) comprehensive general liability insurances, with a minimum coverage of \$2,000,000 per occurrence and \$2,000,000 aggregate for personal injury; and \$2,000,000 per occurrence/aggregate for property damages, and professional liability insurance in the amount of \$2,000,000.
- (b) The Government Entity shall ensure that each of its contractors performing any Government Work secures and maintains in force throughout the duration of the Conversion Project (or, if sooner, until termination of this Agreement) insurance policies having the same coverage, amounts and limits as specified Section 12(a), above.
- (c) In lieu of the insurance requirements set forth in Section 12(a), above, the Company may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the Government Entity's request, the Company shall provide the Government Entity with reasonable written evidence that the Company is maintaining such self-insurance.

13. Other.

- (a) Agreement Subject To Tariff. This Agreement is subject to the General Rules and Provisions set forth in Tariff Schedule 80 of the Company's electrical Tariff G and to Schedule 74 of such Tariff as approved by the Washington Utilities and Transportation Commission and in effect as of the date of this Agreement.
- (b) Termination. The Government Entity reserves the right to terminate the Conversion Project and this Agreement upon written notice to the Company. In the event that the Government Entity terminates the Conversion Project and this Agreement, the Government Entity shall reimburse the Company for all costs reasonably incurred by the Company in connection with the Work performed prior to the effective date of termination. In such event, the costs reimbursable to the Company (i) shall not be reduced by any Shared Government Costs or other costs incurred by the Government Entity, and (ii) shall be paid within thirty (30) days after the receipt of the Company's invoice therefor. Sections 1, 5, 7, 8, 9, 10, 11 and 13 shall survive any termination of the Conversion Project and/or this Agreement.
- (c) Facilities Greater Than 15,000 Volts. Nothing in this Agreement shall in any way affect the rights or obligations of the Company under any previous agreements pertaining to the existing or future facilities of greater than 15,000 Volts within the Conversion Area.
- (d) Compliance With Law. The Parties shall, in performing the Work under this Agreement, comply with all applicable federal, state, and local laws, ordinances, and regulations.
- (e) No Discrimination. The Company, with regard to the Work performed by the Company under this Agreement, shall comply with all applicable laws relating to discrimination on the basis race, color, national origin, religion, creed, age, sex, or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.

PUGET SOUND ENERGY

- (f) Independent Contractor. The Company and the Government Entity agree that the Company is an independent contractor with respect to the Work and this Agreement. The Company is acting to preserve and protect its facilities and is not acting for the Government Entity in performing the Work. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the Parties. Neither the Company nor any employee of the Company shall be entitled to any benefits accorded employees of the Government Entity by virtue of the Work or this Agreement. The Government Entity shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Company, or any employee of the Company.
- (g) Nonwaiver of Rights or Remedies. No failure or delay of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any other right under this Agreement, and no course of dealing or performance with respect thereto, shall, except to the extent provided in this Agreement, be construed as a waiver or, or choice of, or relinquishment of any right under any provision of this Agreement or any right at law or equity not otherwise provided for herein. The express waiver by either Party of any right or remedy under this Agreement or at law or equity in a particular instance or circumstance shall not constitute a waiver thereof in any other instance or circumstance.
- (h) No Third Party Beneficiaries. There are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, their respective successors, assigns and legal representatives.
- (i) Governmental Authority. This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental regulatory authorities and courts having jurisdiction over this Agreement, the Parties or either of them. All laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental regulatory authorities and courts that are required to be incorporated into agreements of this character are by this reference incorporated in this Agreement.
- (j) No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligations or liability upon either Party. Further, neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.
- (k) Severability. In the event that any provision of this Agreement or the application of any such provision shall be held invalid as to either Party or any circumstance by any court having jurisdiction, such provision shall remain in force and effect to the maximum extent provided by law, and all other provisions of this Agreement and their application shall not be affected thereby but shall remain in force and effect unless a court or arbitrator holds they are not severable from the invalid provisions.

PUGET SOUND ENERGY

- (l) **Notice.** Any notice under this Agreement shall be in writing and shall be faxed (with a copy followed by mail or hand delivery), delivered in person, or mailed, properly addressed and stamped with the required postage, to the intended recipient as follows:

If to the Government Entity:

Attn: _____
Fax: _____

If to the Company:

Puget Sound Energy, Inc.

Attn: _____
Fax: _____

Any Party may change its address specified in this Section 13(l) by giving the other Party notice of such change in accordance with this Section 13(l).

- (m) **Applicable Law.** This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.
- (n) **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and all other agreements and understandings of the Parties, whether written or oral, with respect to the subject matter of this Agreement are hereby superseded in their entireties; provided, however, that except as expressly set forth in this Agreement, nothing herein is intended to or shall alter, amend or supersede the Design Agreement and the same shall remain in full force and effect in accordance with its terms.
- (o) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the Parties, including but not limited to, any entity to which the rights or obligations of a Party are assigned, delegated, or transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

Government Entity:

Company:

PUGET SOUND ENERGY, INC.

BY _____

BY _____

ITS _____

ITS _____

Date Signed _____

Date Signed _____

Approved as to form:

Exhibit A “Project Plan”

Schedule 74 Underground Conversion

PUGET SOUND ENERGY

City of Des Moines: Pacific Highway South (SR99) Improvements

This Project Plan describes work to be performed by Puget Sound Energy (PSE) and the City of Des Moines (the City) for the conversion of certain PSE electrical distribution system facilities as described herein (the Conversion Project). In addition to this document, the Project Plan includes and consists of:

- The attached and approved PSE plans Electric Order #101007397 Approved & Dated 7-17-03
- The attached PSE design standards as listed in “PSE Facility Design Standards” of this document
- The attached Project Plans and Specifications
- The Project Cost Estimate document(s)

Revisions to this Project Plan must be mutually approved by the City and PSE.

Scope of Work

The project includes conversion of the existing Puget Sound Energy (PSE) overhead electrical distribution facilities (15 kV or less) to underground facilities within the City of Des Moines (City). The existing overhead distribution facilities to be converted are located within City public thoroughfare. The project limits are along Pacific Highway South between South 216th Street and the Kent-Des Moines Road (SR516), as shown on the attached plans. The length of this project is approximately 6,200 centerline feet along Pacific Highway South. In addition, trenching down various existing side street rights of way and onto various private properties will be necessary to intercept and tie-in to the existing PSE distribution system.

Transmission facility relocation is required by the City on this project and will be performed by PSE under terms of the existing franchise agreement with the City and is not included in this Project Plan.

Street lighting service is being provided by PSE for the City (drawing 105020406) and will be coordinated with the conversion project; however, the street lighting work is not included in this Project Plan.

Secondary service hookup for new load such as traffic signal control boxes and irrigation control boxes, along with miscellaneous lighting such as bus shelters, is not included in this Project Plan.

Responsibilities of Parties

City of Des Moines

- A. The City will provide all survey staking for alignment and grades for vault and handholes as shown on the attached, approved PSE plans, per Schedule 74 Attachment B Section 3.(a)(ii).
- B. The City will provide all excavation, shoring, bedding, backfill, offsite disposal, and site restoration for the installation of vaults, handholes and conduits included in the conversion project per Schedule 74 Attachment B Section 3.(a)(i).
- C. The City will provide coordination of other utilities participating in this conversion project on both private property and public thoroughfare.
- D. The City will install ducts and vaults for new PSE distribution facilities excluding all work that requires entry into energized vaults per Schedule 74 Attachment B Section 3.(a)(iii).
- E. The City, or its contractor, will provide PSE, or its contractor, ten (10) working days notice requesting necessary conduits and vaults and a schedule for vault deliveries will be provided that coincides with the contractor's schedule.

Puget Sound Energy

- A. PSE will furnish and deliver all materials necessary for the electrical supporting structure including vaults, conduits, conduit cement, conduit fittings, grout, fish line for proofing, electronic markers, and all other materials necessary for installation of the vaults and ducts per Schedule 74 Attachment B Section 2.(a)(i).
- B. PSE will provide an inspector on-site to inspect the installation of all duct and vault installation work per Schedule 74 Attachment B Section 2.(a)(ii). PSE's inspector shall not direct the City's contractor in any manner; the PSE inspector shall communicate all requests to the City's inspector.
- C. PSE will provide progress reports to the City per Schedule 74 Attachment B Section 2.(b)(i) and Section 2.(b)(ii) at the weekly construction coordination meetings.
- D. PSE will accept delivery of the completed duct and vault system only after the new system has been proofed by the City's contractor, which will be evident by the presence of "fish line", and the vaults are clean and clear of all construction debris.
- E. Once sufficient sections of vault and conduit installation is completed by the City and accepted by PSE, PSE, or its contractor, will begin installation of conductors and equipment and notify the City in writing when the new underground system is energized.
- F. PSE, or its contractor, will perform cut-over and transfer of existing customers and facilities to the new underground system where applicable. Once all customers and the remaining utilities have transferred off the existing overhead system, PSE will schedule the removal of the old overhead system per Schedule 74 Attachment B Section 2.(a)(iii).
- G. PSE will complete the removal of all overhead systems, service wire, conductors, down guys, anchors and poles within thirty (30) working days of the date wrecking activities begin. PSE, or its contractor, will furnish crushed rock and tamp fill holes left from pole removal with crushed rock.

Cost Allocation

- Cost allocation for this project will be governed by PSE's Rate Schedule 74.

PSE Facility Design Standards

The attached, approved and sealed PSE plans (Electric Order #101007397) are hereby incorporated into this Project Plan.

The PSE Design Standards listed below may be applicable to this Conversion Project and are hereby incorporated into this Project Plan:

- 6325.3200 – Underground Service (7/12/2001)
- 6775.0035 – Vault, Handhole, and Padmounted Equipment Location (11/4/2002)
- 6775.0040 – Vault and Handhole Installation (7/12/2001)
- 6790.0110 – Customer Supplied Trench for Commercial/Multifamily Developments (7/12/2001)
- 6800.4050 – Depth of Burial Requirement for Underground Cable (12/13/1999)
- 6800.6000 – PVC Conduit Installation (10/18/1999)
- 6825.6505 – Installation of Electronic Markers (9/15/1997)
- Should a change in one of the attached standards occur that results in increased cost to the City of Des Moines, a change order will be initiated by the City of Des Moines for cost recovery from PSE.

Cost Assumptions

The project design, construction plans and cost estimates are based on the following assumptions. Construction conditions that are not consistent with these assumptions may result in a request for change or an equitable adjustment to project compensation under Section 6 of the Construction Agreement.

Schedule

1. PSE, or its contractor, will be provided continuous access to the construction site and associated electrical work during core business hours from 6:30 AM to 5:30 PM Monday through Friday.
2. Should lane closures become necessary PSE or its contractor is limited to working between the hours of 8:30 AM to 3:00 PM if a lane is out of service.
3. The normal construction crew work schedule consists of five – eight hour workdays per week within the core hours referenced in Item 1.
4. Once construction crews are mobilized, the conversion will be constructed in one continuous nonstop effort, end to end, until the project is completed. Cut-over and transfer of existing customers will be scheduled during normal business hours. The City must approve Work outside the core hours in advance.
5. 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 July 1, 2003. However, the City's contractor will be responsible for planning and scheduling their

work and will submit a schedule to the City prior to beginning construction activities. PSE will receive a copy of that schedule and plan their work accordingly.

6. Once vault and conduit installation is completed by the City and accepted by PSE, approximately 101 working days of construction crew time by PSE or its contractor will be necessary to complete and energize the new underground distribution system. It is assumed that PSE will be able to phase their conductor and equipment installation such that PSE, or its contractor, will install this equipment as the City's contractor completes the vault and conduit installation.
7. PSE or its contractor will cut-over or transfer customers already served underground (off the overhead system) where applicable. PSE or its contractor will notify such customers 48 hours in advance of the pending outage.
8. The City will facilitate the conversion of existing overhead services to underground within the conversion area. This process can take up to 90 days from the date the City notifies customers that an underground system is available. Customers will need to make the appropriate application for new service with PSE (PSE rate schedule 85 will apply).
9. Once all customer services and other utilities have been transferred off of the overhead system, PSE or its contractor, will mobilize and wreck out PSE conductors, devices, equipment, and poles.
10. Removal of poles is contingent upon the cooperation of other utilities attached to PSE poles. If other utilities fail to remove their facilities in a timely manner, PSE may need to remobilize at a later date to remove pole stubs.
11. The cost estimate is based on the installation of facilities at the locations shown on the PSE approved plans. As of 4/7/03, the City has indicated that all necessary operating rights have been obtained and copies of the relevant documentation will be provided to PSE.
12. All flagging and other traffic control required for conduit and vault installation will be provided by the City. PSE, or its contractor, will provide flagging and traffic control for installation of new underground conductor and devices along with overhead removal when required. The cost for Uniformed Officers to assist with traffic control is not included.
13. A City of Des Moines right-of-way permit is the only permit necessary from the City of Des Moines to complete the work undertaken by PSE or its contractor. Such permit will be issued within two (2) weeks of application and will be a "no fee" permit.
14. The City or its contractor will provide all necessary excavation, bedding, backfill, off-site disposal and site restoration.
15. Vault excavation will provide for proper grade elevation and location with a minimum 6" depth of 5/8" minus crushed rock floor bedding. Final grade elevation adjustment of PSE vaults and handholds to match final sidewalk grade must be achieved prior to energizing the new underground system.
16. Minimum cover for PSE conduits and conductors is 36". Typical trench depth for PSE conduits and conductors is 48", however, this depth can be exceeded with prior approval from PSE or its' contractor.
17. Work/cost does not include the installation and/or removal of "temporary" facilities at the request of others during construction.
18. Inspection services will be provided by PSE or it's contractor for the conduit installation phase of this project at a production rate of 150 feet per day. Services will be provided per the agreed schedule as described in item #5 of this section.

Additional Considerations

Commercial Overhead Service Conversions

There are approximately eighteen (18) commercial properties served overhead, some with multiple service drops and meters, which will require conversion of existing overhead service to underground within this conversion area. The following is a list of commercial properties impacted and is based on PSE engineering review of the conversion area. The City is responsible for assuring that all overhead services within the limits of the conversion area are converted to underground, connecting to the new underground system. PSE rate schedule 85 will apply. Work requiring a scheduled disruption of electric service to non-residential customers will be done within core business hours. Outages shall be scheduled with a minimum of two (2) business days notice. PSE or its contractor will notify customers of pending outages.

1. **Sunny's Café**, 21624 Pacific Hwy S and **Rukiya's Nails & Waxing**, 21628 Pacific Hwy S, single-phase service conversion required, 1-meter for both establishments.
2. **Cascade Truck (vacant)**, 22002 Pacific Hwy S, single-phase service conversion required, 1-meter.
3. **State Farm Insurance – Gary Hauser**, 22444 Pacific Hwy S, single phase service conversion required, 2-meters.
4. **"No Name" Market**, 22456 Pacific Hwy S, single-phase service conversion required, 1-meter.
5. **Victory Glass**, 22624 Pacific Hwy S, single-phase service conversion required, 1-meter.
6. **Canopy World**, 22820 Pacific Hwy S, single-phase service conversion required, 1-meter.
7. **Midway Motors**, 22834 Pacific Hwy S, single-phase service conversion required, 1-meter.
8. **Dollar Wise**, 22848 Pacific Hwy S, single-phase service conversion required, 1-meter.
9. **EZ Clean Car Wash**, 22852 Pacific Hwy S, three-phase service conversion required, 1-meter.
10. **Pawn Exchange**, 22862 Pacific Hwy S, single-phase service conversion required, 2-meters.
11. **Hertz Equipment Rental**, 22868 Pacific Hwy S, 1 single-phase and 1 three-phase service conversions required, 2-meters total.
12. **Midway Furniture (vacant)**, 23040 Pacific Hwy S, single-phase service conversion required, 1-meter.
13. **Kost Auto Sales**, 22837 Pacific Hwy S, 2-single-phase and 1-three-phase service conversion required, 3-meters total.
14. **Save-On Insurance**, **Radford Financial Advisors**, **Save-On Travel**, **Oasis Day Spa**, and others, 1-single-phase and 1-three-phase service conversions required with multiple meters.
15. **Associate Fleet Auto Sales**, 22441 Pacific Hwy S, single-phase service conversion required, 1-meter.
16. **The Printers**, **Night Light Nails**, **Rainier Mart**, 22247 Pacific Hwy S, single-phase service conversion required, 6-meter (gang meter base).
17. **Des Moines Veterinary Clinic/Hospital**, 21935 Pacific Hwy S, single-phase service conversion required, 1-meter.
18. **Pete's Welding and Towing**, 21841 Pacific Hwy S, three-phase service conversion required, 1-meter.

Notes:

1. This list is subject to change as customer needs change and may not be complete.
2. PSE understands that the WSDOT Highway Sign Bridge, just north of Kent-Des Moines Rd, along with the associated single-phase service drop and meter will be eliminated on this project.

Residential Overhead Service Conversions

There are no residential properties or services requiring conversion within this conversion area. However, there are several residential properties located just beyond the conversion area that will be effected by power outages when the facilities serving them are transferred to the new underground distribution system.

New Service

New service connection for new City facilities/infrastructure (such as new traffic signals, sign and gateway lighting, bus shelter lighting, and irrigation) will be served under terms of PSE's Rate Schedule 85. Such new service connections will be addressed on a separate work order and work sketch. Each new service connection will require a separate application for service. To date, PSE has received applications for service for three new traffic signals at: Kent-Des Moines Rd; South 224th Street; South 220th Street and one new pedestrian signal between Kent-Des Moines Rd and South 224th Street.

Cut-over and Transfers

Some PSE customers within the conversion area will experience disruption of electric service as a result of this conversion. The following is the list of effected PSE customers. Work requiring a scheduled disruption of electric service to non-residential customers will be done within core business hours. Outages shall be scheduled with a minimum of two (2) business days notice. PSE or its contractor will notify customers of pending outages.

1. **Seven Eleven**, 21454 Pacific Hwy S, Service disruption of approximately two (2) hours required to transfer PSE underground secondary conductors from pole P03 over to transformer V76.
2. **HAT Auto Repair**, 21606 Pacific Hwy S, Customer is required to reroute customer owned and maintained underground service conductors off pole P09 to new handhole HH___. Customer's electrical contractor can coordinate transfer to the new handhole with PSE or its contractor.
3. **Three Bears Motel**, Service is not impacted by this project.
4. **Pine Terrace Mobile Home Park**, 21814 Pacific Hwy S, Service disruption to various tenants within the park will be necessary. Approximately one (1) hour to transfer overhead secondary conductor at pole P69. And approximately three (3) hours to connect pole P68 to new underground primary conductor.

5. **Budget Auto Sales and the residence behind the Budget Auto Sales fence**, 21920 Pacific Hwy S, Service disruption of approximately two (2) hours required to transfer two existing overhead service drops (one to Budget and one to the residence) to new service pole P__.
6. **The Legend Motel**, 22204 Pacific Hwy S, Service is not impacted by this project.
7. **Emerald Thai Restaurant**, 22228 Pacific Hwy S, Service is not impacted by this project. However short outage required to connect underground secondary conductor to the existing pole at the back of the restaurant.
8. **Value Inn Motel**, 22246 Pacific Hwy S, Service disruption of approximately two (2) hours required to transfer PSE underground secondary conductor from pole P33 over to transformer V28. Note: customer may request the transformer be installed close to pole P33 instead of where it is currently designed on the north property line.
9. **WSDOT Vehicle inspection Station (vacant)**, 22406 Pacific Hwy S, Service disruption of approximately three (3) hours required to transfer PSE underground primary conductors from pole P40 over to J-box J35.
10. **Strip Mall with #A Dunn Auto Graphics, #B All Core Auto Service, #C JC's Auto Detail and NW Dent, #D Drop Zone Truck/Auto Accessories**, at 22516 Pacific Hwy S. Customer is required to reroute customer owned and maintained underground service conductors off pole P46 to new Pad-mount transformer V45. Customer's electrical contractor can coordinate connection to the new transformer with PSE or its contractor.
11. **Mcdonalds Restaurant**, 22624 Pacific Hwy S, Service disruption of approximately three (3) hours required to transfer PSE underground primary conductors from pole P48 over to J-box J49.
12. **Taco Bell Restaurant**, 22644 Pacific Hwy S, Service disruption of approximately three (3) hours required to transfer PSE underground primary conductors from pole P49 over to J-box J50.
13. **Midway Donuts and Midas Muffler**, Service is not impacted by this project.
14. **Shell Gas Station**, 23031 Pacific Hwy S, Customer is required to reroute customer owned and maintained underground service conductors off pole P93 to new transformer V97. Customer's electrical contractor can coordinate transfer to the new handhole with PSE or its contractor.
15. **Meal Time Restaurant**, 23021 Pacific Hwy S, Service disruption of approximately two (2) hours required to connect new PSE underground primary conductors the existing total underground transformer J68.
16. **Pacific Finance Center**, 23003 Pacific Hwy S, (Same as Meal Time Restaurant) Service disruption of approximately two (2) hours required to connect new PSE underground primary conductors the existing total underground transformer J68.
17. **Asian Wok Restaurant**, 22855 Pacific Hwy S, (along with various residences behind Asian Wok such as 22855 1/2, etc.), Service disruption of approximately four (4) hours required to replace pole P60 and transfer equipment and conductors.
18. **Travel Lodge Suites**, 22845 Pacific Hwy S, Service is not impacted by this project.
19. **Unknown Tenants (behind Save-on Insurance)**, 22817 and 22815 Pacific Hwy S, Service disruption of approximately four (4) hours required to replace pole P51 and transfer equipment and conductors.
20. **Pacific Professional Building**, 22659 Pacific Hwy S, Service is not impacted by this project.
21. **ABC Dentistry**, 22625 Pacific Hwy S, Service is not impacted by this project.

22. **Quest Building (Brick)**, 2655 S 226th St, Short outage required to transfer overhead secondary conductor to pole P45.
23. **Comprehensive Health Education Foundation**, 22419 Pacific Hwy S, **The Bay Club Apartment Complex**, along S 224th St west of Pacific Hwy S, **Christian Faith Center**, 22323 Pacific Hwy S, Service disruption of approximately four (4) hours required to transfer PSE underground primary conductors from pole P39 over to new J-box J34.
24. **House of Art**, 22205 Pacific Hwy S, Service is not impacted by this project.
25. **Moms and Dads Thrift Store**, 22035 Pacific Hwy S, Service will be discontinued.
26. **Jackson Business Park**, 22001 Pacific Hwy S, Service disruption of approximately three (3) hours required to transfer PSE underground primary conductors from pole P23 over to J-box J21.
27. **Spa Warehouse**, 21665 Pacific Hwy S, Service is not impacted by this project.
28. **Airport Video**, 21637 Pacific Hwy S, Service is not impacted by this project.
29. **Blumenthal Uniforms & Equipment**, 21621 Pacific Hwy S, Service is not impacted by this project.
30. **Bartell Drugs**, 21615 Pacific Hwy S, Service is not impacted by this project.

Acceptance of Project Plan

The City and PSE mutually agree to and accept this Project Plan as of the date indicated below:

For the City:

For PSE:

By: _____

By: _____

Date: _____

Date: _____

Date: 09/24/2002

Project Title: City of Des Moines, Pacific Hwy S (SR99) - Underground Conversion

Project Description: Overhead to Underground Conversion along Pacific Hwy S (SR99) between S 216th St and the Knet-Des Moines RD.

Schedule: 74

Project Manager / Phone #: Andy Lowrey, 425-369-7205

Project Engineer / Phone #: Arnie Tomac, 206-276-3635

Municipal Liaison Mgr / Phone #: Mary Ausburn, 253-395-6867

Project #: 101007397

Revision #: #2

Revision Date: 08/07/2003

Project Construction Summary Estimate ¹

	Shared Costs ²			100% Government Entity Reimbursable Costs					100% PSE Cost	Project Total ³
	Company	Government Entity	Total Shared Costs	Private Conversion	Upgrade	<5yr Converted Facility Relocation	Temporary Services	Total 100% GE Reimbursable Costs		
Design & Engineering										
PSE/GE Labor	\$113,700.00	\$0.00	\$113,700.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$113,700.00
Materials	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
PSE Equipment	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Service Provider Outside Services	\$16,600.00	\$0.00	\$16,600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$16,600.00
PSE Overhead	\$22,000.00	\$0.00	\$22,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$22,000.00
Total - Design & Engineering	\$152,300.00	\$0.00	\$152,300.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$152,300.00
Construction										
PSE/GE Labor	\$8,816.85	\$125,926.64	\$134,743.49	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$134,743.49
Materials	\$465,750.28	\$0.00	\$465,750.28	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$465,750.28
PSE Equipment	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
PSE/Third Party Inspection	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Service Provider Outside Services	\$416,878.61	\$0.00	\$416,878.61	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$416,878.61
PSE Overhead	\$141,533.73	\$0.00	\$141,533.73	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$141,533.73
Total - Construction	\$1,032,979.47	\$125,926.64	\$1,158,906.11	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,158,906.11
Property										
Operating Rights	\$0.00	\$9,198.00	\$9,198.00	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$9,198.00
Total - Property	\$0.00	\$9,198.00	\$9,198.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$9,198.00
Total Project Cost ³	\$1,185,279.47	\$135,124.64	\$1,320,404.11	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,320,404.11
Project Cost Allocations ⁴										
Company Share			\$792,242.47						\$0.00	\$792,242.47
Government Entity Share			\$528,161.64					\$0.00		\$528,161.64

Notes:

¹ Statement prepared in accordance with Section 7 of Schedule 74 Construction Agreement² Shared Costs are allocated 40% to the Government Entity and 60% to the Company.³ Total Costs excludes Government Entity costs of trenching, restoration, and surveying.

AGENDA ITEM

SUBJECT: Des Moines Memorial Drive
Advisory Committee.

ATTACHMENTS:

1. Correspondence from Diane Kennish.

AGENDA OF: August 14, 2003

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: August 8, 2003

CLEARANCES:

☐ Finance _____

☐ Legal _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation:

The purpose of this agenda item is to confirm the Mayor's appointment of Diane Kennish to the Des Moines Memorial Drive Advisory Committee. A suggested motion is provided below:

Suggested Motion:

"I move to confirm the Mayor's appointment of Diane Kennish as the City's Citizen Representative to the Des Moines Memorial Drive Advisory Committee."

Background:

In 2000, the Cities of Burien, Des Moines, Normandy Park, and SeaTac along with King County established an interlocal agreement to jointly study Des Moines Memorial Drive. The interlocal agreement created the Des Moines Memorial Drive Advisory Committee (DMMDAC) for the purpose of researching the history of the memorial corridor and the preparation of recommendations for future improvements. The DMMDAC consists of 16 voting members and six ex-officio members. Each jurisdiction is allotted one citizen representative as one of the voting members. Des Moines' citizen representative position is currently vacant. Previously, Ola Mae Crawford served in this role.

Discussion:

The DMMDAC meets monthly and is currently overseeing the creation of a Cultural Resources Plan for the roadway. Des Moines Memorial Drive has had a significant role throughout the evolution of the Highline area. In 1921, approximately 1,000 elm trees were planted along the street in honor of WWI veterans from Washington State. Now, many of the elm trees are diseased, severely pruned, or have been removed altogether. The DMMDAC is preparing recommendations for replacement trees, roadway cross-sections, memorials, and other features of the road.

Ola Mae Crawford served as Des Moines' citizen representative since the group's formation. Ms. Diane Kennish has expressed an interest in serving the community in that role. Information about Ms. Kennish is provided as Attachment 1. The interlocal agreement does not specify the terms of office of any position. If the Council confirms the Mayor's appointment of Ms. Kennish to the DMMDAC, the term of the appointment would be "open-ended".

Alternatives:

1. Confirm the Mayor's appointment of Diane Kennish to the DMMDAC.
2. Do not confirm the Mayor's appointment of Diane Kennish to the DMMDAC.

Financial Impact:

None. Members of the DMMDAC serve without compensation.

Recommendation/Conclusion:

Confirm the Mayor's appointment of Diane Kennish to the DMMDAC.

Concurrence:

None.

DIANE KENNISH
23641 ~20TH AVE. SO. #A103
DES MOINES WA 98198
(206)592-8147

Mayor Maggie Steenrod

I would like to submit a formal request to be appointed the Des Moines Citizen Representative for the Des Moines Memorial Drive Restoration Project. I have been attending meetings for the last 4 months and am committed to seeing this project through.

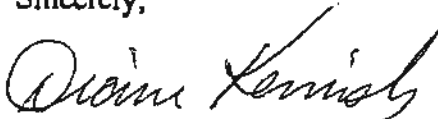
I am a lifetime resident of the Highline area and currently reside in Des Moines. After graduating from Mt. Rainier H.S., I attended transportation classes at Highline Community Collage. I have made a career as a flight attendant and have been based in Seattle for most of my flying career.

For the past 25 years I have been active in community volunteer work. Currently serve on the Board of Directors for a local arts coalition and a local performing group for high school kids, and am Executive Director for a scholarship program for young area women. I was approached to attend one of the meetings for the Memorial Drive Project and have been attending meetings ever since.

As a current resident of Des Moines and as a lifelong resident (over 40years) of the Highline area, I feel I would represent the best interests of the community to help restore and preserve this vital link to our history.

Thank you for your consideration, I look forward to your reply.

Sincerely,



Diane Kennish
Des Moines Citizen
kennishdiane@qwest.net
cc: Corbitt Loch

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Des Moines City Council
Rules of Procedure

ATTACHMENTS: Draft Resolution No. 03-109

FOR AGENDA OF: August 14, 2003

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: August 4, 2003

CLEARANCES:
[X] Legal LAM

APPROVED BY CITY MANAGER

FOR SUBMITTAL: AP

PURPOSE AND RECOMMENDATION

This item is on the agenda at the request of three Councilmembers for revisions of a number of Council Rules of Procedure. The City Attorney reviewed and redrafted the requested revisions, and provides the attached resolution amending City Council Rules of Procedure Nos. 5, 9, 10, and 20, as requested by the Councilmembers.

This is the second reading of Draft Resolution No. 03-109, as required in DMMC 4.12.030. This proposed amendment to the Council *Rules of Procedure* was discussed by the City Council at the July 10, 2003 meeting. In accordance with DMMC 4.12.030, this amendment was first submitted in resolution form on July 10, 2003, under the order of New Business, and subsequently placed on this calendar for consideration. An affirmative vote of at least a majority of the whole membership of the Council is needed to adopt this resolution.

MOTION: "To adopt Draft Resolution No. 03-109, amending the Des Moines City Council Rules of Procedure by amending Council Rule 5 to limit the power of the Mayor Pro Tempore when acting as Mayor in preparing a meeting agenda or presiding over a meeting; amending Council Rule 9 to change the way a regular meeting agenda is prepared and used at a Council meeting; amending Council Rule 10 to permit a meeting to be designated as a study session only when there are no more than four items of business; and amending Council Rule 20 relating to control of the order of business.

DISCUSSION

Descriptions of the proposed amendments are as follows:

- **Rule 5 - Presiding Officer.** This amendment limits the power of the Mayor Pro Tempore when acting as Mayor in preparing a meeting agenda or presiding over a meeting. The Mayor Pro Tempore would have authority only to approve the Council meeting agenda or study session worksheet as to form without introducing or deleting items of business, and to preside at the meeting by following the approved agenda or study session worksheet as written.
- **Rule 9 - Council Meeting Agenda.** This amendment changes the way a regular meeting agenda is prepared and used at a Council meeting. The amendment does not change the process of introducing new items to the preliminary agenda: items may be introduced by the Presiding Officer, three Councilmembers, or the City Manager. Under the amendment, the Presiding Officer has authority to delete items from the **preliminary** agenda, except that the Presiding Officer may not delete items proposed by three Councilmembers; and deleted items are to be placed on a future Council agenda to determine whether and when they will be acted upon. Language that appeared to give the Presiding Officer authority to delete items from a prepared agenda is removed from the rule. The rule is changed to require 72 hours advance posting of the meeting agenda, in order to be consistent with DMMC 4.04.030.
- **Rule 10 - Study Sessions.** This amendment permits a meeting to be designated as a study session only when there are no more than four items of business.
- **Rules 20 - Order of Business.** There are three amendments to this rule. The amendment in the first paragraph provides that any ruling by the Presiding Officer relative to rearrangement of items on the agenda may be overruled by a vote of a majority of members present. The amendment to subsection 20(f)(2)d. corrects an oversight from a 2000 amendment, which added a third subsection to the section, but failed to change the reference to the number of subsections, for which a majority vote may overturn the Presiding Officer's decisions, from "two" subsections to "three" subsections. The amendment to 20(j)(3) codifies the current practice of addressing items removed from the consent calendar as the next business in order following conclusion of the consent calendar.

CITY ATTORNEY'S REDRAFT 7/07/03

DRAFT RESOLUTION NO. 03-109

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, amending Des Moines City Council Rules of Procedure Rule 5, regarding Mayor Pro Tempore duties; Rule 9, regarding City Council meeting agenda preparation for regular meetings; Rule 10, regarding City Council study session worksheet preparation for study session meetings; and Rule 20, regarding City Council meeting order of business; and amending Rules 5, 9, 10, and 20 of section 1 of Resolution No. 525 as amended by Resolution No. 659 as amended by section 2 of Resolution No. 754.

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

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

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

WHEREAS, the City Council finds that it is in the public interest to amend Rule 5, regarding Mayor Pro Tempore duties; Rule 9, regarding City Council meeting agenda preparation for regular meetings; Rule 10, regarding City Council study session worksheet preparation for study session meetings; and Rule 20, regarding City Council meeting order of business; now therefore,

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

Sec. 1. Rule 5 of the Des Moines City Council Rules of Procedure and Rule 5 of section 1 of Resolution No. 525 are hereby amended as follows:

PRESIDING OFFICER

Rule 5. The Mayor shall preside at meetings of the Council, and be recognized as the head of

the City for all ceremonial purposes. The Mayor shall have no regular administrative or executive duties. In case of the Mayor's absence or temporary disability the Mayor Pro Tempore shall act as Mayor during the continuance of the absence. When the Mayor Pro Tempore acts as Mayor by participating in preparation of a Council meeting agenda or study session worksheet, or by presiding at a meeting of the Council, the Mayor Pro Tempore shall have authority only to approve the Council meeting agenda or study session worksheet as to form without introducing or deleting items of business, and to preside at the meeting by following the approved agenda or study session worksheet as written. In case of the absence or temporary disability of the Mayor and the Mayor Pro Tempore, a Mayor Pro Tempore selected by members of the Council shall act as Mayor during the continuance of the absences or disabilities. The Mayor or Mayor Pro Tempore are referred to as "Presiding Officer" from time to time in these Rules of Procedure.

Sec. 2. Rule 9 of the Des Moines City Council Rules of Procedure and Rule 9 of section 1 of Resolution No. 525 are hereby amended as follows:

COUNCIL MEETING AGENDA

Rule 9. This rule specifies the method of preparation of a Council meeting agenda for meetings other than study sessions. The Presiding Officer, three (3) Councilmembers, or the City Manager may introduce a new item to the preliminary agenda. The Presiding Officer shall have the option of deleting any item, other than those items introduced by three (3) Councilmembers, from the preliminary agenda until the next regular Council meeting when the full Council shall vote on whether to introduce the item on the agenda for a subsequent Council meeting. The City Clerk, under the direction of the City Manager, shall arrange a list of such matters according to the order of business and

prepare ~~((an))~~ a preliminary agenda for the Council. After the ~~((proposed))~~ preliminary agenda has been approved by the Presiding Officer, a copy of the agenda and supporting materials shall be prepared for Councilmembers, the City Manager, and the press ~~((on or before 4:30 PM two working days))~~ seventy-two (72) hours before a regular Council meeting. ~~((The Presiding Officer shall have the option of deleting any item from the agenda until the next regular Council meeting when the full Council shall vote on whether to introduce the item on the agenda for a subsequent Council meeting. The Presiding Officer, three (3) Councilmembers, or the City Manager may introduce a new item to the agenda.))~~

Sec. 3. Rule 10 of the Des Moines City Council Rules of Procedure and Rule 10 of section 1 of Resolution No. 525 as amended by Resolution 659 as amended by section 2 of Resolution No. 754. are hereby amended as follows:

STUDY SESSIONS

Rule 10. Regular Council meetings that are held during the first and third week of each month in accordance with Rule 2, may be designated as Study Sessions by the Presiding Officer when there are no more than four (4) items of business. Study Sessions need have no formal agenda and may be conducted informally so long as such informality is not in conflict with these rules. The purpose of Study Session discussions is to allow Councilmembers to be made aware of impending business and allow informal discussion of issues that might be acted on at a future meeting. These conditions will allow the Councilmembers to communicate informally about these impending issues. The City Clerk, under the direction of the City Manager, shall arrange a Council Study Session worksheet for the Study Session. The Council Study Session worksheet shall, for each item, contain the Discussion Item, the Discussion Item Moderator, and the Discussion Goal. After the proposed Council Study Session worksheet has

been approved as to form, only, by the Presiding Officer, a copy of it along with any supporting materials shall be prepared for Councilmembers, the City Manager, and the press on or before 4:30 PM five (5) working days before the Council Study Session. During the Council Study Session the Discussion Item Moderator may: 1) introduce the subject and give background information; 2) identify the discussion goal; 3) act as facilitator to keep the discussion focused to the eventual discussion goal; 4) alert the Presiding Officer when it is appropriate to call for a motion or other official direction of the Council. The Presiding Officer retains the option of assuming the function of the Discussion Item Moderator in order to keep the discussion properly focused.

Sec. 4. Rule 20 of the Des Moines City Council Rules of Procedure and Rule 20 of section 1 of Resolution No. 525, as amended by section 1 of Resolution No. 894 are each amended as follows:

ORDER OF BUSINESS

Rule 20. The business of all regular meetings of the Council shall be transacted as follows; provided, however that the Presiding Officer may, during a Council meeting, rearrange items on the agenda to conduct the business before the Council more expeditiously. Any ruling by the Presiding Officer relative to rearrangement of items on the agenda may be overruled by a vote of a majority of members present.

- (a) Call to order by the Presiding Officer.
- (b) Pledge of Allegiance.
- (c) Invocation (Presiding Officer's discretion).
- (d) Roll call (See Rule 7 for procedure to excuse an absence).

- (e) Correspondence not previously received by the Council.

(f) **Comments from the public (non-public hearing topics).** Public comments are encouraged and appreciated. The information and advice received from citizens helps the City Council make the best possible decisions.

(1) Procedure.

- a. Citizens are encouraged to supplement verbal comments through written submittals.
- b. All citizens desiring to address Council during the Public Comment period shall first fill out a sign-in sheet and submit the form to the City Clerk prior to the start of Public Comments.

(2) Scope of Comments.

- a. Subjects not on the current agenda. Any member of the public may request time to address the Council after first stating their name, address, and the subject of their comments. The Presiding Officer may then allow the comments subject to such time limitations as the Presiding Officer deems necessary. Following such comments the Presiding Officer may place the matter on the current agenda or a future agenda, or refer the matter to administration or a Council committee for investigation and report.
- b. Subjects on the current agenda. Any member of the public who wishes to address the Council on an item on the current agenda shall make such

request to the Presiding Officer at the time when comments from the public are requested. The Presiding Officer shall rule on the appropriateness of public comments as the agenda items is reached. The Presiding Officer may change the order of speakers so that testimony is heard in the most logical groupings (.e.) proponents, opponents, adjacent owners, vested interests, etc.).

- c. Subjects of a Public Hearing. Comments made during the Public Comment period on a topic set for a public hearing by the City Council shall be out of order. To ensure a fair hearing to applicants or matters that are subject to a public hearing before the City Council, the presiding officer may rule public comments made outside the scope of a public hearing record to be out of order.
- d. Any ruling by the Presiding Officer relative to the preceding (~~two~~) three subsections may be overruled by a vote of a majority of members present.

(3) **Rules of Conduct.** A minimum number of basic rules are established to ensure that all individuals wishing to address the City Council are fairly heard.

- a. Each person addressing the Council shall step up to the indicated speakers table, give his or her name and address for the record, and shall limit comments to three (3) minutes.

Groups may be allotted five (5) minutes by the presiding officer

- b. Except where permission is granted by the Presiding Officer, all remarks shall be made only from the designated speaking table and addressed to the Council as a body and not to individual members, the audience or the television cameras.
- c. The City Clerk shall notify the individual when the allotted time has expired and the speaker shall promptly conclude his or her remarks. All speakers are encouraged to submit supplemental or detailed written remarks for Council consideration.
- d. Any person making personal, impertinent, or slanderous remarks, or who becomes boisterous, threatening, or personally abusive while addressing the Council, may be ordered to leave the meeting. The presiding officer has the authority and duty to preserve order at all meetings of the Council, to cause the removal of any person from any meeting for disorderly conduct and to enforce these rules.
- e. The presiding officer may rule "out of order" any comment made with respect to a quasi-judicial matter pending before the Council or its Boards or Commissions. Such comments should be made only at the hearing on a specific matter. If a hearing has been set, persons whose comments are ruled out of order will be notified of the time and place when they can

appear at the public hearing on the matter and present their comments.

- f. Any person whose comments have been ruled out of order by the presiding officer shall immediately cease and refrain from further improper comments. The refusal of an individual to desist from personal, inappropriate, slanderous or otherwise disruptive remarks after being ruled out of order by the presiding officer may subject the individual to removal from the Council Chambers.

(Res. 894, §1, 2000)

- (g) Committee and board reports.
- (h) Presiding Officer's report.
- (i) Administration reports.
- (j) Consent Calendar.

(1) The City Manager, in consultation with the Presiding Officer, shall place matters on the Consent Calendar which have been: (a) previously discussed by the Council, or (b) based on the information delivered to members of the Council by administration that can be reviewed by a Councilmember without further explanation, or (c) are so routine or technical in nature that passage is likely, or (d) as directed by the City Council.

(2) The Clerk shall read the Consent Calendar, including the titles of any ordinances or resolutions contained therein.

(3) The proper Council motion on the Consent Calendar is as follows: "I move adoption of the Consent Calendar". This motion shall be non-debatable and will have the effect of moving to adopt all items on the Consent

Calendar. Since adoption of any item on the Consent Calendar implies unanimous consent, any member of the Council shall have the right to remove any item from the Consent Calendar. Therefore, prior to the vote on the motion to adopt the Consent Calendar, the Presiding Officer shall inquire if any Councilmember wishes an item to be withdrawn from the Consent Calendar. If any matter is withdrawn, the ~~((Presiding Officer shall place the item at an appropriate place on the agenda for the current or a future meeting))~~ item withdrawn from the consent calendar shall be the next business in order following the conclusion of the consent calendar.

(k) Public Hearings (see Rule 21 for procedural details).

(l) Old Business.

(m) New Business.

(n) Executive Session (as required)

(o) Next meeting date announced by Presiding Officer.

(p) Adjournment. No meeting shall be permitted to continue beyond 10:30 PM without approval of three fourths of the Councilmembers who are present and eligible to vote. A new time limit must be established before taking a Council vote to extend the meeting. In the event that a meeting has not been closed or continued by Council vote prior to 10:30 PM, the items not acted on shall be deferred to the next regular Council meeting as old business, unless the Council, by a majority vote of members present, determines otherwise. (Res. 525 S1, 1988).

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.

Resolution No. ____
Page 10 of ____

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

DRAFTRES: 03-109 2d draft

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:

Towing/Impound Services Request for
Proposal

ATTACHMENTS:

- A. RFP 02-001
- B. Agenda Item October 31, 2002 City
Council meeting regarding Towing/
Impound Services Contract
- C. Minutes of the October 31, 2003 City
Council meeting

FOR AGENDA OF:

DEPT. OF ORIGIN:

DATE SUBMITTED:

CLEARANCES:

☒ LSM

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

AP

Purpose

The purpose of this agenda item is to give the City Council and opportunity to provide direction to staff regarding the possibility of issuing a Request for Proposal for towing/impound services. This item was placed on this City Council agenda at the request of Councilmembers Sherman, Sheckler, and White.

Potential Motions

"I move to direct staff to issue an RFP for towing/impound services with the same requirements and time frames as contained in RFP 02-001."

or

I move to direct staff to issue an RFP for towing/impound services similar in nature to RFP 02-001 with the following changes: _____"

Background and Discussion

As noted above, this item has been placed on this agenda for discussion by Councilmembers Sherman, Sheckler, and White. For Council's information, attached is the Request for Proposal documents used in 2002 to solicit proposals for towing/impound services. For additional background information regarding the history of towing/impound services provided to Des Moines, see Attachment B. As a result of an action brought by a citizens group and a Superior Court judge's ruling that the relationship

between the City and the previous towing/impound services provider (Pete's Towing) violated state law, the City currently now receives towing/impound services from RoadOne (Dick's Highline). These services are being provided without a written agreement between RoadOne and the City.

Financial Impact

Unknown. Since the agreement would also make provisions for towing of City-owned vehicles, the financial impact would depend on the proposed pricing of the winning vendor and how that compares to the current prices of RoadOne.

Alternatives

Council can direct staff to issue an RFP with the same requirements and timeframes as RFP 02-001 or direct that certain changes be made that document before a new RFP is issued. Council could elect to keep the situation as it is by continuing to have RoadOne provide towing/impound services without a written agreement or direct staff to negotiate a written agreement with RoadOne, given that they were the recommended vendor that came out of the last RFP process.

Recommendation

In the fall of 2002, staff recommended that towing and impound services be provided to the City via a written contract. Staff continues to support this recommendation. Issuing an RFP or entering into an agreement with RoadOne would accomplish this recommendation.

REQUEST FOR PROPOSAL

No. 02-001

CITY OF DES MOINES, WASHINGTON

DES MOINES POLICE DEPARTMENT VEHICLE TOWING/IMPOUND SERVICES

Notice is hereby given that sealed proposals will be received by the City Clerk or her designee at Des Moines City Hall, 21630 11th Ave. South, Des Moines, WA 98198, until 4:30 p.m. on July 24, 2002, to obtain Vehicle Towing Services for the Des Moines Police Department.

Proposals received after the specified time and date indicated cannot be considered. **Proposal number must appear on the outside of all Proposals submitted.**

All proposals shall be submitted on the forms that are furnished by the City of Des Moines. Qualifications of those submitting Proposals will be evaluated when determining award of contract. In order to qualify for consideration, the Proposal Page must be signed. Proposal documents may be examined at City of Des Moines, Office of the City Clerk, 21630 11th Ave. South, Des Moines, WA 98198.

The City will not accept any telegraphic, telephonic, or facsimile transmitted proposals.

Applicants must acknowledge they have read, understood and will comply with the:

- Instructions Regarding Proposal,
- Special Provisions, and
- Specification for Vehicle Towing and Impound Services

by initialing each paragraph of each document as provided. Information requested in the RFP that requires a written response beyond acknowledgement by initialing shall be provided on a separate document that clearly notes the section of the RFP to which it applies.

Applicants who wish to provide services in excess of those outlined in the Request for Proposal (RFP) packet should describe the improved service on a separate document and attach it with their completed response.

The City Council for the City of Des Moines reserves the right to reject any or all proposals, waive technicalities or irregularities, and to award one or more contracts if such action is believed to be in the best interest of the City.

Denis Staab
City Clerk

INSTRUCTIONS REGARDING PROPOSALS

CITY OF DES MOINES, WASHINGTON

1. **SUBMISSION OF PROPOSALS:** It is **IMPORTANT** THAT FOR PROPOSALS TO RECEIVE CONSIDERATION, THEY MUST BE RETURNED PRIOR TO THE SPECIFIED TIME, IN A SEALED ENVELOPE, CLEARLY MARKED WITH COMPANY NAME, ADDRESS, TELEPHONE NUMBER, PROPOSAL NUMBER, AND TITLE OF PROPOSAL, DELIVERED OR MAILED TO THE CITY OF DES MOINES, 21630 11th Ave. South, Des Moines, WA 98198. **Initials** _____
2. **SIGNATURE:** Each Proposal must be signed in longhand by the Applicant with the Applicant's usual signature. Proposals by partnership must be signed with the partnership name by one of the partners, followed by signature and designation of the partner signing. Proposals by corporations must be signed with the legal name of the corporation, followed by the name of the State or Province of Incorporation and by the signature of the President, Secretary, or other person authorized to bind it in the matter. Below the signature, type the name of each person signing. **NOTE:** If erasures or other changes appear on the Proposal forms as submitted, each erasure or change must have the initials of the person signing the Proposal. **Initials** _____
3. **PROPOSAL FORM:** No Proposal shall be considered except those submitted on the Proposal form supplied by the City of Des Moines. No oral, telephonic, facsimile, or telegraphic Proposals or modifications will be accepted. **Initials** _____
4. **WITHDRAWAL OF PROPOSALS:** Any Applicant may withdraw his/her Proposal, either personally or by written request, at any time prior to the time set for the Proposal Opening. **Initials** _____
5. **ALTERATIONS OF PROPOSALS:** A Proposal that is in the possession of the City may be altered by a telegram or letter bearing the signature of the name of the person authorized for Proposing, providing it is received prior to the time and Proposal due date. **Initials** _____
6. **PROPOSAL GUARANTEE:** All proposals must be accompanied by a Proposal Bond or certified check on a solvent bank, payable to the City of Des Moines, in the sum of five percent \$5,000, as a guarantee that if the Proposal is accepted, a Contract will be entered into. Checks and Proposal Bonds of all other Applicants will be returned as soon as practicable after Proposals are opened. Should an Applicant fail to enter into Contract within ten (10) days after his proposal has been accepted, his/her Proposal Guarantee shall be forfeited to Buyer. **Initials** _____

7. **PERFORMANCE BOND:** Applicants must provide a *Performance Bond/Supply Bond as specified*, in this package. ***Initials*** _____
8. **EXCEPTIONS:** If awarded a Contract, the Applicant will be required to furnish the particular services referred to in strict accordance with the *specifications* unless a departure or substitution is clearly noted and described in *the Proposal*. Any exceptions to Proposal specifications must be clearly noted on page provided. ***Initials*** _____
9. **TAXES:** Prices quoted shall show as a separate entry, the total Proposal amount, before WASHINGTON STATE SALES TAX is applied. City of Des Moines reserves the right to remit sales tax at the Des Moines rate directly to Washington State Department of Revenue. EXCLUDE Federal Excise Tax and supply exemption certificate when necessary. Certificate of Registry No. 91-6015840 issued at Seattle, Washington, October 15, 1973. ***Initials*** _____
10. **COMPLETION OF PROPOSAL:** Applicants must submit all available and pertinent information with their Proposal. Failure to submit adequate, or requested information, could severely limit the City's ability to consider the Proposal. ***Initials*** _____
11. **LATE PROPOSALS AND MODIFICATIONS OF PROPOSALS:** Any Proposal or modification of a Proposal received at the City Clerk's Office after the exact time specified will not be considered unless it was received within the City or Des Moines's Mail System before the time set for Proposal receipt. ***Initials*** _____
12. **ADDENDA:** Receipt of amendments to the Proposal specification/documents by an Applicant must be acknowledged on the Proposal or by letter or telegram received before the time set for Proposal receipt. ***Initials*** _____
13. **ALTERNATE PROPOSALS:** Applicant must submit specifications and descriptive literature on all alternate Proposals. Proposals which include deviations or alternates, but which fail to identify these substitutions in the Proposal, will be considered as non-responsive. ***Initials*** _____

- 14. NON-RESPONSIVE PROPOSALS:** Any Proposal that does not comply with the Proposal schedule or instructions, is not properly signed, supplements or deviates from its Proposal requirements or has an incomplete Proposal or proposal sheet when required, may be considered non-responsive. *Initials* _____
- 15. REJECTION OF PROPOSALS:** The City of Des Moines reserves the right to reject any and all Proposals and to waive any informalities in the Proposals received.. *Initials* _____
- 16. ALL OR NONE PROPOSALS:** "All or none" Proposals will be accepted so long as the item or group of items are clearly identified. Applicants who elect to Proposal in this manner thereby represent that they are Proposing solely for the purpose of offering the best possible price to the City and are not trying to prohibit or eliminate competition. *Initials* _____
- 17. PROPOSAL AWARD:** The City will award to the Applicant or Applicants complying with the specifications, the Proposing regulations, and the advertisement for Proposals, provided the Proposal is in the City's best interest. A decision to make a partial award of this Proposal however will be based on how the Proposal results comply with budget constraints or limitations. *Initials* _____
- 18. INTERPRETATION OF PROPOSAL AND CONTRACT DOCUMENTS:** No oral interpretations will be made to any Applicant as to the meaning of the Proposal or contract documents; and any oral communication is not binding upon the City of Des Moines. Requests for an interpretation shall be made in writing and delivered to the City Clerk at the address indicated in Section 1 at least ten (10) days before the date announced Proposals are due. Any interpretation deemed necessary by the City will be in the form of an addendum to the Proposal documents and when issued will be sent as promptly as is practical to all parties to whom the Proposal documents have been issued. All such addenda shall become part of the Proposal specifications. . *Initials* _____
- 19. EXAMINATION OF PROPOSAL AND CONTRACT DOCUMENTS:** The submission of a Proposal shall constitute an acknowledgment upon which the City of Des Moines may rely that the Applicant has thoroughly examined and is familiar with the Proposal and contract documents (and any work site identified in such documents), and has reviewed and inspected all applicable statutes, regulations, ordinances, and resolutions dealing with or related to the work and services to be provided herein. The failure or neglect of an Applicant to examine such documents, work site(s), statutes, regulations, ordinances, or resolutions shall in no way relieve the Applicant from any obligations with respect to the Applicant's Proposal or to the contract. No claim for additional compensation will be allowed which

is based upon a lack of knowledge of any contract documents, work site(s), statutes, regulations, ordinances, or resolutions. A signed purchase order or contract furnished to the successful Applicant results in a binding contract without further action by either party.

Initials _____

20. **PROPOSAL PRICE:** The Proposal price shall include everything necessary for the prosecution and completion of the contract including, but not limited to, furnishing all materials, equipment, tools, plants, and other facilities and all management, superintendents, labor and service, except as may be provided otherwise in the contract documents. The offer shall remain in effect for **90 days** after Proposal receipt (unless indicated otherwise). In the event of a discrepancy between the unit price and the total price, the unit price will govern and the total price will be adjusted accordingly. Prospective Applicants should indicate in their Proposal the address to which payment should be mailed, if such address is different from that shown for the Applicant.

Initials _____

21. **APPROVED EQUAL:** The term "approved equal" shall mean that the quality of equipment must be equal to the above named and receive the approval of the City. The City shall be the sole arbiter in the determination of equality; and it reserves the right to reject any and all Proposals and to accept the Proposal or Proposals which in its sole and absolute judgment will, under all circumstances, best serve the interests of the City.

Initials _____

22. **NON-COLLUSION AFFIDAVIT:** All Applicants must complete the attached non-collusion affidavit. Proposals returned without a completed affidavit will be declared non-responsive.

Initials _____

23. **ERRORS AND OMISSIONS:** The City will not consider a claim of an error in a Proposal unless the claim is presented in writing within 24 hours after the Proposal due date. Additionally, the Applicant claiming error must present supporting evidence, including but not limited to cost breakdown sheets, no later than 48 hours after the Proposal.

Initials _____

24. **REFERENCES:** All Applicants must attach a reference sheet including a minimum of three professional references.

Initials _____

25. **DRIVERS LICENSE AND PUBLIC RECORDS CHECKS:** All applicants must attach a listing of all employees' to include their date of birth, driver's license number and state of issue. All employees must pass a criminal history check and check with the Department of Licensing.

Initials _____

The City of Des Moines
Police Department

**Specifications for Vehicle Towing
and
Impound Services**

Dated: June 13, 2002

Scope of Duties: The Contractor shall tow, store, protect and release or otherwise dispose of vehicles; (1) requested to be towed by the City's Police Department for a private individual, or (2) ordered impounded by the Police Department, or (3) all City vehicles requiring towing services upon request of an authorized city officer. The Contractor shall provide such ancillary services as set forth herein, as directed by the City. Except as otherwise provided, the City will employ only the Contractor to perform all services, not performed by city employees, in the City of Des Moines. If applicable, a citizen may request another towing company. *Initials* _____

Personnel, Facilities, and Equipment: In addition to communication and other equipment and personnel required elsewhere in this contract, the Contractor will have personnel, facilities and equipment on hand as follows:

Sufficient Vehicles: The Contractor shall have a sufficient number of tow trucks of adequate size and capacity, together with operating personnel, to respond to requests for services within the times specified herein. The Contractor shall have at least three (3) Class A tow trucks and drivers on duty at all times. "Tow Trucks must be approved and certified by the Washington State Patrol as set forth in W.A.C. 204-91A-050 as now or hereafter amended." *Initials* _____

Class "C" Tow Trucks: By ownership, lease, purchase contract or temporary use agreement, the Contractor shall at all times have the use of a heavy-duty tow truck, as defined by W.A.C. 204-91A-170 relating to Class "C" tow trucks as now or hereafter amended, together with a driver skilled in its operation. *Initials* _____

Dispatch Office: The Contractor shall provide a staffed dispatch office twenty-four (24) hours per day, seven (7) days per week, which shall be capable of receiving requests for vehicle impound, towing or redemptions, verifying vehicle impounds and vehicle impound information, and dispatching personnel and equipment to the site of an impound, or tow, in response to a city request. From 8:00 a.m. to 8:00 p.m. the Contractor shall maintain an in-house dispatcher. From 8:00 p.m. to 8:00 a.m. the Contractor may utilize a hired dispatch service. The Contractor and any of its subcontractors or partners shall not have more than a total of two phone numbers published or used at any one time during the scope of the services provided herein. *Initials* _____

Skill and Supervision: The Contractor shall employ only persons competent at and skilled in the performance of the work assigned to them and shall provide skilled responsible supervision for such persons. *Initials* _____

Courtesy: Contractors and their agents and employees shall be courteous at all times when performing work under this Contract. The use of abusive, indecent,

offensive, coarse or insulting language is prohibited and shall be deemed a violation of this Contract. *Initials* _____

Complaints: The Contractor shall promptly and courteously respond to complaints and shall not unreasonably or arbitrarily delay or refuse to pay claims resulting from its acts or omissions in impounding or towing vehicles pursuant to the Contract. This shall include the furnishing of the insurance company name and claims agent if requested by a complainant. *Initials* _____

Response Time: The Contractor will dispatch a tow truck to the location specified by the City immediately upon receiving a request for impound/tow and any Class A or B tow truck will arrive at the site of impound/tow within twenty (20) minutes of the time the Contractor receives the impound request. Class C tow trucks shall arrive at the site of the impound/tow within thirty (30) minutes of the request. *Initials* _____

Removal of Debris: Unless otherwise directed, the Contractor will remove, at no additional cost, from the street, sidewalk or parking strip any broken glass or other debris resulting from a collision involving the vehicle, before towing the vehicle away. The Contractor shall dispose of all such debris in a lawful manner. *Initials* _____

Care and Skill: The Contractor will use reasonable care and skill in towing and/or impounding vehicles and will not damage them through lack of reasonable care. *Initials* _____

Storage Lot: The Contractor will provide a storage lot within a reasonable walking distance from a bus route and no further than three miles from the City limits. Vehicles, except as otherwise directed, will be towed directly to the storage lot. *Initials* _____

Physical Conditions and Security: The Contractor's storage lot will be kept surfaced, graded, drained, lighted and free of obstacles and hazards in a manner satisfactory to the City Manager, or City Manager's designee, at all times, so that persons redeeming vehicles have safe and convenient access to the vehicles. The Contractor will provide adequate security at its storage lot to prevent loss or damage to vehicles or their contents. All such lots will be screened and fenced in accordance with state law at all times; gates will be securely locked at all times when an attendant is not on duty on the premises and all vehicles will be locked, if possible. *Initials* _____

Shelter: The Contractor shall provide adequate shelter at its storage lot for motorcycles, open convertibles, or other vehicles open and exposed to the elements, and will store such vehicles under the shelter when reasonable or

necessary to protect such vehicles. The Contractor shall provide an isolated secure storage area not less than 10 feet by 20 feet in floor area that city police personnel can secure with city locks. These shelters shall be maintained in good repair at all times. *Initials* _____

Approval Required: The storage lot will be subject to the initial and continuing approval of the City Manager, or City Manager's designee, with respect to meeting the requirements of the contract. *Initials* _____

Other Storage Prohibited: The Contractor will not store towed and/or impounded vehicles on public streets or public property, or any place other than an approved storage lot. *Initials* _____

Abandoned Vehicles: The Contractor shall dispose of abandoned vehicles in the possession of the Contractor pursuant to RCW and WAC rules. *Initials* _____

Removal of Junk Vehicle or Parts, Thereof: The tow truck contractor shall, upon request of the Des Moines Police Department, remove to a disposal site designated junk vehicles or parts thereof. Costs of such removal shall be recovered by the tow truck operators in accordance with RCW 46.55.130 as now or hereafter amended. *Initials* _____

Release: The Contractor shall release impounded vehicles as follows:

- ◆ **Release to Claimants,** Vehicles impounded for evidence by order of the Police Department will be released only upon order of the Police Department. The Contractor will notify the City of Des Moines Police Department in writing of all police impounds with holds which remain in storage before the expiration of the third day of storage or the Contractor shall not charge storage fees beyond the third day. *Initials* _____

- ◆ **Vehicles impounded as authorized by RCW 46.55.080, RCW 46.55.085 or RCW 46.55.113,** as now or hereafter amended will be released or redeemed to proper persons all in accordance with the terms and regulations of RCW 46.55.120 as now or hereafter amended upon payment to the Contractor of towing and storage charges at the rates provided under terms of this Contract. *Initials* _____

- ◆ **Release of Vehicles,** When a proper person seeks to redeem an impound vehicle, the Contractor shall deliver possession of such

vehicle, not more than thirty (30) minutes after such person tenders payment in accordance with state law. **Initials** _____

Charges: Charges by the Contractor for towing and storage services pursuant to this Contract will not exceed the following:

- ♦ **Towing Fees.** The Contractor may charge a fee for each vehicle towed under this Contract, in the amount stated herein which will include all service required to place the vehicle in a position to be towed and to safely and properly tow the vehicle from the location of the impound to the Contractor's storage lot, together with storage for the first twelve (12) hours. **Initials** _____
- ♦ **Storage Fee.** The Contractor shall not charge a storage fee for the twelve (12) hours after a vehicle is towed. Thereafter, the Contractor may charge a daily storage fee for each 24-hour period during which an impounded vehicle is stored. Such storage charge shall begin after the lapse of the twelve (12) hour redemption period. The Contractor may charge one and one-half times the storage fee otherwise due for an impounded vehicle or combination of vehicles more than twenty-five (25) feet in length. **Initials** _____
- ♦ **Extra Charges.** In addition to the impound/tow and storage fees, and except as otherwise limited herein, the Contractor may make extra charges, whenever extra services are ordered by the Police Department or whenever towing without such extra services would be impossible or hazardous to persons or property. **Initials** _____

City Payment: The City shall pay the Contractor, at the rates provided in this Contract, for towing and storage charges under the following Circumstances:

- ♦ All City vehicles approved for tow or impound by an authorized City Employee; **Initials** _____
- ♦ For impound vehicles released by order of the Chief of Police or his/her representative after determination by the Police Department that the impoundment was erroneous; **Initials** _____
- ♦ Some cases require an evidence vehicle be towed and secured in the city garage for processing of the evidence. The vehicle will then be towed to the storage lot. Any tow to a City facility and then to the Contractor's storage lot shall be considered one tow; **Initials** _____

- ◆ Anytime a Contractor is called by the Police Department for services but the Contractor for whatever reason does not actually provide a service, neither the City nor the vehicle owner/operator shall pay any charges to the towing operator. *Initials* _____

Terms of Acceptance and Payment: For those impound or tow services billed to the City:

- ◆ Without exception, no payment will be made prior to acceptance of the work; *Initials* _____
- ◆ Washington State sales tax will be paid at the prevailing rate at the time of acceptance; *Initials* _____
- ◆ The City of Des Moines pays twice a month. Invoices will be paid by the second pay period following receipt. Contractor shall not charge late fees or interest for invoices paid within this schedule; *Initials* _____
- ◆ Except as otherwise noted, all those impound or tow services billed to private parties are subject to the rates and charges set forth in this Contract. *Initials* _____

STORAGE AND RETURN REQUIREMENTS

Location: All vehicles impounded shall be taken to the nearest storage location that has been inspected and approved by the City. *Initials* _____

Storage: All vehicles shall be handled and returned in substantially the same condition as they existed before being towed. All personal property and contents in the vehicle shall be kept intact, and shall be returned to the vehicle's owner or agent during normal business hours upon request and presentation of a driver's license and other sufficient identification. Personal property shall not be sold at auction to fulfill a lien against the vehicle. All personal property not claimed before the auction shall be turned over to the City. *Initials* _____

Personal Property Defined:

1. Items of personal property, which the Police Department will not accept, include the following:
 - a. Auto parts and accessories including, but not limited to:
 - (1) Tire chains;

- (2) Spare tires/wheels;
- (3) Used auto parts and/or accessories;
- (4) Seat covers;
- (5) Fuel containers;
- (6) Jacks, lug wrenches;
- (7) Radios, stereos and other items attached to the vehicle by bolts, screws, or some other manner, which incorporates them to the vehicle, shall remain with the vehicle.

Initials _____

b. Refuse:

- (1) Trash;
- (2) Garbage;
- (3) Open alcohol containers;
- (4) Soiled or mildewed clothing, shoes, blankets, tarpaulins, etc., having little or no actual value;
- (5) Miscellaneous unofficial papers and other items having no actual value.

Initials _____

2. Items, which must be turned over and inventoried, include, but are not limited to:

- a. Money;
- b. Wallets or purses;
- c. Bank or check books;
- d. Bank or credit cards;
- e. Official identification cards, operator's license or passports;
- f. Jewelry items;
- g. Firearms or any other type weapon;
- h. Contraband and/or controlled substances;
- i. Stocks, bonds, money orders, bank certificates, traveler's checks, postage stamps, food stamps, etc.; Other items of obvious value.

Initials _____

Contractor Responsibilities:

- 1. Remove all property from each vehicle, keeping it separate from property removed from all other vehicles. **Initials** _____
- 2. Screen the property to see that it meets the department's definition of "personal property". **Initials** _____
- 3. Itemize all the property to be turned in and identify the property by the vehicle from which it was removed. **Initials** _____

- a. Vehicle Make;
- b. Vehicle Model;
- c. Year,
- d. License number;
- e. License state;
- f. Vehicle identification number,
- g. Color,
- h. Location of impound; and
- i. Police case number (if any).

If some of the above information is unavailable, it should be noted.

Initials _____

4. A copy of the Vehicle Inventory and Department of Licensing Abandoned Vehicle Report must accompany the property when submitted by the Contractor to the property officer.

Initials _____

5. The property officer must be contacted before anything is brought to the police station. Patrol officers will not transport the property.

Initials _____

COMMUNICATION: The Contractor shall provide and maintain in good working order the following communications equipment and capability.

Initials _____

- ♦ **Public Telephone,** The Contractor shall provide telephone equipment and service for receiving calls at its dispatch office twenty-four (24) hours per day.

Initials _____

- ♦ **Radio,** The Contractor shall provide two-way radio communication equipment and service between its dispatch office and each tow truck used to impound vehicles pursuant to this Contract.

Initials _____

- ♦ **Receipt,** The Contractor shall prepare a receipt using uniform, sequentially numbered forms approved by the City Manager, or City Manager's designee, for every impounded vehicle that leaves the Contractor's possession, except for those stolen or driven out without being properly redeemed. The receipt shall be prepared at the time the vehicle leaves the Contractor's possession and shall state legibly:

Initials _____

- a. The date and time of delivery, to the claimant;

- b. The name, address, and Washington State (or other State) driver's license number of the person to whom it is delivered;
- c. The name and address of the employer or principal of such person, if such person is the agent for the registered owner or purchaser of the vehicle;
- d. The name and address of the vehicle's registered owner at the time of impound, if known;
- e. Either:
 - (1) An itemized statement of the impound, storage and extra charges collected by the Contractor, if redeemed by payment of charges; OR
 - (2) A complete statement of moneys or other consideration paid for the vehicle if sold:
- f. The signature of the person to whom it is delivered, acknowledging such delivery and payment, if any, and;
- g. The signature of the Contractor's employee making such delivery and receiving such payment, if any.

The Contractor shall deliver one (1) copy of the receipt to the person to whom the vehicle is delivered and will keep one (1) copy, filed serially in the order of the receipt number. *Initials* _____

Inspection: The Contractor shall keep all records, including records required by the Contract, and other applicable Ordinances or statutes, pertaining to vehicles impounded pursuant to the contract for at least three (3) years following the expiration or termination of the Contract. The Contractor shall keep all the records in its regular business Office or offices and shall not remove any of the records from its regular business office. The Contractor shall keep the records in an orderly manner as may be instructed by the City Manager, or City Manager's designee, to assure easy access and reference records and shall make all the records available for inspection and copying by the City at all times between 8:00 a.m. and 5:00 p.m. Monday through Friday, and at all other times when employees having charge of the records are present at the Contractor's office or offices. *Initials* _____

SPECIAL PROVISIONS

BASIS FOR AWARD

The City of Des Moines is not required by statute or ordinance to let this contract by public bidding. The City will make its award based on its determination, in its sole discretion, of proposer who can also best serve the interests of the City and its residents. Among factors that will be considered are:

1. Towing/impound price for Class A, B, C tow trucks;
2. The ability, capacity and skill of the corporation making the proposal to perform the contract or provide the service required;
3. The character, integrity, reputation, judgment, experience, and efficiency of the corporation making the proposal,
4. Whether the bidder can perform the contract within the time specified;
5. The quality of performance of previous contracts or services;
6. The previous and existing compliance by the corporation making the proposal with laws relating to the contract or services;
7. Servicing Resources, Capability and Capacity;
 - a. The corporation making the proposal must state the number, type and location of owned equipment that bidder proposes to use to fulfill the Contract.
 - b. The corporation making the proposal must state the number, type and location of all non-owned subcontracted equipment proposed for use by the corporation, to include name and address.
 - c. The corporation making the proposal must state existence of other service contracts that are applicable to the equipment.
 - d. The corporation making the proposal must state the location of their storage lot. All vehicles must be taken to one storage lot under the control of the corporation.

Initials _____

PERFORMANCE BOND: Prior to the execution of a contract, the Contractor shall file with the City Clerk of the City of Des Moines the original of a bond in the amount of \$25,000.00 executed by the Contractor as principal and a surety authorized to do business as such in the State of Washington. The bond shall first be approved as to form by the City Attorney of the City of Des Moines and shall be conditioned upon the Contractor's and any subcontractor's faithful performance of its duties under this Contract, and damages including reasonable attorney's fees sustained by the City or by members of the public for failure to comply with the conditions of this Contract shall be recoverable by agreement of the Contractor and surety or by presentation to the surety of a certified copy of a judgment from any court of competent jurisdiction. The contractor shall maintain the bond in full force and effect throughout the life of the Contract and during the pendency of any claim brought against the bond during the life of the Contract. The bond shall provide for at least sixty (60) days written notice to the City Clerk or his/her designee by surety, prior to cancellation. The parties agree that such sum shall constitute liquidated damages suffered by the City as a consequence of the Contractor's failure to perform in a manner such as to constitute a material breach of Contract resulting in termination of the Contract.

Initials _____

INSURANCE: The Contractor and any subcontractor shall at its own expense, obtain and file with the City evidence (in the form of a Certificate of Insurance) and automobile coverage, which Certificate is subject to approval by the City as to company, form and coverage, which policy must fully protect the City from any and all claims and risks in connection with Contractor's, its agents, subcontractors and/or employees, acts or omissions in its performance of the Contract. Such policy must specifically name the City as an additional insured party thereunder and provide the following minimum limits:

- ◆ Automobile Liability insurance with combined single limit for bodily injury and property damage of \$1,000,000 per accident and commercial general liability insurance with limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate.

Said insurance policy must be maintained in full force and effect at the Contractor's sole expense throughout the entire term of the Contract and such policy or an endorsement thereto and the Certificate of Insurance must evidence the following coverage and contain the following provisions:

Coverage shall be provided under a Comprehensive General Liability and Automobile Liability form of insurance, such as is usual to the practice of the insurance industry, including (but not limited to) all the usual coverage referred to as:

- a. Premises/Operations Liability (N&C);
- b. Products and Completed Operations Liability;
- c. Blanket Contractual Liability;
- d. Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles;
- e. Garage Liability;
- f. Garage Keeper's Legal Liability. (\$50,000 minimum per occurrence)
- g. Hook coverage (\$50,000 minimum coverage per incident).

The coverage provided by this policy to the City or any other named insured shall not be terminated, reduced or otherwise changed in any material respect without providing at least thirty (30) days prior written notice to the City of Des Moines.

The coverage's provided by this policy are primary to any insurance maintained by the City.

If the "ACCORD" form of Certificate of Insurance is used, it must be modified in the following manner:

- ♦ The wording at the top of "ACCORD" form, "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the below named Certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company," shall be changed to read, "Should any of the above described policies be canceled or reduced as to coverage before the expiration date thereof, the issuing company will mail thirty (30) days written notice to the below named Certificate holder/City of Des Moines as an Additional Insured."

Failure of the Contractor to fully comply with any and all of the terms of the foregoing insurance provisions shall be considered a material breach of this Contract and cause for its immediate termination.

Initials _____

SUBCONTRACTS: The Contractor shall not subcontract with any other person, firm or corporation to perform duties under the contract or any portion thereof unless it has first requested and received approval of the subcontract from the City Manager, or City Manager's designee. In the event the City Manager, or City Manager's designee, approves of subcontracting for the performance of any duty

under the Contract, the Contractor shall include and incorporate the contract terms in the subcontract and the Contractor shall remain responsible for performance under this Contract. The Contractor shall submit to the City with the Contractor's proposal any and all agreements or other documents setting forth the working relationship between the Contractor and any subcontractor(s) Contemplated or intended to be used by the Contractor to perform the duties of this Contract. *Initials* _____

SELLING OF CONTRACT: This Contract is a contract for personal services. The City enters the Contract in reliance upon the honesty, integrity and good business judgment of the Contractor. The City does not consent to the Contractor's sale or transfer of the Contract to any other person without prior City approval. Should the Contractor wish to sell or transfer its Contract, it must identify to the City the proposed buyer. The buyer must meet all of the qualifications of the original Contractor to hold a City Contract. Any attempt to sell or transfer the Contract to a person or business not approved by the City shall result in the termination of the Contract. *Initials* _____

CHANGE IN BUSINESS OWNERSHIP: The Contractor shall notify the City prior to any change in the ownership of the Contractor's business. Any new owner must meet all of the qualifications of the original owner to hold a City Contract. Any transfer of business ownership to a person not qualified by its honesty, integrity or good business judgment to hold the Contract shall result in termination of the Contract. *Initials* _____

GRATUITIES: The Contractor shall not directly or indirectly give, pay, deliver or perform- or agree to arrange to give, pay, deliver or perform- any gratuity, gift, bonus, donation or discount of any kind, in the form of goods, services or any other thing of value for any purpose, at any time, to any person employed by the City of Des Moines. Violations of these provisions will automatically result in termination of the Contract and forfeiture of the Contractor's Bond. *Initials* _____

CONTRACTOR'S BOND. Nothing in the Contract prohibits donations to campaigns for election to city office, so long as the donation is disclosed as required by the election campaign disclosure laws of the State. *Initials* _____

MAILING ADDRESS: Unless otherwise specified in writing, all notices, inquiries and other communications from the Contractor shall be directed to the City Clerk, City of Des Moines, 21930 11th Ave. South, Des Moines, WA 98198. *Initials* _____

DURATION. The duration of the Contract is two (2) years. Upon expiration of the Contract, the Contractor will continue to perform under the same terms and conditions, and for the same compensation as though the Contract had never

expired, until the City terminates the contract by thirty (30) days prior written notice of cancellation or by the Contractor by sixty (60) days prior written notice of cancellation. **Initials** _____

AMENDMENT: The Contract may only be amended by written agreement of the City and the Contractor. **Initials** _____

TERMINATION: Notwithstanding any other provision of this Contract, the City Manager, or City Manager's designee, may, after at least thirty (30) days notice to the Contractor cancel this Contract with or without written cause. The Contractor may cancel this contract upon sixty (60) days written notice to the City; after such notice the Contract will be terminated at the end of sixty (60) days or upon the City entering into a new Tow Truck Contract with another Tow Company, which ever occurs first. **Initials** _____

REMEDIES NON-INCLUSIVE: NON-WAIVER: Any remedies of the City under this Contract are non-exclusive, the City retains the right to choose the appropriate remedy for any violation of this Contract except as otherwise limited by this Contract. No waiver, express or implied of any violation of this Contract by either party shall constitute a waiver of any other violation of the Contract. The exercise of the City of any remedy under the Contract shall not constitute a waiver of the right to exercise any other remedy available to it. **Initials** _____

WORKMEN'S COMPENSATION: The Contractor shall pay to the State of Washington the amounts required to be paid in connection with the Workmen's Compensation Act. **Initials** _____

SEVERABILITY: If any provision or condition of this Contract shall be held to be invalid or unenforceable by any court, or regulatory or self-regulatory agency or body, such invalidity or unenforceability shall be attached only to such provision or condition; and the validity and enforceability of the remaining provisions and conditions shall not be affected thereby, and this Contract shall be carried out as if such invalid or unenforceable provisions were not contained in this Contract. **Initials** _____

ATTORNEY'S FEES: In the event the City employs legal counsel to enforce its rights under this Contract, the City shall be entitle to recover its reasonable attorney's fees. **Initials** _____

EXCEPTIONS

Any exceptions to the specifications as shown on the previous pages must be shown below. Failure to list any exceptions below will indicate individual or company making the proposal has no exceptions to specifications and will indicate that if awarded a contract, that individual or company could compete the contract at the amounts following all specifications with no exceptions.

1. **Introduction:** The document discusses the importance of maintaining accurate records of all transactions, including sales, purchases, and expenses, for financial reporting and tax purposes. It emphasizes the need for a systematic approach to record-keeping and the use of appropriate accounting methods.

2. **Record-Keeping Requirements:** The document outlines the specific requirements for maintaining records, including the need to retain records for a minimum of six years. It also discusses the importance of using appropriate accounting methods and the need to maintain accurate records of all transactions, including sales, purchases, and expenses.

3. **Accounting Methods:** The document discusses the various accounting methods available, including the cash method, the accrual method, and the hybrid method. It explains the differences between these methods and the requirements for using each method.

4. **Record-Keeping Procedures:** The document provides a detailed description of the record-keeping procedures, including the need to maintain accurate records of all transactions, including sales, purchases, and expenses. It also discusses the importance of using appropriate accounting methods and the need to maintain accurate records of all transactions, including sales, purchases, and expenses.

5. **Conclusion:** The document concludes by emphasizing the importance of maintaining accurate records of all transactions, including sales, purchases, and expenses, for financial reporting and tax purposes. It also discusses the need for a systematic approach to record-keeping and the use of appropriate accounting methods.

PROPOSAL FORM

Having carefully examined the Request for Proposal, Specifications, Instructions Regarding Proposal, and the Special Provisions, the undersigned proposes to perform all work in strict compliance with the above-named documents for the amount set forth below.

IN ORDER TO QUALIFY YOUR PROPOSAL FOR CONSIDERATION, THE FORM OF PROPOSAL MUST BE SIGNED.

FIRM NAME _____

ADDRESS _____

CITY/STATE/ZIP _____

TELEPHONE _____ FAX _____

CONTRACTOR RATES

- | | | |
|----|--|------------------|
| 1. | Service Calls | \$ _____ |
| | | Amount |
| 2. | Towing: includes 1 st hour | |
| | (A) Class "A" Truck | \$ _____ |
| | | Amount |
| | (B) Class "B" Truck | \$ _____ |
| | | Amount |
| | (C) Class "C" Truck | \$ _____ |
| | | Amount |
| 3. | Stand-By Time | \$ _____ |
| | (15 Minute Intervals; after 1st hour) | |
| | Class "A" & "B" Truck | \$ _____ |
| | Class "C" Truck | \$ _____ |
| 4. | Winching | \$ _____ |
| | (15-minute intervals) | (Per 15 minutes) |
| 5. | Drive Line Removal | \$ _____ |
| 6. | Dolly Rental – included in tow fee | \$ _____ |
| 7. | Mileage Fee (after 10 miles) | \$ _____ |
| 8. | Vehicle release between 8:00 p.m.
And 8:00 a.m. | \$ _____ |

9. Storage (1st 12 hours no charge)
Amount for each additional 24-hour
period.

(A) Inside Storage \$ _____

(B) Outside Storage \$ _____

CHARGES SHALL BE AS STATED FOR ITEMS 3 through 9

SIGNED BY _____
(SIGNATURE OF APPROVED REPRESENTATIVE)

PLEASE PRINT NAME _____

I hereby acknowledge
Receipt of the
Following addenda _____

By: _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ of the Corporation presenting the Proposal(s) attached hereto; that _____, who signed said Proposal(s) on behalf of the Bidder, was then _____ of said Corporation; that said Agreement was duly signed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

By _____

Title

STATE OF WASHINGTON)

(ss

COUNTY OF KING)

On this day personally appeared before me _____ known to me to be the individual(s) who executed the within and foregoing instrument, and acknowledged that said instrument was signed as a free and voluntary act and deed, for the uses and purposes therein mentioned and further acknowledges that execution of said instrument was an authorized act.

GIVEN UNDER MY HAND and official seal this _____ day of _____, 200__.

NOTARY PUBLIC in and for the
State of Washington, residing at

A G E N D A I T E M

SUBJECT:
Towing/Impound Services Contract

ATTACHMENTS:
Evaluation Spread Sheet
Memo From Commander Tucker regarding
RFP Evaluation

AGENDA OF: October 31, 2002

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: Sept. 20, 2002

CLEARANCES:

[] POLICE _____

[] LEGAL _____

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL: *SA*

Purpose and Recommendation:

The purpose of this report is to inform the City Council of the results of the Request for Proposals for towing / impound services and to recommend that RoadOne (Dick's Highline Towing) be awarded the contract.

Recommended Motion: "I move that the City Council award ^Athe towing and impound contract to RoadOne (Dicks Highline Towing), waive the three-mile requirement, allow subcontracting of class C towing, and authorize the City Manager to finalize and sign the agreement."

Alternative Motions:

"I move to reject all responses to RFP Number 02-001 and direct staff to re-issue the RFP with the following changes: _____."

"I move to reject all responses to RFP Number 02-001."

Background:

Since the late 1950's, the City of Des Moines has utilized the services of Pete's Towing for towing and impound services. These services include moving/towing vehicles that have been in accidents, towing abandoned vehicles, towing vehicles that are being impounded (driver's arrested for various offenses/warrants), and towing City vehicles for various reasons. Pete's Towing provided these services competently and professionally throughout the years. These services, however, were rendered without a written contract nor were they put out for competitive bid. It is good management practice to

have a written contract for such services and to occasionally put them out for a competitive procurement process. Written contracts lay out the services to be rendered, the responsibilities of each party, dispute resolution procedures, and usually include insurance, indemnification, and hold harmless provisions. Subjecting such services to competitive procurement processes allows reasonable assurance that the services are being provided in a comprehensive and cost-effective manner.

In July of this year, the City issued a Request for Proposals (RFP) for towing and impound services. On July 24th four (4) proposals were received. The four tow contractors who responded to the RFP were RoadOne (Dick's Highline), Pro-Tow, Airport Towing, and Special Interest Auto Works, Inc.

Discussion:

Staff conducted an in-depth review of the proposals in August. This review included site visits, contacts with the managers, equipment review, and reference contacts. An initial review of the responses was completed by mid-August. Completing the reference checks, including a random check of customers of each company proved to be a more time consuming task than anticipated.

In conducting these reviews, it was found that no one contractor met all standards as outlined in the RFP. However, based upon discussions with the managers from the tow companies, adding the City of Des Moines to their client list would have a minimal impact on any of the companies' operations. In the review process a comparison spreadsheet was constructed outlining the essential criteria requirements that each tow company had to meet (see attached). RoadOne (Dick's Highline) provided the best response to the non-financial criteria, in addition to offering the best overall price schedule.

As noted earlier, all the proposing companies did not meet each RFP requirement. For example, the RFP required tow storage yards to be within three (3) miles of the Des Moines City limits. RoadOne (Dick's Highline) is 3.7 miles from the city limits, Airport Towing is 3.2 miles, Special Interest Auto Works is .2 miles, and Pro-Tow is in excess of 5 miles. These distances could cause an inability on the part of three of the four responding companies to meet the 20-minute response time at all times and could be less convenient for customers to retrieve their vehicles. The attached memo from Commander Tucker summarizes the issues and concerns with each responding tow company.

Alternatives:

Alternatives available to the City Council include awarding a contract to two or more towing companies and establishing a rotational system for towing vehicles and use that experience to determine which company(s) are able to regularly meet the 20-minute requirement. Council could also not award a contract to any of the companies that responded and re-issue the RFP, hoping to have more towing companies respond, particularly some within three miles of Des Moines and better able to guarantee a 20 minute response time. Council could also elect not to award a contract to any of the

responders and leave the situation as it currently stands. This, however, would mean that Des Moines does not have a written contract for this service.

Financial Impact:

The financial impact to the City of Des Moines and the citizens who have their vehicles towed should be reduced since, in several tow categories, the fee that RoadOne (Dick's Highline) proposed is lower than the amount currently being charged.

Recommendation

It is staff's recommendation that RoadOne (Dick's Highline) be awarded the towing contract for the City of Des Moines. Staff also recommends that the City Council waive the three-mile requirement and allow subcontracting of Class C towing.

Copies of all four responses to RFP Number 02-001 are available in the City Clerk's Office.

Concurrence:

The Police Department concurs with this recommendation.

MEMORANDUM

Date: August 9, 2002
To: Chief Don Obermiller
From: Commander Kevin Tucker
Subject: RFP Review

I have reviewed all 4 request for proposals; conducted site visits on 3 out of the four. (I did not conduct site visit on Pro-Tow due to distance from City of Des Moines). While at each site I talked with the managers or owners to gain clarification on issues in the RFP as well as walked the business sites.

There is no one RFP submitted which currently would meet all specification required by the City of Des Moines. Below I have listed areas in which each proposal would require a waiver for contract or future changes by each business. Due to the fact the City of Des Moines towing services would only amount to approximately 2 tows per day, most of the tow company's would not add any more drivers or equipment to their fleet. The impact of adding our tow services would be minimal to each company.

RoadOne (Dicks Highline Towing)

- Driving Time from the City of Des Moines north limits 3.7 miles
- Subcontract waiver required for Class "C" tow, (Waiver requested in proposal document)

Pro-Tow

- Response time concerns
- Excess of 5 miles from City of Des Moines south boundary
- Auburn storage under construction and unapproved by State Patrol

No Site Visit Conducted

Airport Towing

- Driving Time from the City of Des Moines north limits 3.1 miles
- Subcontract waiver required for Class "C" tow
- Will charge registered owner of the vehicle for second tow from city garage

Airport Towing (Alternate Proposal)

- Driving Time from the City of Des Moines north limits 3.1 miles
- Subcontract waiver required for Class "C" tow
- Will charge registered owner of the vehicle for second tow from city garage
- In house dispatching 8:00 a.m. to 6:00 p.m. except Saturday, Sunday and holidays
- All abandoned vehicles will be towed to secondary storage lot in south Seattle
- City of Des Moines will make every effort to impound abandoned vehicles during non peak business hours
- Winching charged at ¼ hour minimum with other services and ½ hour minimum without other services

Special Interest Auto Works

- Does not have radio communication in each tow truck
- Does not have a 24-hour dispatch office. Driver answer cellular phones after hours.
- Does not have 3 Class "A" Tow Trucks. (Only has 2)
- No current isolated secure storage area as required for police evidence vehicles
- Lot storage area contains some temporary fence
- Intermixes body shop vehicles with impounded vehicles

Recommendations

After reviewing all proposals I believe the best overall package and value will be RoadOne (Dicks Highline) Dicks Highline is by far the cheapest for all services over the other proposals. The majority of all tows will be the class "A" tows which will be charged to the city as well as our customers at the rate of \$87.00 per tow. The next closest Class "A" tow was Special Interest at \$107.00. I also added all contractor rates per proposal and found Dicks Highline came in at \$590.00 for all services. The next closest was Special Interest at \$743.70.

RoadOne (Dicks Highline) also has all the necessary equipment to provide services as well as 43 other pieces of equipment under subcontract through their parent company. Their storage yard and covered secure storage areas are adequate for our customers as well as our in-house needs.

Response time will be of concern at all times. This would need to be monitored and tracked.

Note:

In the future, if Special Interest Auto works can meet all RFP requirements I would recommend they be added to the city's future tow list if they meet the contractor rates currently in use. The proximity to the city and response times would make this contract beneficial to the city.

Attachments:

1. 3-page comparison matrix
2. RFP Road One (Dicks Highline)
3. RFP Pro-Tow
4. RFP Airport Towing
5. RFP Special Interest Auto Works
6. DOL Record Checks

	RoadOne (Dicks Highline)	Pro-Tow	Airport Towing	Airport Towing (Alternate)	Special Interest Auto Works, Inc
Contractor Rates					
Service Calls (\$)	\$60.00	\$139.30	\$69.50	\$59.95	\$45.00
Towing Includes 1st Hour Class "A" Truck	\$87.00	\$139.30	\$285.59	\$121.30	\$107.00
Towing Includes 1st Hour Class "B" Truck	\$127.00	\$164.50	\$325.24	\$160.95	\$131.00
Towing Includes 1st Hour Class "C" Truck	\$127.00	\$260.20	\$396.24	\$231.95	\$231.00
Standby Time 15 minute intervals after 1 st hour Class "A" & "B" Truck	\$21.00	\$34.82	\$76.36	\$30.33	\$15.00
Standby Time 15 minute intervals after 1 st hour Class "C" Truck	\$21.00	\$34.82	\$99.06	\$60.66	\$30.00
Winching (15 minute intervals)	\$24.00	\$34.82 Class A \$41.13 Class B \$65.05 Class C	\$76.36	\$76.36	\$65.00
Drive Line removal	\$ 0	Hourly Per Class	\$40.00	\$40.00	\$25.00
Dolly Rental-included in tow tee	N/A	Hourly Per Class	\$40.00	\$40.00	\$25.00
Mileage Fee (after 10 Miles)	\$5.00	Hourly Per Class	\$4.00	\$4.00	\$2.50
Vehicle Release between 8:00 p.m. and 8:00 a.m.	\$48.00	\$69.65	\$142.80	\$60.65	\$45.00
Storage (1 st 12 hours no charge) Amount for each additional 24-hour period. Inside Storage	\$40.00	\$27.50	\$57.95	\$48.95	\$38.60
Storage (1 st 12 hours no charge) Amount for each additional 24-hour period. Outside Storage	\$30.00	\$49.70	\$38.30	\$33.75	\$28.60
Total Package Costs	\$590.00	\$954.61	\$1,651.40	\$968.85	\$743.70

Other Conditions	RoadOne (Dicks Highline)	Pro-Tow	Airport Towing	Airport Towing (Alternate)	Special Interest Auto Works, Inc
(Forms Completed?) <i>Specifications For Vehicle Towing And Impound Services</i>	YES	YES	YES	YES	YES
(Forms Completed?) <i>Instructions Regarding Proposals</i>	YES	YES	YES	YES	YES
(Forms Completed?) <i>Special Provisions</i>	YES	YES	YES	YES	YES
(Forms Completed?) <i>Non-Collusion Affidavit</i>	YES	YES	YES	YES	YES
(Forms Completed?) <i>Certificate As To Corporate Principal</i>	YES	YES	YES	YES	YES
(Forms Completed?) <i>Exceptions</i>	YES	YES	YES	YES	YES
(Forms Completed?) <i>Proposal Form</i>	YES	YES	YES	YES	YES
Proposal Guarantee Submitted?	YES, Bid Bond	YES, Check for \$5,000	YES, Check for \$5,000	YES, Check for \$5,000	YES, Check for \$5,000
Sufficient Vehicles? (at least 3 Class "A" Tow Trucks with drivers on duty at all times)	YES, 6 Class A, with 31 on sub-contract	YES, 3 Class A	Yes, 5 Class A	Yes, 5 Class A	NO, only 2 Class A

Other Conditions	RoadOne (Dicks Highline)	Pro-Tow	Airport Towing	Airport Towing (Alternate)	Special Interest Auto Works, Inc
Class "C", by ownership, lease, purchase contract or temporary use agreement. (At all times)	Yes with Subcontract approval by City Manager	YES	Yes with Subcontract approval by City Manager	Yes with Subcontract approval by City Manager	YES
24-7 dispatch office?	YES	Unknown	YES, Nextel Radios	YES, Nextel Radios	NO, after hours calls go directly to drivers
20 minute response time?	YES, except rush hour	Unknown	YES, except rush hour	YES, except rush hour	YES
Storage Lot? (No further than 3 miles from the city limits)	NO, 2012 S. 146 th St Seatac, WA 98168 3.7 driving miles	NO, One lot under construction in Auburn the other in Maple Valley	NO, 817 S. 149 th St, Burien, WA 98166 3.1 driving miles	NO, 817 S. 149 th St, Burien, WA 98166 3.1 driving miles	YES, 24816 SR99, Kent, WA 98032 0.2 Miles
Towing a vehicle to city garage and second tow to contractors storage lot considered one tow.	OK	OK	Will charge registered owner of the vehicle for second tow from city garage	Will charge registered owner of the vehicle for second tow from city garage	OK
Physical Conditions and Security of storage lot?	Asphalt, fenced, poor lighting no alarms	Unknown, to far from City of Des Moines	Gravel/dirt under remodel no functioning drainage Alarmed and well Lighted	Gravel/dirt under remodel no functioning drainage Alarmed and well Lighted	Asphalt/gravel, slope drainage only. minimal lights, some temp fence
Shelter in good repairs and securable?	Good	Unknown, to far from City of Des Moines	One building needs repair other high quality	One building needs repair other high quality	None. Currently under construction / remodel
Radio Equipment?	Nextel	unknown	Nextel	Nextel	None
Staff Records Checks Results?	All clear except 2 contract employees	All clear	All clear	All clear	All clear
WSP Standards and Inspections within set guidelines?	Due for inspection, on WSP tow list, last complaint 1999	Inspected April 2002, on WSP tow list, last complaint 1999	Inspected June 2002, on WSP tow list, last complaint 1999	Inspected June 2002, on WSP tow list, last complaint 1999	Inspected April 2002, on WSP tow list.

EXCERPT

DES MOINES CITY COUNCIL MINUTES

October 31, 2002

OLD BUSINESS

Towing Services Contract

Police Commander Tucker informed Council that in July this year, request for proposals for imponnd and Towing services were sent to 16 companies, and four responded. He informed Council that he personally reviewed the proposals, made site visits, reviewed equipment and drive times, ran record checks with Washington State Patrol regarding complaints, contacted references and compared pricing. He advised Council that none of the companies met all of the criteria. He proceeded to review a three page comparison matrix furnished to Council in their packets. He concluded by recommending that the contract be awarded to RoadOne (Dick's Highline Towing) for having the best overall package and value. He did noted that response time will be of concern and would need to monitored and tracked.

City Manager Piasecki advised that should Council choose to award a contract, a standard contract would be prepared incorporating the information provided by the towing company, including all required insurance.

Upon questioning by Mayor Wasson, Commander Tucker advised that he ran a record check on all drivers for the companies submitting proposals.

Upon questioning by Mayor Pro Tem Benjamin, Commander Tucker advised that since the late 1950's the City has utilized the services of Pete's Towing. It is his opinion that Pete's is a quality company and has provided outstanding service, and he personally knows of no outstanding complaints.

Mayor Pro Tem Benjamin questioned why with a record of 40 years of outstanding service Council is even spending time considering this issue. He was of the opinion that this whole issue was politically motivated and since the service is already being provided, it is a waste of Council time.

Councilmember Steenrod felt that this issue has been raised to try to force Councilmember Petersen to resign. She noted that with longer towing times there is no benefit to the citizens and could force more overtime for Des Moines' Police officers. She reminded Council that Councilmember Petersen's case is still before the Judge to rule on a conflict of interest and that the Council should not make any decisions until the Judge has made his ruling.

MOTION was made by Councilmember Steenrod, seconded by Mayor Pro Tem Benjamin, that Council elect not to award a contract to any of the responders and leave the situation as it currently stands, pending the outcome of the Petersen conflict of interest lawsuit.

Councilmember Petersen announced that he must abstain from participation in this issue.

Councilmember Thomasson spoke against the motion citing that having a towing contract should have been accomplished 10 years ago, as it is just a good business practice. This issue has been

heightened by Councilmember Petersen being on the Council and owning Pete's Towing. He felt there are valued reasons to have a contract including indemnity clauses and hold harmless agreements and other items of that nature. He is of the opinion that having a contract would have a guarantee for a fair price for citizens. He suggested that Council may wish to have a contract with several towing companies, which would be his preference, and let the citizens make the choice.

Mayor Pro Tem Benjamin voiced the opinion that this is a political issue. He noted currently citizens can have any towing company called they name. Picking one towing company does not encourage a free market. He advised that the current system is not broke, it is working well.

Councilmember Sheckler agreed that this is an emotional subject. He noted that probably no one is going to dispute the fact that Pete's Towing is the best company, but even Councilmember Petersen acknowledged at the beginning that he could see a potential problem with a conflict of interest. He reminded Council that three authorities in the State said that they believe there is a conflict and this is the real issue. He does not see any way around that. He acknowledged that the pending court case could be thrown out, then Council would have to revisit the issue.

10:28 p.m. **MOTION** was made by Councilmember Steenrod, seconded by Mayor Pro Tem Benjamin, to extend the meeting another 15 minutes. Motion passed 5 to 2 with Councilmembers Petersen and Thomasson voting NO.

Mayor Pro Tem Benjamin stated that he heard Councilmember Petersen say he may have a conflict and that he had been advised by past City legal representation, which was advice from the Attorney General's office, that he might have a conflict. He also reminded Council that Councilmember Petersen had stated that the State Auditor's office felt the only area that he might have a conflict of interest was in towing City of Des Moines vehicles, if he charged for towing City vehicles. [ED Note: Councilmember Petersen acknowledged this to be true.]

Upon questioning by Mayor Pro Tem Benjamin, Councilmember Petersen acknowledge that he is not charging the City for any towing of City vehicles.

Councilmember Steenrod felt that since Pete's Towing is not charging the City for towing City vehicles, which helps the City's budget, there is no conflict and therefore there is no need to take any action until after the Court case is settled.

Councilmember White stated that she did not believe this was a political issue, but rather a responsibility to have a contract in place outlining services, dispute resolution procedures, insurance, indemnification and hold harmless provisions.

Upon questioning by Council, City Attorney Marousek noted she had reviewed written opinions on the conflict of interest regarding Councilmember Petersen from the following:

- MRSC indicating that the current situation was an apparent conflict of interest
- Two letters from the Attorney General's office expressing an opinion that the current situation was a violation of the Conflict of Interest Rule for Councilmembers
- Opinion from the State Auditor's office noting that they would take the advice of the Attorney General

She noted that she had also read a letter from Mr. Langley, Mr. Petersen's attorney, disagreeing with those opinions. She further noted, that as she understands it, the Court has not yet

expressed an opinion, but simply issued an injunction which Mr. Petersen has complied with tonight.

Mayor Wasson voiced the opinion that until the Judge makes a formal ruling, there is no conflict of interest. He felt this expensive process was politically motivated by a disgruntled citizen. He noted that the City Manager used his best judgement to place this RFP. However, he feels the first step is to adopt procurement policy guidelines for all services before any RFP is ever issued. Therefore, he supports Councilmember Stenrod's motion. If Council were to proceed to award a contract, the City could be stuck with the second best choice.

Upon questioning by Council, Councilmember Petersen stated that he believes the Judge may reach a decision around mid-December. He noted that originally he was advised by the City Manager that there may be a possible conflict of interest. He was informed that the Attorney General's office and Washington Cities Insurance Authority believed that there was a potential conflict of interest. He further noted that he then contact his attorney, who informed him that he did not believe there is any conflict of interest, due to the fact that in 1999 the Legislature re-wrote the Conflict of Interest Laws, to allow individuals who had years of good business and involvement in communities to get involved in State government.

10:45 p.m. **MOTION** was made by Mayor Pro Tem Benjamin, seconded by Councilmember Sheckler, to extend the meeting another 15 minutes. Motion passed 5 to 2 with Councilmembers Thomasson and White voting NO.

City Manager Piasecki noted that when a Des Moines officer shows up at a stalled car on the side of the road, or an accident, the owner is asked if they have a preference of tow companies. He noted that even if Council chooses to award the contract, there would be no guarantee that they would have exclusive rights to towing all vehicles. Personal requests for a towing company would be honored. The Police only make the choice when the owner is not present or for some reason is unable to tell the police who they wish to have tow the vehicle.

VOTE ON MOTION: Motion failed by a 3 to 3 vote. With Councilmember Stenrod, Mayor Pro Tem Benjamin and Mayor Wasson voting YES. Councilmembers Sheckler, Thomasson and White voting NO. [ED NOTE: Councilmember Petersen did not participate.]

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: RCAA 2002 Invoices

FOR AGENDA OF: August 14, 2003

ATTACHMENTS:

- A. July 11, 2003 letter from RCAA
Regarding 2002 invoices
- B. Agreement between the City of
Des Moines and RCAA for 2002
- C. March 6, 2003 Agenda Item
Regarding RCAA 2002 invoices
- D. Minutes of March 6, 2003 City
Council Meeting

DEPT. OF ORIGIN: City Manager's Office

DATE SUBMITTED: August 8, 2003

CLEARANCES:

[] CAm

APPROVED BY CITY MANAGER
FOR SUBMITTAL: AS

Purpose and Recommendation

The purpose of this report is to provide the City Council an opportunity to review the July 11, 2003 letter from the Regional Commission on Airport Affairs (RCAA) regarding invoices for services they provided in 2002 to satisfy their responsibilities per the agreement between the City of Des Moines and RCAA and to determine whether or not the Council will authorize payment for these services. This item was placed on this agenda at the request of Councilmembers Sherman, Sheckler, and White.

Suggested Motion:

"I move to authorize payment of \$_____ to the Regional Commission on Airport Affairs as full and final payment for services provided in 2002 out of the General Fund fund balance for the 2003 budget."

or

"I move to direct staff to negotiate with RCAA regarding the amounts of the invoices for services rendered in 2002, including the interest assessed on each, and to process the final negotiated amounts for payment using the 2003 General Fund fund balance."

Background

For several years, the City of Des Moines contracted with RCAA to provide various services to educate the public concerning the environmental, economic and social effects of the proposed third runway and related expansion of Seattle-Tacoma International Airport. The attached copy of the 2002 agreement

provides greater detail. For these services, the City agreed to pay RCAA \$28,000 in quarterly installments of \$7,000 each.

At its September 5, 2002, meeting, the City Council voted to terminate the contract with RCAA. The City Manager notified RCAA of this action in a letter dated September 10, 2002, with an effective date of October 14, 2002. Under paragraph 5 of the contract, RCAA is "entitled to pro rata compensation based on the number of months this contract has remained in effect and the quantity and quality of services performed by RCAA on behalf of the City".

In September and October 2002, RCAA sent the City invoices totaling \$22,065.22 for services rendered before the contract was terminated. At its March 6, 2003 meeting, the City Council declined to authorize payment of these invoices, finding that the services rendered did not warrant payment.

Discussion

On July 11, 2003, RCAA sent a letter to the City resubmitting their invoices for 2002. Councilmembers Sherman, Sheckler, and White requested that this letter and invoices from RCAA be placed on this agenda for discussion. The invoices include the original amounts of \$7,000 per quarter for the first and third quarter and a pro-rated amount of \$1,065.22 for the fourth quarter plus interest. The total amount without interest would be \$15,065.22. With interest, the total is \$16,749.78. The second quarter invoice was not included with the July 11, 2003, letter, but would amount to \$7,000 without interest and approximately \$7,800 with interest. As of the finalization of this agenda item, staff has a call into RCAA to see if this was an oversight and if so, if it can be corrected.

Alternatives

The City Council may elect to pay all, part or none of the RCAA invoices, based upon Council's evaluation of the quantity and quality of services performed by RCAA in 2002 on behalf of the City. The City Council may also direct staff to negotiate the amounts, including interest, billed on each invoice.

Financial Impact

The total billings in the July 11, 2003, letter amount to \$15,065.22 without interest and \$16,749.78 with interest. The second quarter invoice will total \$7,000 plus some amount of interest. \$28,000 was allocated in the 2002 Budget for the RCAA contract. Since none of this was expended, it was carried over into the 2003 budget as part of the fund balance.

Recommendation

None.

11 July 2003

COUNCIL - FYI

copy: Linda

Tony Piasecki
City Manager
City of Des Moines
21630 Eleventh Ave. So., Suite A
Des Moines, Washington 98198-6398

Re: RCAA billings to Des Moines:

Dear Mr Piasecki:

By direction of the Board of Directors of RCAA, I herewith resubmit our invoices for services provided to the City by RCAA under the services contract between Des Moines and this organization for calendar year 2002.

Please note that interest charges have been brought current to 1 July.

Yours very truly,

Chas. H.W. Talbot
Office Administrator

encls (4)

L03-192-2



19900 4th Ave SW
Normandy Park, WA 98166
(206) 824-3120
FAX (206) 824-3451

<rcaa@earthlink.net>

www.rcaanews.org

Officers

Lawrence J. Corvari
President

Allan M. Furney
Vice President

Philip C. Emerson
*Vice President &
Secretary*

Jim Bartlemay
Treasurer

Directors

Mike Anderson
Jim Bartlemay
Clark Dodge
Rob Frissholz
Dennis Hansen, M.D.
Jeanne Moeller
Len Oebser
Jane M. Rees
Benjamin Stark

Affiliates

CANE

C.A.S.E. (Citizens
Against Sea-Tac
Expansion)

Seattle Community
Council Federation

Seattle Council on
Airport Affairs

REGIONAL COMMISSION ON AIRPORT AFFAIRS

19900 4th S.W.
Normandy Park, Washington
98166-4043
Telephone: 206.824.3120
FAX: 206.824.3451
E-mail: rcaa@earthlink.net

STATEMENT

11 July 2003

City of Des Moines
21630 11th Ave. So.
Des Moines, Washington 98198-6838

RE: Services, first quarter, 2002
As per contract between RCAA and the City of Des Moines

Amount due, original invoice, & per contract	\$7,000.00
Interest from 1 April 2002, at statutory rate, 15 months	<u>1,050.00</u>
Total now past due	<u>\$8,050.00</u>

REGIONAL COMMISSION ON AIRPORT AFFAIRS

19900 4th S.W.
Normandy Park, Washington
98166-4043
Telephone: 206.824.3120
FAX: 206.824.3451
E-mail: rcaa@earthlink.net

STATEMENT

14 October 2002

City of Des Moines
21630 11th Ave. So.
Des Moines, Washington 98198-6838

RE: Services, portion, fourth quarter, 2002
As per contract between RCAA and the City of Des Moines

Normal quarterly payment per contract, \$7000
Fourth quarter, 92 days
Contract days, 14
Percentage, 15.2
Prorated amount due: $0.152 \times 7000 = \$1065.22$

Amount due:	\$1,065.22
Interest from 1 November, at statutory rate, seven months	<u>74.57</u>
Total now past due	<u>\$1,139.78</u>

REGIONAL COMMISSION ON AIRPORT AFFAIRS

19900 4th S.W.
Normandy Park, Washington
98166-4043
Telephone: 206.824.3120
FAX: 206.824.3451
E-mail: rcaa@earthlink.net

STATEMENT

11 July 2003

City of Des Moines
21630 11th Ave. So.
Des Moines, Washington 98198-6838

RE: Services, third quarter, 2002
As per contract between RCAA and the City of Des Moines

Amount due, original invoice, & per contract	\$7,000.00
Interest from 1 October 2002, at statutory rate, eight months	<u>560.00</u>
Total now past due	<u>\$7,560.00</u>

**AGREEMENT FOR SERVICES
BY AND BETWEEN
THE CITY OF DES MOINES AND
THE REGIONAL COMMISSION ON AIRPORT AFFAIRS ("RCAA")
FOR THE YEAR 2002**

The CITY OF DES MOINES ("City"), a municipal corporation, and the REGIONAL COMMISSION ON AIRPORT AFFAIRS ("RCAA") agree as follows:

FACTS AND ASSUMPTIONS

THIS AGREEMENT is entered into on the basis of the following facts and assumptions:

RCAA is a corporation, incorporated under the Nonprofit Corporations Act of the State of Washington.

The purpose for which RCAA is organized is to actively oppose the proposed third runway and related expansion of Seattle-Tacoma International Airport (Sea-Tac Airport) and to educate the local public concerning the environmental, economic, and social effects.

The RCAA recognizes that the City, in cooperation with the Airport Communities Coalition (ACC), is or may become engaged in litigation with the Port of Seattle, the Federal Aviation Administration, the Puget Sound Regional Council and others regarding many of the same issues with which the RCAA is concerned.

For these reasons, the City Council of the City of Des Moines has allocated funds to contract with RCAA which will be of assistance to the City in regards to the third runway or expansion of Sea-Tac Airport.

AGREEMENT FOR SERVICES

Accordingly, and in reference to the foregoing, the parties agree as follows:

1. RCAA Responsibilities

(a) RCAA shall provide to the City services which the City may from time to time require in achieving the goals previously described with regard to the third runway or expansion of Sea-Tac Airport. These services shall include the following:

- Information booths at public festivals in Burien, Normandy Park, Des Moines, Federal Way, Tukwila, Beacon Hill, Magnolia and other areas impacted by the expansion of Sea-Tac Airport;
- Schedule monthly citizen involvement activities in Olympia, Seattle, Sea-Tac Airport and the Greater Puget Sound Region, as necessary;

- Host town meetings in the Greater Puget Sound Region to inform and educate the public and elected officials as needed.
- Maintain a web site to provide in-depth and immediate information to the public;
- Publish a quarterly newsletter;
- Recruit new members;
- Expand the mailing list upon request of city councils;
- Send action alerts to all RCAA members as deemed necessary by the RCAA Board of Directors;
- Placement of informational advertisements as deemed necessary by the RCAA Board of Directors;
- Conduct elected official outreach at the state, county, and local levels;
- Provide other activities as deemed necessary by city councils;

(b) RCAA shall ensure that all of its activities on behalf of the City are in compliance with applicable state, federal and local law, including without limitation, any reporting requirements of the Washington Public Disclosure Commission that are applicable, or in the future become applicable, to actions or assignments undertaken by RCAA;

(c) RCAA will at all times maintain accurate and appropriate financial records. At any time during the term of this Agreement, within seven (7) days of a written request from the Des Moines Finance Director, RCAA agrees to make available to the City Finance Director for audit and inspection any and all records maintained by RCAA, including without limitation, receipts for goods, services, payroll, expenditures, and study costs; and

(d) RCAA will regularly seek contributions through its mailings and public activities.

2. *Limitations on RCAA Activities*

To ensure that RCAA's efforts are consistent with and complement the City's efforts through the ACC, the RCAA shall not use City funds for the following activities, without the prior approval of the City:

- Retaining experts or professionals to assist in developing technical information related to the impacts of Sea-Tac Airport;
- Dissemination of technical reports or other technical information prepared in contemplation of litigation, or in any manner related to the issues raised (or to be raised) in ACC litigation;
- Retain any professional or consultant who has been retained by the ACC (unless approved by the ACC); or

- Publication (including electronic publication) of any attorney/client privileged materials prepared for litigation by the ACC, its counsel, consultants, or staff.

3. *RCAA Meeting Requirements*

An officer of the RCAA shall meet with a member or members of the City staff on a periodic basis so that the City may provide RCAA with its requirements and RCAA may report on services rendered.

4. *City Responsibilities*

In consideration of the services performed by RCAA, the City shall compensate RCAA in the amount of twenty-eight thousand dollars (\$28,000.00) during the year 2002, payable in four installments, which shall be paid on or before February 15, 2002, May 15, 2002, August 15, 2002, and November 15, 2002, or when otherwise authorized by the City Council..

5. *Termination*

This contract may be terminated by either party upon thirty (30) days written notice, in which event RCAA will be entitled to pro rata compensation based on the number of months this contract has remained in effect and the quantity and quality of services performed by RCAA on behalf of the City.

6. *Independent Contractor, Hold Harmless Agreement*

RCAA warrants and understands that in performing services under this agreement, it is an independent contractor and is not an agent, servant, or employee of the City of Des Moines and it will not represent itself as such. RCAA agrees to defend, indemnify, and hold the City, its officers, officials, agents, employees, and volunteers harmless from any claim, damages, suit, action or liability, costs of expenses in law or equity, including attorney fees and expenses in defending against any such claim because of damages to property or personal injury arising out of the services performed under this agreement, which may be occasioned by any willful or negligent act or omission of RCAA, or any of RCAA's agents, servants, employees, or subcontractors, except to the extent such injury is caused by the negligent or willful misconduct of the City, its directors, officers, agents, servants, or employees.

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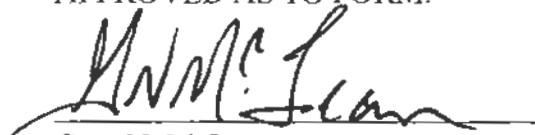
7. ***Ratification, Confirmation, and Retroactive Application.***

Any acts consistent with the authority and prior to the effective date of this agreement are hereby ratified and confirmed. This agreement is effective as of January 1, 2002.

DATED this 1st day of February, 2002.

APPROVED AS TO FORM:

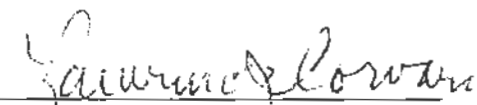
CITY OF DES MOINES



Gary N. McLean
City Attorney

By 
Robert L. Olander
Its City Manager

REGIONAL COMMISSION ON
AIRPORT AFFAIRS

By 
Its President

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: RCAA Final Billing

FOR AGENDA OF: March 5, 2003

ATTACHMENTS:

Various Letters and Memos regarding
RCAA's Agreement with Des
Moines and Final Payment

DEPT. OF ORIGIN: City Manager's Office

DATE SUBMITTED: November 27, 2002

CLEARANCES:

[] Legal _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

Purpose and Recommendation

The purpose of this report is to provide the City Council an opportunity to review the information supplied by the Regional Commission on Airport Affairs (RCAA) regarding the services they provided in 2002 to satisfy their responsibilities per the agreement between the City of Des Moines and RCAA and to determine the final payment amount the Council will authorize for these services.

Suggested Motion:

"I move to authorize payment of \$_____ to the Regional Commission on Airport Affairs as full and final payment for services provided in 2002."

Background

The City of Des Moines contracts with RCAA to provide various services to educate the public concerning the environmental, economic and social effects of the proposed third runway and related expansion of Seattle-Tacoma International Airport. The attached copy of the 2002 agreement provides greater detail. For these services, the City agreed to pay RCAA \$28,000 in quarterly installments of \$7,000 each.

Discussion

At its September 5, 2002, meeting, the City Council voted to terminate the contract with RCAA. The City Manager notified RCAA of this action in a letter dated September 10, 2002, with an effective date

of October 14, 2002. Under paragraph 5 of the contract, RCAA is "entitled to pro rata compensation based on the number of months this contract has remained in effect and the quantity and quality of services performed by RCAA on behalf of the City".

On September 6, 2002, RCAA sent the City an invoice for \$7,000 for services rendered in the first quarter of 2002, and an invoice for \$7,000 for services rendered in the second quarter of 2002. Attached to these two invoices was a detailed list of RCAA's 2002 expenditures to date. On September 20, 2002, RCAA invoiced the City \$7,000 for services rendered in the third quarter. Finally, on October 14, 2002, RCAA sent a final, pro rata invoice totaling \$1,065.22 for the first 14 days of the fourth quarter. Attached to this invoice was a letter detailing the services RCAA has rendered on behalf of the City and copies of several years worth of RCAA newsletters. All of this material has been previously given to the City Council and is attached to this report for Council's convenience.

Alternatives

The City Council may elect to pay all, part or none of the billings from RCAA, based upon Council's evaluation of the quantity and quality of services performed by RCAA on behalf of the City.

Financial Impact

The total billings amount to \$22,065.22. \$28,000 was allocated in the 2002 Budget for the RCAA contract.

Recommendation

None.

**AGREEMENT FOR SERVICES
BY AND BETWEEN
THE CITY OF DES MOINES AND
THE REGIONAL COMMISSION ON AIRPORT AFFAIRS ("RCAA")
FOR THE YEAR 2002**

The CITY OF DES MOINES ("City"), a municipal corporation, and the REGIONAL COMMISSION ON AIRPORT AFFAIRS ("RCAA") agree as follows:

FACTS AND ASSUMPTIONS

THIS AGREEMENT is entered into on the basis of the following facts and assumptions:

RCAA is a corporation, incorporated under the Nonprofit Corporations Act of the State of Washington.

The purpose for which RCAA is organized is to actively oppose the proposed third runway and related expansion of Seattle-Tacoma International Airport (Sea-Tac Airport) and to educate the local public concerning the environmental, economic, and social effects.

The RCAA recognizes that the City, in cooperation with the Airport Communities Coalition (ACC), is or may become engaged in litigation with the Port of Seattle, the Federal Aviation Administration, the Puget Sound Regional Council and others regarding many of the same issues with which the RCAA is concerned.

For these reasons, the City Council of the City of Des Moines has allocated funds to contract with RCAA which will be of assistance to the City in regards to the third runway or expansion of Sea-Tac Airport.

AGREEMENT FOR SERVICES

Accordingly, and in reference to the foregoing, the parties agree as follows:

I. RCAA Responsibilities

(a) RCAA shall provide to the City services which the City may from time to time require in achieving the goals previously described with regard to the third runway or expansion of Sea-Tac Airport. These services shall include the following:

- Information booths at public festivals in Burien, Normandy Park, Des Moines, Federal Way, Tukwila, Beacon Hill, Magnolia and other areas impacted by the expansion of Sea-Tac Airport;
- Schedule monthly citizen involvement activities in Olympia, Seattle, Sea-Tac Airport and the Greater Puget Sound Region, as necessary;

- Host town meetings in the Greater Puget Sound Region to inform and educate the public and elected officials as needed.
- Maintain a web site to provide in-depth and immediate information to the public;
- Publish a quarterly newsletter;
- Recruit new members;
- Expand the mailing list upon request of city councils;
- Send action alerts to all RCAA members as deemed necessary by the RCAA Board of Directors;
- Placement of informational advertisements as deemed necessary by the RCAA Board of Directors;
- Conduct elected official outreach at the state, county, and local levels;
- Provide other activities as deemed necessary by city councils;

(b) RCAA shall ensure that all of its activities on behalf of the City are in compliance with applicable state, federal and local law, including without limitation, any reporting requirements of the Washington Public Disclosure Commission that are applicable, or in the future become applicable, to actions or assignments undertaken by RCAA;

(c) RCAA will at all times maintain accurate and appropriate financial records. At any time during the term of this Agreement, within seven (7) days of a written request from the Des Moines Finance Director, RCAA agrees to make available to the City Finance Director for audit and inspection any and all records maintained by RCAA, including without limitation, receipts for goods, services, payroll, expenditures, and study costs; and

(d) RCAA will regularly seek contributions through its mailings and public activities.

2. *Limitations on RCAA Activities*

To ensure that RCAA's efforts are consistent with and complement the City's efforts through the ACC, the RCAA shall not use City funds for the following activities, without the prior approval of the City:

- Retaining experts or professionals to assist in developing technical information related to the impacts of Sea-Tac Airport;
- Dissemination of technical reports or other technical information prepared in contemplation of litigation, or in any manner related to the issues raised (or to be raised) in ACC litigation;
- Retain any professional or consultant who has been retained by the ACC (unless approved by the ACC); or

- Publication (including electronic publication) of any attorney/client privileged materials prepared for litigation by the ACC, its counsel, consultants, or staff.

3. *RCAA Meeting Requirements*

An officer of the RCAA shall meet with a member or members of the City staff on a periodic basis so that the City may provide RCAA with its requirements and RCAA may report on services rendered.

4. *City Responsibilities*

In consideration of the services performed by RCAA, the City shall compensate RCAA in the amount of twenty-eight thousand dollars (\$28,000.00) during the year 2002, payable in four installments, which shall be paid on or before February 15, 2002, May 15, 2002, August 15, 2002, and November 15, 2002, or when otherwise authorized by the City Council..

5. *Termination*

This contract may be terminated by either party upon thirty (30) days written notice, in which event RCAA will be entitled to pro rata compensation based on the number of months this contract has remained in effect and the quantity and quality of services performed by RCAA on behalf of the City.

6. *Independent Contractor, Hold Harmless Agreement*

RCAA warrants and understands that in performing services under this agreement, it is an independent contractor and is not an agent, servant, or employee of the City of Des Moines and it will not represent itself as such. RCAA agrees to defend, indemnify, and hold the City, its officers, officials, agents, employees, and volunteers harmless from any claim, damages, suit, action or liability, costs of expenses in law or equity, including attorney fees and expenses in defending against any such claim because of damages to property or personal injury arising out of the services performed under this agreement, which may be occasioned by any willful or negligent act or omission of RCAA, or any of RCAA's agents, servants, employees, or subcontractors, except to the extent such injury is caused by the negligent or willful misconduct of the City, its directors, officers, agents, servants, or employees.

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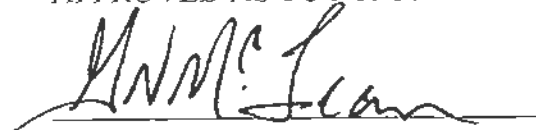
7. *Ratification, Confirmation, and Retroactive Application.*

Any acts consistent with the authority and prior to the effective date of this agreement are hereby ratified and confirmed. This agreement is effective as of January 1, 2002.

DATED this 1st day of February, 2002.

APPROVED AS TO FORM:

CITY OF DES MOINES

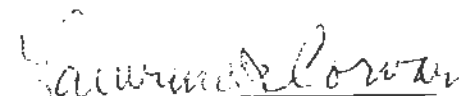


Gary N. McLean
City Attorney

By 

Robert L. Olander
Its City Manager

REGIONAL COMMISSION ON
AIRPORT AFFAIRS

By 

Its President

MEMORANDUM

Date: October 30, 2002

To: City Council

From: City Manager 

Subject: Information from RCAA Regarding Services Provided in and Billings for 2002

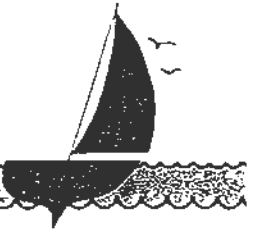
cc: City Attorney

Attached is information that I have received from the RCAA regarding the services that they have provided to the City of Des Moines in 2002. Also attached are copies of their quarterly billing statements for the first three quarters of 2002 and a prorated bill for the first two weeks of October. An item has been placed on the November 14, 2002, City Council meeting agenda to discuss RCAA's billings and to allow the City Council to decide if the services rendered meet the terms of the contract between the City and RCAA.



City of Des Moines

ADMINISTRATION
21630 11TH AVENUE SOUTH, SUITE A
DES MOINES, WASHINGTON 98198-6398
(206) 878-4595 T.D.D.: (206) 824-6024 FAX: (206) 870-6540



October 29, 2002

Lawrence J. Corvari, President
Regional Commission on Airport Affairs
19000 Fourth Avenue S.W.
Normandy Park, WA 98166

Dear Mr. Corvari:

Thank you for your letter of October 14, 2002, providing the requested information concerning RCAA services. The City of Des Moines will determine its 2002 payment to RCAA for all time periods prior to termination of the 2002 contract, including the first two quarters of 2002 that were first billed to the City on September 6, 2002, under the termination provision of the contract. That language specifically states that:

RCAA will be entitled to pro rata compensation based on the number of months this contract has remained in effect and the quantity and quality of services performed by RCAA on behalf of the City.

We expect that the City Council will consider this issue on November 14, 2002. I invite a representative of RCAA to address the Council during the discussion on this issue. Please advise me who will represent RCAA at the November 14 meeting.

Thank you again for your response to my letter. Please let me know if you have any questions.

Sincerely,

Tony Piasecki
City Manager

TP:sb



City of Des Moines

ADMINISTRATION
21630 11TH AVENUE SOUTH, SUITE A
DES MOINES, WASHINGTON 98198-6398
(206) 878-4595 T.D.D.: (206) 824-6024 FAX: (206) 870-6540



September 10, 2002

Lawrence J. Corvari, President
RCAA
19900 Fourth Avenue SW
Normandy Park, WA 98166

Dear Mr. Corvari:

The City Council of the City of Des Moines, at its September 5, 2002 meeting, directed that the City terminate its contract with RCAA. In accordance with Paragraph 5 of the contract between the City and RCAA, you are hereby notified that the City terminates its contract with RCAA, effective October 14, 2002. This termination date provides you with thirty days written notice of termination, as required by the contract, counted as required by Civil Rule 6.

Under Paragraph 5 of the contract, upon termination of the contract, RCAA is "entitled to pro rata compensation based on the number of months this contract has remained in effect and the quantity and quality of services performed by RCAA on behalf of the City." To permit the City to comply with this provision, please provide the City with a final billing by October 1, 2002, for services provided through October 14, 2002, giving both a pro rata calculation and detailed identification of services provided and dates of services, for January 1, 2002 through October 14, 2002. In order to allow the City to evaluate the "quantity and quality of services," in addition please provide a detailed identification of services provided, and dates of services, under the 2001 contract with the City. The City acknowledges that on September 6, 2002, you provided us with a billing for the first two quarters of 2002. The City requests that you provide us with the additional detailed information requested in this letter for both 2001 and 2002, in order to facilitate our timely final payment under the contract.

Thank you.

Very truly yours,

Tony Piasecki
City Manager

TP/LAM:vs

Cc: Linda A. Marousek, City Attorney

W101:RCAA/02-057

14 October 2002



19900 4th Ave SW
Normandy Park, WA 98166
(206) 824-3120
FAX (206) 824-3451

<rcaa@earthlink.net>

www.rcaanews.org

Tony Piasecki
City Manager
City of Des Moines
21630 Eleventh Ave. So., Suite A
Des Moines, Washington 98198-6398

Re: RCAA billings to Des Moines:

Dear Mr Piasecki:

Please find enclosed for staff review & Council action our invoice for services for the fourth quarter, 2002, totaling \$1,065.22. The computation leading to this figure is shown on the invoice itself. Given that our services are continuous & ongoing, we believe that the appropriate method for computing the amount due us per contract for the fourth quarter is simply to prorate the quarterly payment of \$7,000 between days when the contract was in force (1-14 October), and the balance of the quarter. Your letter of 10 September, terminating the contract, asked for this computation specifically. While your letter terminating the contract asked for this billing by 1 October, our leadership has felt that it was inappropriate to submit a final bill before the terminal date, and our Office Administrator has discussed this with you, to, we believe, mutual agreement.

Your letter also asks for "detailed identification of services provided and dates of services, for January 1, 2002 through October 14, 2002". We trust that RCAA's services for the first three quarters of 2002, for which invoices are outstanding and unpaid, are not in dispute. There has been not the slightest hint of dissatisfaction with those services. Accordingly, we assume that the invoices for the first three quarters are being processed for timely payment, and that the request for a delineation of services during those quarters is only made to permit a basis for comparing prior services with services provided in the period 1-14 October.

* * * * *

It is appropriate to state at the onset that RCAA has provided the same services, in the same way, during the period 1-14 October, as during the period 1 January 2002 to 30 September 2002, and that services provided in the Year 2002 are very similar to those provided in Year 2001.

The services provided by RCAA to Burien, Des Moines, and Normandy

Officers

Lawrence J. Corvari
President

Allan M. Furney
Vice President

Philip C. Emerson
*Vice President &
Secretary*

Jim Bartlemay
Treasurer

Directors

Mike Anderson
Jim Bartlemay
Frank Bosl
Clark Dodge
Brett Fish
Rob Frishholz
Dennis Hansen, M.D.
Jeanne Moeller
Len Oebser
Jane M. Rees

Affiliates

CANE

C.A.S.E. (Citizens
Against Sea-Tac
Expansion)

Seattle Community
Council Federation

Seattle Council on
Airport Affairs

RCAA

Tony Piasecki
Re: Final Billing
14 October 2002
Page 2

Park under its three separate but virtually identical contracts with those cities are generally of an indirect nature.

By that, I mean that instead of, say, providing material goods for the City's use, or performing consultant services direct to the City (as an engineer might do with respect to a proposed capital improvement), we provide services to the general public and others for the advantage of the City.

Purpose of services. As is said in the contract, RCAA's work is intended to "be of assistance to the City in regards to the proposed third runway and related expansion of Sea-Tac Airport". A list of activities that RCAA can engage in under this rubric is found in Paragraph 1(a) of the basic contract. And, naturally, we engage in other actions & activities in support of the no-third-runway position, though they are not listed per se in the contract. Generally, we have accepted the guidance of the Airport Communities Coalition in many of these day-to-day activities, tailoring our work to dovetail with theirs, and to be supportive of their rôle as the principal opponent of the runway project. Most our services can best be described as public-involvement and public-relations activities, premised on opposition to the third-runway project at Sea-Tac Airport, and other expansion projects there. Opposition to Sea-Tac expansion, and particularly, opposition to the third-runway proposal, has been this organization's focus since its founding, and that was the focus throughout 2002 – which is not just our position but is the position of the City of Des Moines, the other contracting cities, our friends & supporters, our affiliated organizations, and the Airport Communities Coalition.

Continuous services. Some of RCAA's services are provided day & night, week in & week out ("365/24/7"). This is particularly true of our pioneering website, which is the first great airport-concern website run by a citizen group. It is available for use by anyone any time. The website requires the services of a consultant webmaster, supported by information continuously fed to her by members of our Board, interested members of the public, and our Office Administrator. The website contains an ever-growing accumulation of Sea-Tac information that is difficult – perhaps impossible – to obtain elsewhere. Also provided 365/7/24 is our telephone answering service, by which we field public inquiries about Sea-Tac issues – many of them referred to us by staff of the contracting cities.

Work-day services. Some of our services are provided four days a week: Our office is open for regular business hours four days a week, with contract staff on duty to field phone, FAX, e-mail & in-person requests for information from contracting cities, ACC staff & consultants, other agencies, and the general public. In recent years, our office has received many requests for assistance in research and documentation from the ACC's attorneys and consultants, and from leadership, attorneys, and consultants of Citizens Against Sea-Tac Expansion, both of which

RCAA

Tony Piasecki
Re: Final Billing
14 October 2002
Page 3

have been actively involved in third-runway litigation on behalf of the ACC cities and the general public. We maintain extensive archives of relevant information and a library now occupying two rooms. Access to these resources is available during office hours to the public (but around the clock to our Board members, and as needed at any time by appointment through our contract staff).

After hours. Our Office Administrator reminds me that he handles a good volume of e-mail traffic outside of normal business hours for our Board and our affiliated organizations – this is a seven-day-a-week activity. He is not alone in this – our Board members are in touch with one another & with staff & consultants without regard to formal business hours. Urgent matters are dealt with nrgently. The Administrator also reviews several e-mail publications relating to airport issues on a seven-day-a-week basis, & passes along items of interest to Board members, other volunteers, and affiliated organizations, and on occasion to news media.

Periodic services. Some of our services might be said to be provided periodically, although their impact is spread over long time periods. This category includes our (former) print newsletters and our present web letters. We published a quarterly print newsletter, focused on Sea-Tac issues, for several years, mailing to an extensive list. About 6000 Des Moines households received the newsletter regularly. Until we cut off Federal Way mailings, total distribution ran to about 40,000, and thereafter, to about 28,000. These newsletters went to all members of the Legislature, to the Congressional delegation & relevant staff, and to all voting members of the Puget Sound Regional Council, as well as the general public (some sample copies of the print newsletter are enclosed). There is further discussion of newsletters below.

Water-quality consultant. As you will note in reviewing our financial reports for Years 2001 and 2002 (previously furnished), a large item of expense for us in the last couple of years has been the services of our outstanding water-quality consultant. He has been a critical link in the technical arguments on our side of the third-runway administrative proceedings and associated litigation, with respect to environmental issues. His work has been significant in support of both the Airport Communities Coalition and C.A.S.E. (Citizens Against Sea-Tac Expansion) in this complex & highly technical effort. He has kept a watchful eye on how the Airport impacts Des Moines Creek – rather a direct benefit to the City of DM. (We are not aware of anyone on your staff with these duties and expertise.) He reviews almost every water-quality document that is issued by any party – most importantly in the last few weeks, the drafts of the proposed renewal permit for the Airport under sec. 402 of the Clean Water Act (“NPDES permit”), & the Port’s voluminous comments on the drafts. He is a key member of the Technical Committee. He is invaluable to us in preparing for the forthcoming hearing on the renewal. All of these services

RCAA

Tony Piasecki
Re: Final Billing
14 October 2002
Page 4

have been continuous and ongoing.

Web-based Newsletters. As you may be aware, our Board made a decision some months ago to switch to a different form of newsletter. This was not only a cost-cutting measure (postage costs are accelerating) but also the result of a prolonged Board review of the effectiveness, as well as timeliness, of this method of reaching the public with the Sea-Tac runway message. So, we now issue a "webletter", a less formal, and very timely, newsletter that is posted monthly on our website, with an e-mail alert sent to our e-mail lists at the time of posting. The first of these was posted in mid-August, the second, in mid-September, and the editors and the chairman of the Board's Communications Committee are at work on the third, scheduled for issuance on or about 24 October.

Episodic services. Some of our services are episodic, especially "Action Alerts". As occasion requires, we send out mailings to interested people about special events of interest, such as the various public hearings on the JARPA (sec. 401.404) applications, and the efforts of Mr Hopkins to revive the ill-fated Des Moines conveyor-belt proposal. In the last few months, we set aside funds for an Action Alert on the long-expected public hearing for a new sec. 402 ("NPDDDES") permit for Sea-Tac Airport, and Board, staff, and consultant time has been expended in preparing for that Alert and for the public hearing.

Services to individuals. Some services are provided to specific persons. These include:

- Dealing with noise & flight-corridor inquiries
- Requests for information and research assistance, primarily from ACC's lawyers and consultants in the last few months, but also from the general public. Here's a comment that came in (unsolicited) the other day from a member of the public:

I personally have benefited greatly from RCAA's resources and from Chas' Insights {"chas" refers to our Office Administrator}. The mailed newsletter was extremely helpful to me as a newcomer to this area to understand just what was going on.

(Maintaining an office with staff has been essential to our mission of building support for the runway position of the ACC cities.)

- Working with beat reporters. RCAA is recognized as a source for information on Sea-Tac related issues, so we receive some independent inquiries from various print media. In addition, we pass along news tips and formal news releases to the local dailies and to the national e-mail airport-interest publications, all in aid of the no-third-runway effort.

* * * * *

RCAA

Tony Piasecki
Re: Final Billing
14 October 2002
Page 5

With respect to all of these activities, it has not been practical to engage in highly detailed accounting exercises, to allocate each hour of volunteer, staff, or consultant time to a particular category of activity, & then allocate the benefits of that activity as between the City of Des Moines on the one hand, other cities on the other, not to speak of the general public. To date, this has not been a requirement from any of the contracting cities.

We do track expenditures for special projects – like our recent aerial photography of various Sea-Tac construction sites (not available for inspection on the ground). We cannot (without a huge amount of new work) produce an accounting, hour by hour, for all of the time of Board members, other volunteers, contract staff, and other consultants. As is the case in any organization, a good deal of the expenses goes to overhead – phones, publications, contract staff. And there are services that are difficult to categorize – staff attendance at Port Commission meetings; Technical Committee members' meeting with the Army Corps of Engineers or the Department of Ecology; testimony at hearings; formal written comments on a variety of Airport-related issues; staff support to member groups – to mention just a few such activities.

The Board believes that it is not readily feasible to draw a distinction – which would be utterly artificial – between activities & expenditures that benefit the City of Des Moines separate and apart from benefit to the other contracting cities. For example, we made, at their request, a large contribution to the radio advertising campaign that ACC mounted earlier in the year. (This shows up in the accounting report that we sent you a few weeks back.) But how would one allocate the benefit of that expenditure as between the three cities? The cities' representative, the ACC, asked for the help; we provided it as part of the common effort.

I trust that you, your staff, & Council will find this sufficiently responsive to your inquiry. If not, please advise,

Yours sincerely,



Lawrence J. Corvari
President

Encls: Final invoice; sample print news letters

REGIONAL COMMISSION ON AIRPORT AFFAIRS

19900 4th S.W.
Normandy Park, Washington
98166-4043
Telephone: 206.824.3120
FAX: 206.824.3451
E-mail: rcaa@earthlink.net

STATEMENT

14 October 2002

City of Des Moines
21630 11th Ave. So.
Des Moines, Washington 98198-6838

RE: Services, portion, fourth quarter, 2002
As per contract between RCAA and the City of Des Moines

Normal quarterly payment per contract, \$7000
Fourth quarter, 92 days
Contract days, 14
Percentage, 15.2
Prorated amount due: $0.152 \times 7000 = \$1065.22$

Amount due: \$1065.22

Change in Local Passengers and Yield at Top 100 U.S. Airports

First Quarter 2002 vs. First Quarter 2001

Airport	O&D Passengers	Passenger % Chg.	Yield % Chg.	Airport	O&D Passengers	Passenger % Chg.	Yield % Chg.
1 Los Angeles	6,101,450	-17.8%	-11.2%	51 Kahului	1,130,700	-6.1%	-9.7%
2 Las Vegas	6,016,710	-8.0%	-9.9%	52 Providence	1,127,830	-3.9%	-11.5%
3 Orlando	5,388,810	-13.3%	-9.1%	53 Albuquerque	1,076,450	-7.6%	-9.7%
4 Atlanta	5,241,730	-14.4%	-18.8%	54 Jacksonville	1,057,960	-12.2%	-14.9%
5 Chicago, O'Hare	5,202,850	-13.8%	-18.1%	55 Charlotte	1,039,070	-15.0%	-14.0%
6 Phoenix	4,890,820	-10.8%	-10.9%	56 Dallas, Love	1,034,120	-25.6%	-3.9%
7 New York, LaGuardia	4,210,120	-14.6%	-15.5%	57 Burbank	1,025,380	-5.7%	-10.4%
8 Dallas/Fort Worth	4,040,050	-12.9%	-18.2%	58 Milwaukee	985,620	-14.7%	-8.3%
9 Fort Lauderdale	3,913,930	-1.8%	-9.6%	59 Reno	982,820	-15.9%	-7.6%
10 New York, Newark	3,892,130	-15.7%	-17.8%	60 Cincinnati	962,240	-16.1%	-14.3%
11 Denver	3,876,850	-9.7%	-14.8%	61 Buffalo	848,820	-8.7%	-14.1%
12 Seattle/Tacoma	3,582,480	-8.6%	-12.1%	62 Tucson	812,320	-6.3%	-10.6%
13 Tampa	3,521,630	-7.7%	-14.1%	63 Memphis	746,430	-14.4%	-12.0%
14 Boston	3,426,960	-21.0%	-15.8%	64 Omaha	743,210	-6.2%	-13.0%
15 Baltimore	3,295,070	-8.8%	-9.9%	65 Manchester	717,710	2.1%	-10.4%
16 San Francisco	3,232,460	-25.5%	-13.6%	66 Louisville	715,060	-12.6%	-13.9%
17 San Diego	2,982,140	-8.7%	-10.8%	67 Norfolk	654,700	14.8%	-28.3%
18 Philadelphia	2,928,770	-6.6%	-17.6%	68 Oklahoma City	619,310	-13.4%	-9.7%
19 Minneapolis/St. Paul	2,927,870	-15.5%	-8.0%	69 Tulsa	591,980	-15.7%	-11.5%
20 Detroit	2,894,910	-16.0%	-12.8%	70 Albany, NY	589,620	-8.9%	-10.6%
21 Honolulu	2,800,720	-3.8%	-5.0%	71 Birmingham	564,250	-13.8%	-12.4%
22 Chicago, Midway	2,403,030	-10.0%	-8.7%	72 Spokane	563,870	-10.7%	-5.3%
23 Oakland	2,385,850	0.3%	-15.4%	73 El Paso	559,670	-10.2%	-7.2%
24 New York, Kennedy	2,361,250	1.6%	-14.3%	74 Anchorage	549,360	3.7%	-8.2%
25 Houston, Bush	2,333,730	-11.6%	-14.0%	75 Lihue	545,250	-9.0%	-2.2%
26 Miami	2,243,670	-9.6%	-13.3%	76 Kona	538,080	-4.9%	-5.2%
27 Salt Lake City	2,220,870	-10.8%	-3.7%	77 Boise	536,850	-12.7%	-6.3%
28 Washington, National	2,168,100	-26.2%	-8.9%	78 Greensboro	483,680	-17.4%	-11.7%
29 San Jose	2,134,390	-15.1%	-21.3%	79 Dayton	460,790	-7.4%	-14.4%
30 Portland, OR	2,044,000	-9.9%	-10.7%	80 Rochester, NY	457,740	-13.6%	-16.5%
31 St. Louis	2,038,350	-17.3%	-17.4%	81 Little Rock	447,160	-14.9%	-7.9%
32 New Orleans	1,967,650	-9.0%	-6.5%	82 Richmond	435,660	-17.6%	-16.2%
33 Kansas City	1,915,190	-12.0%	-12.7%	83 Islip	415,230	-14.0%	-8.0%
34 Sacramento	1,711,410	-0.6%	-12.1%	84 Grand Rapids	413,540	-5.8%	-15.3%
35 Washington, Dulles	1,680,200	-16.0%	-17.4%	85 Colorado Springs	410,890	-5.6%	-13.4%
36 Orange County	1,661,760	-1.9%	-17.1%	86 Syracuse	388,030	-8.0%	-12.7%
37 Raleigh/Durham	1,616,160	-8.9%	-25.0%	87 Palm Springs	344,910	-13.4%	-8.0%
38 West Palm Beach	1,596,340	-9.8%	-6.6%	88 Des Moines	335,490	-7.8%	-18.7%
39 Fort Myers	1,574,880	-5.2%	-6.5%	89 Savannah	331,010	-6.3%	-15.2%
40 Cleveland	1,509,270	-13.9%	-14.2%	90 Sarasota/Bradenton	324,430	-9.9%	-9.1%
41 Indianapolis	1,424,570	-11.9%	-14.6%	91 Hilo	321,990	-10.7%	4.9%
42 Pittsburgh	1,397,100	-12.4%	-17.7%	92 Madison	299,570	-0.9%	-16.0%
43 Nashville	1,373,130	-12.2%	-12.4%	93 Charleston	293,290	-9.9%	-9.3%
44 Hartford	1,372,520	-12.8%	-14.1%	94 Pensacola	277,380	28.1%	-22.0%
45 San Juan	1,363,790	-7.9%	-7.5%	95 St. Thomas	271,030	-0.3%	-18.0%
46 San Antonio	1,352,490	-7.2%	-11.4%	96 Greenville	257,350	-14.8%	-17.6%
47 Ontario	1,346,840	-7.1%	-12.8%	97 Knoxville	256,920	-14.8%	-16.1%
48 Houston, Hobby	1,332,270	-12.9%	-7.0%	98 Jackson	250,820	-14.8%	-11.2%
49 Austin	1,288,650	-14.8%	-19.3%	99 Vail/Eagle	247,780	-2.9%	-16.4%
50 Columbus, OH	1,288,260	-10.3%	-13.7%	100 Harrisburg	240,170	-1.6%	-14.9%

IN BRIEF

Highline Schools, Port Agree to Noise Pact

Settlement may have been reached in the long-running dispute between the Highline School District and the Port of Seattle about mitigation of jet-plane noise in classrooms, a development welcomed by the Regional Commission on Airport Affairs (RCAA).

In a "memorandum of understanding" between the District, the Port, Gov. Gary Locke, and U.S. Rep. Adam Smith (D-9), sources for up to \$200 million in noise-mitigation money were identified, & the parties agreed to enter into a more-detailed agreement by 31 December.

Port Doubles Its Offer

In a breakthrough, the Port agreed to contribute up to \$50 million of its own money. Previously, the Port had only offered \$40 or \$50 million that it might receive from the Federal Aviation Administration for noise mitigation. Highline School District will put up \$50 million, to

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IG To Audit Runway Costs

The Office of the Inspector General of the U.S. Department of Transportation and U.S. Rep. Adam Smith (D-9) have announced that the staff of the Inspector General will analyze the current estimated costs and sources of funding for the third-runway project at Sea-Tac. The audit will also cover 13 other major runway projects in the U.S. that are scheduled for completion by 2007.

Rep. Smith seeks a broader review of the third runway. He is pressing the Inspector General to report on the violation of a major condition in the Governor's certificate to the U.S. DOT that runway construction would not violate water-quality standards. He also has suggested that the Port of Seattle is not in compliance with fiscal standards for federally-assisted projects because it does not have a budget for the third runway—no current cost estimates & no complete financing plan.

Critics of the runway project wonder if the Inspector General can obtain from the Port what no-one else has been able to get: a complete, current cost estimate, and a description of a realistic financing plan.

Truth in Aviation

The Newsletter of the Regional Commission on Airport Affairs

Vol. 7, No. 2

Summer 2001

Port Announces New \$3 Billion Terminal for Sea-Tac Airport

On 8 May, the Port of Seattle Commission approved final design and funding for a \$94 million upgrade of the main terminal at Sea-Tac Airport. Construction work on the project is to begin in a year. The renovated terminal is scheduled for a grand re-opening in September 2004.

The airport also has pending a project for expansion of its south terminal, at a cost of \$375 million.

On 26 June, Port staff presented the Port Commission with its preliminary plans for a new north terminal, to be located about 1300 yards north of the existing main terminal. The cost estimate for this project is \$3 billion. Planners told the Commission that a detailed cost analysis would be available in about two years.

Bells, Whistles, and Gold-Plating

Included in this project would be expansion of the existing northern satellite terminal, one new 'people mover', two new parking garages, and three new concourses, with a light-rail station as an op-

tion as well. The cost includes removal and relocation of two freeways, and relocation of several cargo operations. According to the Port's planners, this third terminal is needed in order to accommodate a predicted increase in passenger traffic. The present main terminal was planned for 25 million travelers a year, and the new terminal is needed for the additional 11 million increase expected by the year 2010. Staff expects construction to start in the year 2004 and to be complete in 2014.

No firm sources of funding were identified by staff. One major component of funding for airport capital projects is revenue from tenant airlines. The Port has been in private negotiations with major airline tenants for a new master lease agreement since spring 2000. The present leases expire at the end of this year, and the Port wants hefty increases in rent from the airlines. The airlines are being asked to give up their present powers to control use of their lease payments.

Runway Safety Worries Mount

Veteran Pilot Says Wall Too Close, Incursions Dangerous

Airline pilot Sven Holm, who recently retired as chief pilot for Northwest Airlines, raised a series of concerns about the safety of the proposed third runway at Sea-Tac Airport in a letter to the *Seattle Post-Intelligencer* published on 20 June. He warned that careful pilots may refuse to use the runway.

Among the safety hazards, Capt. Holm pointed out the much higher risk of a "runway incursion" (on-the-ground collision of aircraft) with the proposed configuration of three parallel runways. The environmental impact statement for the runway project estimated that this risk would increase by 21 percent, though others have put the risk higher.

Another concern was the closeness of the runway to the edge of the embankment which drops 170 feet. To gain a 2500-foot separation between the new runway and the existing main runway, the Port must lay down 19.84 million cubic yards of fill, to extend the present level ground westward. The new runway would, according to Capt. Holm, be perilously close to the edge that embankment.

Continued on page 6

Inspector General Says U.S. Incursion Problems Too Risky

"Further actions are needed to reduce runway incursions", Congress was told on 26 June by Kenneth M. Mead, Inspector General of the U.S. Department of Transportation. Runway incursions are incidents on the runway that create a collision hazard. The number of these incidents in the U.S. grew by 48 percent from 1997 to 2000, with a 25 percent spurt between 1999 and 2000, according to a study released by the Federal Aviation Administration just a few days before Mr Mead's testimony.

While many of the incidents pose only slight risk of a collision, Mr Mead noted that there is a significant number of close calls. Of these, 63 percent involved at least one commercial aircraft where the potential loss of life is high.

FAA Rapped

Primary responsibility for reducing incursions rests on the FAA. Inspector General Mead said "it is apparent that FAA's efforts, along with those of the aviation industry and airports are not sufficient. The number of runway incursions continues to go in the wrong direction." He called for "strong

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IN BRIEF

Election Coverage:

Port of Seattle: Runway Foes Chosen To Challenge Incumbents

The third runway is emerging as an issue in Port Commission elections.

In the primary election on 18 September, two announced opponents of third-runway construction at Sea-Tac Airport were selected by voters to oppose incumbent Port Commissioners in the general election.

For Position 3, Richard Pope received 42,317 votes, and will face incumbent Paige Miller (with 87,662 votes). Two other challengers received a total of 30,716 votes. Mr Pope attributed a good part of Ms Miller's support to endorsements by Democratic Party groups.

In the Position 4 race, incumbent Pat Davis received fewer votes than the combined opposition. Christopher R. Cain will oppose her in the 6 November election. Ms Davis received 67,844 votes, Mr Cain, 39,488, Jake Jacobovitch, 29,187, and Al Yuen, 20,055. The *Post-Intelligencer's* election coverage erroneously reported that Mr Cain was not an active candidate, and did not even mention that he would be on the November ballot. Ms Davis' share of the vote (less than 44 percent) shows that the long-time incumbent is in serious difficulty.

Only two candidates filed for the seat now held by Jack Block—Mr Block and Lawrence Malloy. Their names will appear on the general-election ballot. Mr Malloy is a very keen supporter of the third runway. Mr Block has been known to express an occasional doubt.

Highline Area Races

In the Highline area, all candidates for City Council posts in Normandy Park and Burien are opposed to the Sea-Tac third-runway project, & the runway is not an issue at this time in the city of Sea-Tac.

In Des Moines, there are clear differences between the finalists on this issue. At present, all members of the Des Moines Council oppose the runway project & are supporters of the

Continued on page 2

Highline School Bonds

Story on page 2.

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Vol. 7, No. 2

Fall 2001

WHAT NOW?

Two weeks after the attacks on the World Trade Center & the Pentagon, Congress was forced to bail out the airlines to the tune of \$15 billion. Some industry-watchers claim business will rebound quickly once people relax a little. Others, however, point out that the airlines were in big financial trouble *before* the Trade Center disaster because of a persistent drop in business travellers. This part of the problem, they argue, is likely to persist for a very long time, even if the public regains its confidence. The airlines themselves and Boeing seem to fall in to the latter camp, laying off tens of thousands.

Additional security needs will have a huge impact on airports. Some may never re-open. All of this affects airport expansion projects planned across the country, which are dependant on industry profits and customer demand. Sea-Tac's expansion is one of the most expensive in the country and will likely take some major cuts.

At many airports across the U.S., expansion projects are in serious jeopardy, as the money streams dry up. The immediate impacts are two-

fold: first, fewer travellers means less money collected from passenger facility charges (PFCs), & second, insolvent airlines cannot meet their lease payments to airports. Third, revenues from the federal tax on aviation fuel & other taxes on air travel will start to fall. FAA's grants for airport construction come from these taxes.

Here's what is happening at some representative airports.

Twin Cities (Minneapolis - St. Paul, Minnesota). The St. Paul *Pioneer Press* reported on 22 September that the balance of a \$2.7 billion expansion project at the Minneapolis-St. Paul Airport was at risk. To balance its budget the airport is likely to cut capital costs. Of the \$2.7 billion expansion project, between \$1.75 billion and \$2 billion already has been spent or committed.

San Francisco. According to the *San Mateo Daily Journal* (20 September), the terrorist attacks may impact the decision whether or not to proceed with expansion at San Francisco. (The airport wants to fill in a big piece of the San Francisco Bay to make new land for the runway.)

Continued on page 3

ACC Blasts DOE Process, Appeals to State Pollution Board

On August 10 the state Department of Ecology (DOE) issued a Section 401 water quality certification for the third runway project. This is the third attempt by the Port to get its 401 approval. This process has been watched with concern by people in the airport communities ever since DOE reassigned the lead analyst, Tom Luster, to "more pressing projects", hired Port consultants as "independent" technical reviewers, and "negotiated" the certificate in meetings chaired by a mediator paid for by the Port. (See *TIA Summer 2001*, p.5.) The Airport Communities Coalition (ACC) has appealed the decision and asked for a stay. The hearing on the stay is scheduled for mid-October 2001, but no schedule for the main appeal has been set.

The 401 decision is a one-time opportunity for the State to determine whether the third runway meets applicable state aquatic resource regulations. These regulations cover areas such as fill, stormwater discharges, decreased streamflow, groundwater, water quality in the streams, and wetland health. By law, the Port must demonstrate that there is "reasonable assurance" that construc-

tion and the third runway itself will not violate State water quality standards.

Affidavits from experts in support of ACC's appeal point out that the Port did not even provide the information necessary to decide if applicable water quality standards *could* be met, much less reasonable assurance that they *would* be met. For example, instead of requiring a plan showing that the Port can prevent transport of contaminated groundwater through old utility corridors under the airport, DOE will allow the Port to submit the plan 60 days *after* the issuance of the certification. This, despite the fact that the Port has had years to come up with a plan, but has failed. ACC's lawyers point out that this gerrymandering of the requirements also destroys the public's legal right to comment on the plan.

In some instances, the Port provided conflicting information. For example, different Port reports claim that water behind the 150-foot high retaining wall, the "Great Wall of Sea-Tac", will transport through the wall, be diverted under the wall, or be collected behind the wall for later dis-

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IN BRIEF

Top Environmental Specialist Leaves Port, Joins ACC Staff

On 5 July, Barbara Hinkle, Senior Environmental Manager at Sea-Tac Airport, responsible for environmental oversight on all Airport expansion plans (including the third runway) left that job to join the staff of the Airport Communities Coalition, which is leading the legal fight against Sea-Tac expansion.

Ms. Hinkle became disenchanted with the mindset within the Airport staff toward the environmental rules that airport construction. She was quoted as saying that the Port does not follow through on its own environmental studies. Pressure from above to "get the job done", regardless of environmental consequences and applicable laws, was cited as a major factor in Ms Hinkle's leaving the Port. She said, "the pressure to put aside environmental concerns is growing, and with the number of projects coming on-line over the next several years, I can be more effective at the ACC, for the environment, that I ever could be at the Port of Seattle".

Announcing her employment change to the U.S. Environmental Protection Agency, she commented that she "could no longer work within a system that continually turned a deaf ear toward its obligation of public stewardship."

No interchange on SR 509 for third-runway fill trucks this year

Port of Seattle plans to build its own private interchange on SR 509 at So. 174th, for the exclusive use of trucks hauling fill, have been stopped, at least for this year, by actions of the Department of Ecology, as the result of strong pressure from the Airport Communities Coalition (ACC).

In a sternly-worded letter, Ecology told the Port that the project requires a "major modification" of a critical environmental permit—a detail that the Port conveniently overlooked in its planning. In addition, the project requires a hydraulic permit from the Department of Fish & Wildlife. Ecology also advised the Port that no action should be taken until the U.S. Army Corps of Engineers has decided whether the project falls under the federal Clean Water Act (which it does). Construction was to have begun on 1 June, according a mailing from the Port had written to the handful of folks still living in what is called the "Westside acquisition area".

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Summer 2000

FAA, Port Sued Over Violations of Federal Endangered Species Act

The federal courts have been asked to order a halt to all Sea-Tac Airport construction projects until the Federal Aviation Administration has completed formal "consultations" with federal fish and wildlife agencies, as required by the Endangered Species Act (ESA). If endangered species exist in or near an area where a federal agency is sponsoring or funding a project, the sponsoring agency must complete a "consultation" with federal wildlife agencies as to the need for special protections before allowing work to begin (or to continue).

The endangered sea bird, the marbled murrelet, has been recently sighted within two miles of the Airport by Audobon Society observers. Endangered chinook salmon are

known to spawn in the Green River, which receives Airport run-off water via Gilliam Creek, a tributary of the Green; juvenile chinook have been observed in the upper reaches of Gilliam by a City of Tukwila fish biologist. Whether chinook could spawn in Miller Creek is disputed. There is no dispute that bull trout, also listed, and coho, cut-throat, and other salmonid fish occur in local streams.

When advised of these concerns by the Airport Communities Coalition (ACC), the FAA sought to brush off the legal requirements. Correspondence and negotiations have not persuaded the FAA that it, too, is bound by federal law, and

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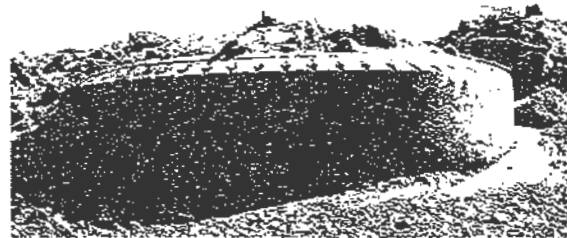


Photo credit: Chris Gower

Photo of "clean fill" taken Wednesday, August 9, 2000 on S. 192nd Street, near the entrance to the Tyee Golf Course. See story, p. 4

Agencies Talk Tough As Deadlines Loom Over Sea-Tac Third Runway Project

As this issue of *Truth in Aviation* heads toward the printer, major deadlines loom over the Sea-Tac third-runway project. By 28 September, the U.S. Army Corps of Engineers is to rule on the application of the Port of Seattle to fill in wetlands (a "section 404" permit). The Engineers are waiting for a ruling by the Department of Ecology as to whether the Port's project will meet water-quality standards ("section 401 certificate"). Ecology has given the Port till 5 September to file all complete, accurate documents in support of its plan. Ecology has pledged to issue its ruling by Friday, 8 September.

Ecology has repeatedly told the Port and its major water-quality consultant, Parametrix, Inc.,

about grave deficiencies in the supporting technical studies. On 11 August, the Corps of Engineers sent a 3-page letter covering a 19-page memorandum, pointing out in detail a long list of errors, inaccuracies, and so on in the paperwork filed with the Corps, and demanding that everything be tidied up as soon as possible.

The Engineers are plainly dissatisfied with the documents already submitted, and they are, in essence, demanding a major re-write. They politely say that the final document "will require some rethinking and the provision of a rationale and much added detail". They "look forward to receiving a comprehensive, better-organized and

Continued on page 6

IN BRIEF

What Killed The Fish?

Starting on October 31, and continuing into December, dozens of seemingly-healthy adult Coho salmon have died in Miller Creek, before spawning. Stream-side residents have watched (and filmed) Coho struggling to breathe. Preliminary laboratory exams have not revealed any obvious causes of death, although suspicion naturally falls on pollutants that might come from a sewage-treatment plant nearby or from Sea-Tac Airport, at the headwaters of the creek. Shortly before the first kills, the Airport experienced an overflow from its settling ponds upstream. Locals strongly suspect Airport-related pollution as the cause of the unusual fish kill.

This winter's run of returning salmon was one of the strongest in recent memory (bearing out the contention that Miller Creek is indeed an historic salmon stream).

No Floatplanes for Seattle Waterfront

Seattle's downtown waterfront is no long threatened by increased noise from a proposed floatplane base near Pier 54 (Ivar's). Faced with strong opposition, floatplane operator Kenmore Air has withdrawn its application for a City-issued shorelines permit. The Seattle City Council has put a moratorium on applications while it looks at the whole issue.

Kenmore had planned as many as 16,000 sightseeing flight operations during the summer tourist season. Two downtown Seattle residential associations, and the Washington State ferry system, were concerned with impacts of the proposal, and appealed the City-granted permit to the Shorelines Management Hearings Board. Kenmore and Ivar's then withdrew the application, not wishing to "go out and fight the public," as Robert Munro, owner of Kenmore, put it.

Truth in Aviation

The Newsletter of the Regional Commission on Airport Affairs

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Winter 2000

CROWD PACKS SEA-TAC WETLANDS HEARING

On November 3, a crowd of more than 500 people overflowed the auditorium at Foster High School in Tukwila for a hearing on the revised application of the Port of Seattle for permission to destroy 18-plus acres of wetlands as part of its third-runway project.

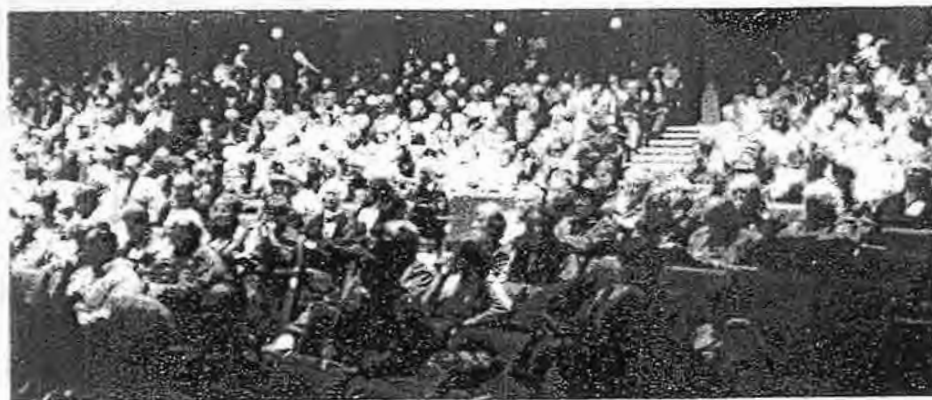
Both the Department of Ecology and the U.S. Army Corps of Engineers must determine that there will be no needless, unmitigated impacts on wetlands and wildlife before they can give permission for the Port to begin construction of the third runway in the headwaters of Miller and Des Moines Creek, west of the existing airport. The hearing was sponsored by the two agencies. The Corps is responsible for clearing the so-called "404" permit, which is needed to fill any wetland. Ecology is responsible for

issuing a "401" certificate, which concerns the water quality in State waters, wildlife issues, and impacts on the coastal zone.

The auditorium was too small for the crowd, so the fire marshal turned away many latecomers. Only 59 of those who signed up to speak were called to the podium. Local elected public officials led off the testimony with vigorous complaints about the over-all project, the details of the wetlands damage, and the inadequate process. Aside from some Port-paid "experts", almost all of the speakers pointed out serious deficiencies in the Port's revised application.

RCAA President Larry Corvari said after the hearing, "This huge turn-out shows that opposition to the third runway and its unacceptable

Continued on page 5



Leah New

Concerned Highline Residents Sue Water District To Void Backroom Deal with Airport

Citizens Against Sea-Tac Expansion (C.A.S.E.), a citizens' group based in the Highline area, has sued the Highline Water District and the Port of Seattle in King County Superior Court, asking for a declaration voiding the District's attempt to transfer water rights to the Port of Seattle.

According to the complaint, the Water Dis-

trict and the Port of Seattle have secretly made an agreement to transfer one of the District's wells (Well #1) and associated water rights to the Port. The agreement was never discussed by the District Commissioners in open session, only in closed-door meetings. And the agreement's terms were kept secret until after the Commis-

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IN BRIEF

KIK Organizes Students

Maria Wardian, eighth-grade student at Sylvester Middle School, in the Highline School District, has started a no-third-runway group for students, "KIK" (short for "Kids Involving Kids"). The group's goal is to get "more kids informed about what the Port of Seattle is doing to us and our future", in terms of water pollution, air pollution, and impacts on schools.

Ms Wardian and fellow students recently attended a meeting of C.A.S.E., and came away incensed by video recordings of fish dying in Miller Creek (one of the area streams hard hit by pollution from Sea-Tac Airport). She points out that the same water that flows down the creek also finds its way into local drinking-water aquifers.

Demonstration Planned

Maria is working via e-mail to bring together hundreds of kids later this winter for a demonstration "against the violence of the Port on our environment and health". She is looking for volunteers to act as representatives at every area school. Volunteers are also needed to hang posters, to make phone calls, and to spread the word, as well as telling their own stories on how the Port is affecting their own lives.

How Sea-Tac Hurts Kids

Jet noise disrupts classrooms in many schools in the Highline School District, and also in South-East Seattle. The proposed third runway at Sea-Tac would bring flight corridors closer to several Highline schools. There would also be flights directly over elementary schools in South Park and Georgetown, and over Cleveland High School on Beacon Hill. Recent studies demonstrate that airport noise elevates blood pressure in children living near the airports.

Around big airports everywhere, health data show that more kids have asthma than kids who live in other areas. Two recent studies show that airport noise raises persistent blood pressure levels in children living near airport. Jet exhausts contain compounds that are known to cause cancer. Cancer takes a long time to develop, but every child living near a major airport—like Sea-Tac—is at risk for life-threatening cancer later in life.

Contact Maria by e-mail at kiktherunway@hotmail.com or by phone at 206.244.4888.

Truth in Aviation

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Fall 2000

Port Resubmits Permit, Demands Fast-tracking

As most readers know, on 28 September the Port of Seattle formally withdrew its second application to the Department of Ecology and to the U.S. Army Corps of Engineers for official approval to destroy wetlands west of the present Airport, and to relocate part of Miller Creek, for its third-runway project at Sea-Tac Airport.

Under the federal Clean Water Act, the Department of Ecology is charged with determining whether an applicant's plan to build in wetlands provides "reasonable assurance" that State water-quality criteria will not be violated. The Corps of Engineers then determines whether the harm to wetlands is "in the public interest" and otherwise in compliance with the Clean Water Act. Without approval from the two agencies, the Port cannot legally proceed with its third-runway construction work in the wetlands.

The best way to understand what has happened is to review the chronology.

29 September 1999. The Port submitted its second application to the Corps and Ecology, after having to withdraw its 1997 application because of gross under-statement of the amount of wetlands involved. Ecology had 365 days to pass on the application. The Engineers had previously announced that they would not decide till after Ecology had finished its work.

Spring & Summer 2000. Port of Seattle submitted voluminous revised documents, attempting to justify the plan, some as late as late August. Ecology, Engineers, and King County stormwater experts, as well as experts retained by Airport Communities Coalition, RCAA, and C.A.S.E., raised a host of questions, many of which remain unresolved (even in late November).

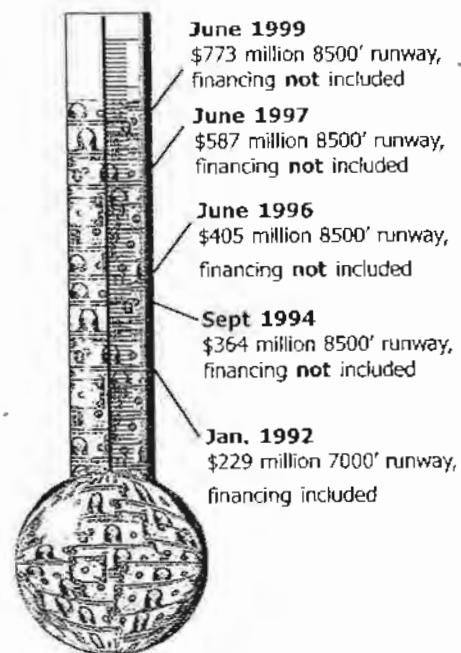
28 September 2000. A meeting—not publicly announced—was held at the office of M.R. ("Mic") Dinsmore, Executive Director of the Port of Seattle. Those present included: Joe Dear, the Governor's Chief of Staff; Mr Dinsmore; Tom Fitzsimmons, the head of the Department of Ecology; Ray Hellwig, head of the regional office of Ecology; and others. Mr Dinsmore was a major fund-raiser for Gov. Gary Locke in the last general election. The Governor and Ecology have denied that there is any political pressure in this affair, though Ecology has been officially warned that there is interest in this project "at the highest levels" of State government.

The Ecology folks brought with them their draft letter of decision on the sec. 401 application, dated that day, and shared it with the others. The letter flatly denied the application, because of multiple shortcomings. "At this time, Ecology does not have reasonable assurance the proposed project will comply with the applicable federal and state water quality requirements..." The letter referred questions to Ecology staffer Tom Luster. The letter acknowledged that the Port intended to resubmit, and pledged to "work with" the Port, and to "provide guidance to the applicant to help develop documents with the necessary level of detail and information for our review."

What else happened next at that meeting is not known.

However on that same day (28 September), the Port announced that it was withdrawing its applications under sec. 401 and sec. 404 of the federal Clean Water Act. In a letter dated that day

Continued on page 2



Late this summer, the Port of Seattle began publicly using the figure of \$5.6 billion for the Sea-Tac Expansion, without mentioning that the entire new Denver Airport cost their taxpayers around \$4.2 billion. See our editorial on page 5.

IN BRIEF

Runway Safety Challenged

Pilots and aviation experts raised eyebrows at the public hearings commenting on difficult safety problems caused by almost-vertical walls along the west side and by the need to cross two active runways to reach the terminal. See Page 4.

A Highline student speaks:

Hi, I'm Maria W.

I represent KIK, the kids at the Highline School District. When I go to my school and can't hear my teacher, when I walk outside my door and smell jet fuel, I think, we need to move away from this stupid airport. But I love my school. I can't move.

When I swing by Miller Creek and see the dying salmon, when I watch the big dump trucks filling in the headwaters of my creek, I think, we need to move away from this stupid airport. But I love my friends. I can't move.

When I know cancer rates are much higher and I visit my Grandpa in Burien dying of cancer I think, we need to move away from this stupid airport. But I love my family here. I can't move.

Then my Mom says the Port guys are going to build another runway. They're go-

Continued on page 6

Port Out Of Money?? Audit Ordered

On 25 May 1999, the Department of Ecology issued an agreed order under the Model Toxics Control Act, requiring the Port of Seattle to complete a "Phase I" groundwater study and to issue a report on results by 22 December 1999. According to Greg Wingard, Director of Waste Action Project (and consultant to RCAA), the Port has not only failed to complete the study but has stopped all work on it because they claim there is no more money in the budget (a large part of which was a grant from Ecology). An audit is underway to determine if the Port mis-spent the funds for the study.

Observers wonder if this is the way the Port plans to keep mitigation promises made to DOE and the Corps of Engineers in order to get wetlands permits.

Truth in Aviation

The Newsletter of the Regional Communities Coalition for Airport Affairs

Vol. 6, No. 4

Spring 2001

Third Wetlands Hearings Highlight Runway Problems

Not once, not twice, but three times, the Port of Seattle, owner-operator of Sea-Tac Airport, has sought official permission to destroy wetlands with its third-runway construction project west of the existing airport. And three times the community has turned out in great strength to tell the regulating agencies that this is a bad idea—bad for the environment, bad for people—and wasteful. Each of the first two applications had to be withdrawn, re-written, and resubmitted, because of fatal flaws.

On 26 and 27 January, the Army Corps of Engineers and the Department of Ecology held hearings on the latest proposal submitted by the Port. Hundreds of residents in attendance heard

nearly one hundred speakers tell the agencies about their concerns with the proposal. Most of the 117 speakers were in opposition, citing numerous issues—airport safety, damage to local streams, concerns with the environmental mitigation plans, lack of community mitigation, and, over and over again, the problems posed by the four vertical embankment walls.

—Against—

In their five-minute comments, a stream of residents and local elected officials carried a few basic messages to the two regulatory agencies.

* The environmental planning is questionable and incomplete in many details, especially as to

Continued on page 2

EXHIBIT 2

Aircraft Adjacent to 179 Drop From Third Runway

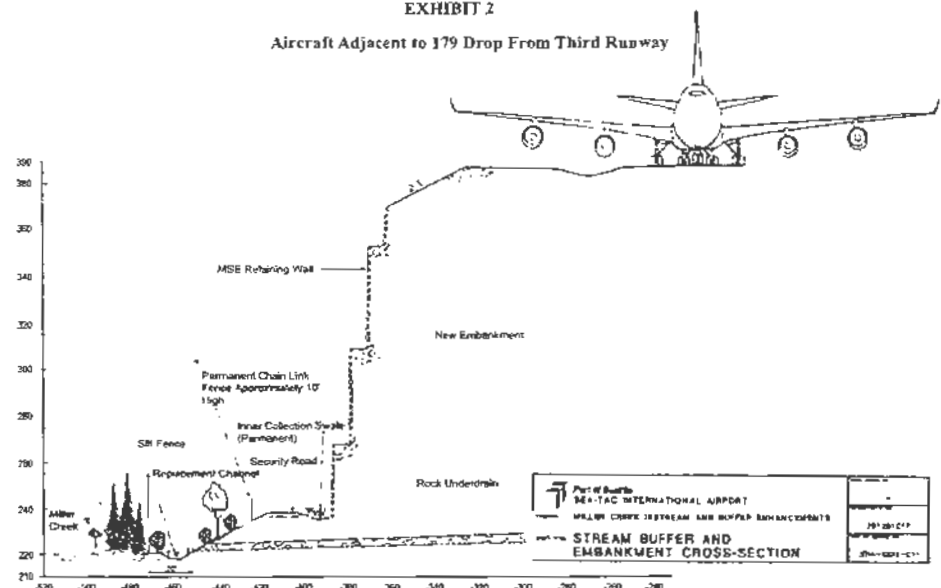


Illustration prepared from from written testimony of Dr. Stephen Hockaday for Airport Communities Coalition showing a large body jet at the edge of the third runway runway safety area, 100 ft. from the 153 ft. high "mechanically stabilized wall" over Miller Creek.

Earthquake Raises Airport Seismic Safety Issues

Planners at Seattle-Tacoma International Airport have a grand vision: nearly 30 million tons of third-runway fill placed on 18 acres of wetlands, and held in place by gravity, compaction, wire mesh, and an array of concrete blocks.

People downstream from Sea-Tac Airport have another vision: nearly 30 million tons of fill—and a great amount of runway concrete—cascading toward Puget Sound when the next big near-surface earthquake strikes the Puget Sound Region. The Seattle Fault is runs just North of the Airport.

Western Washington's most recent earthquake, on 28 February, showed dramatically that airport planning and construction techniques are not adequate to withstand the known seismic hazards in the Puget Sound. Boeing Field's main runway (built on fill) broke up in places, so that the airport had to be closed. Sea-Tac Airport's control tower was knocked out of operation by damage. Yet, the quake was the least damaging of the three types of quakes: surface, tectonic-plate movements, and deep "slab" quakes.

Continued on page 3

IN BRIEF

The Decade In Review

It's been over ten years since the Port first decided to try to expand Sea-Tac, including a third runway. What's the outlook for this huge project?

See article on page 2

Seattle Neighborhood Sues King County

The Georgetown neighborhood in Seattle has sued the County over failure to write an EIS for King County Airport expansion.

See article on page 4

Floatplane Hearing Set

On Wednesday, February 24, at 5:30 p.m. in the City Council Chambers (Municipal Building 4th & Cherry, 9th floor) a Seattle City Council Committee will hold a public hearing on the temporary moratorium on seaplane operations or facilities on the downtown Seattle waterfront. The proposal forbids issuance of permits for seaplane operations on the Downtown harborfront, pending further study. The application of Kenmore Air is unaffected.

CASE Election

The following are the newly elected officers of C.A.S.E. for 1999:

Larry and Candy Corvari—Co-presidents

Arlene Brown and Claudio Parazzoli—Co-Vice Presidents

Wally Meyers—Treasurer.

The post of Secretary remains to be filled. Board Members include: Andrey Richter, Pat Pompeo, Helen Kludt, Peg Springer, Minnie Brasher, Debi Wagner, Rod Blalock, Jim Bartlemay, and Dan Caldwell (a new member).

Truth in Aviation

The Newsletter of the Regional Commission on Airport Affairs

Vol. 5, No. 3

Winter 1999

Conveyor Belt Issue Stirs Crowd

On January 14, an overflow crowd attended the Des Moines City Council meeting to express continued opposition to a proposal to construct a five-mile conveyor belt over the Des Moines beach, up through Beach Park to Sea-Tac Airport. The purpose of the conveyor belt would be to haul 18 million cubic yards (27 million tons) of fill for the third runway from Manry Island to the Airport. The proposal was thought a dead issue when the Port's own poll last year showed that Des Moines residents opposed it by nearly two to one.

The idea apparently revived when one Port commissioner opined that the Des Moines City Council could be bought off. In December, the Port put out "feelers" to ACC about discussions of a possible settlement, in hopes that the Port

could cut a deal to make a large cash payment to Des Moines or ACC in return for approval of the conveyor and dropping all lawsuits.

Although Des Moines is a member of ACC, the ACC cannot commit the city to any deal nor can it bind citizens groups involved in the runway fight. At the

(Continued on page 6)

Hearing to be Held

The public hearing on the conveyor belt EIS may be held as early as mid-March. Check the RCAA website (www.rcaanews.org) or with the RCAA office by phone (824-3120) for time, date, & place.

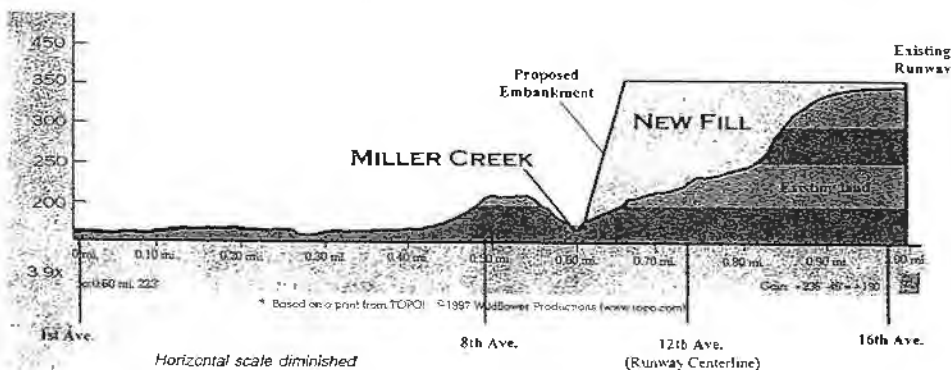
Third Runway Still "No Go" As Wetlands Stall Project

Sea-Tac's third-runway project remains at a total standstill, while the Port of Seattle attempts to solve legal problems related to wetlands permits, with no end in sight. As we reported in our Fall issue, the Port of Seattle announced in September that it needs to fill at least 8 more acres of wetlands for the third runway, a significant increase from the 11.42 acres mentioned in filings with the Department of Ecology and the Army Corps of Engineers. The Port has released no figures since its initial report, but wetlands continue to be found by Port consultants surveying land in

the acquisition area west of the airport. Unofficial reports put the present total at 25 to 30 acres. The Port has told Jonathan Freedman of the Corps that it expects to complete the survey in February 1999. This seems optimistic, considering the present pace, in part because some homeowners refuse to let the Port on their properties until acquisition is settled.

The property acquisition project is behind schedule as well, although recent increases in Port offers have speeded it up lately. According to the Westside

(Continued on page 6)



Seattle Okays Downtown Float Planes

On 17 June, two Downtown condominium associations and the State ferry system filed appeals against a permit granted on 27 May by the City to Kenmore Air for a float plan base at Pier 54 (Ivar's) on the Downtown Seattle waterfront.

Operations are limited to flights by certain non-piston aircraft, with a temporary ban on sight-seeing flights. Only on Sunday is there a night-time curfew. Day-time take-offs must occur at least 2000 feet off-shore. Evening take-offs must occur 3000 feet off shore. No float planes may land closer than 1000 feet. The ferry system is concerned about safety hazards, and the condo-owners, about noise.

Boeing Field Choppers

Although it has yet to present its Master Plan to the King County Council, KCIA management proposed in June to sign a 29-year lease with Classic Helicopters to expand their facilities at Boeing Field. "They are doing this backwards," protested Seattle Commission on Airport Affairs President Mike Rees. "They are signing the long-term leases, then making the plan, and finally studying the noise and pollution. This effectively cuts citizen participation out of the planning process." Nevertheless, the lease was pushed through the King County Council's Commerce, Trade and Economic Development Committee by its chair Dwight Pelz and later adopted by the full council. Classic Helicopters is owned by Karen Walling, who also serves on the KCIA Roundtable, an advisory body to airport management. After approval of the lease, Councilman Pelz proposed a reformed process for all subsequent leases.

Third Runway Costs Jump Another 31%

On 22 June, the Seattle Port Commission voted, 3-0, to accept a staff plan to add another \$186 million to its budget for construction of the third runway proposed at Sea-Tac Airport. This 31% increase brings the official estimated construction cost to \$773 million — for the runway alone. Port Commissioners blamed environmental laws and regulations for the increase in costs. However, no new laws or regulations affecting the project have come into force since the last increase in cost estimates, in 1997.

In the public-comment period just before the vote, RCAA President Al Furney, Len Oebser (speaking for C.A.S.E.), and members of the public urged the Commission to abandon the hugely over-budget project. Members of the Commission responded that the project was necessary to increase capacity at the Airport. Previously, the Port, FAA, and Puget Sound Regional Council have consistently stated that the new runway would NOT increase capacity, and that the sole purpose of the runway is to reduce bad-weather delay for arrival of passenger jets.

What About Interest?

Mr. Furney pointed out to the Commissioners that the staff proposal failed to make any allowance for the cost of borrowed money. Most Sea-Tac expansion projects must be paid for with borrowed money, and the Port has already incurred an obligation of an additional \$255 million for interest on one third-runway bond issue. No estimate of interest charges was provided to the Commissioners, even after Mr. Furney's re-

marks. The Port has in hand only \$293 million in grants and bond proceeds. Under the latest estimate, the shortfall is \$479 million. Port staff attending the Commission meeting suggested that this sum would be made up from revenue, grants, and borrowing, but did not provide any

"Our Clueless Port Commission"

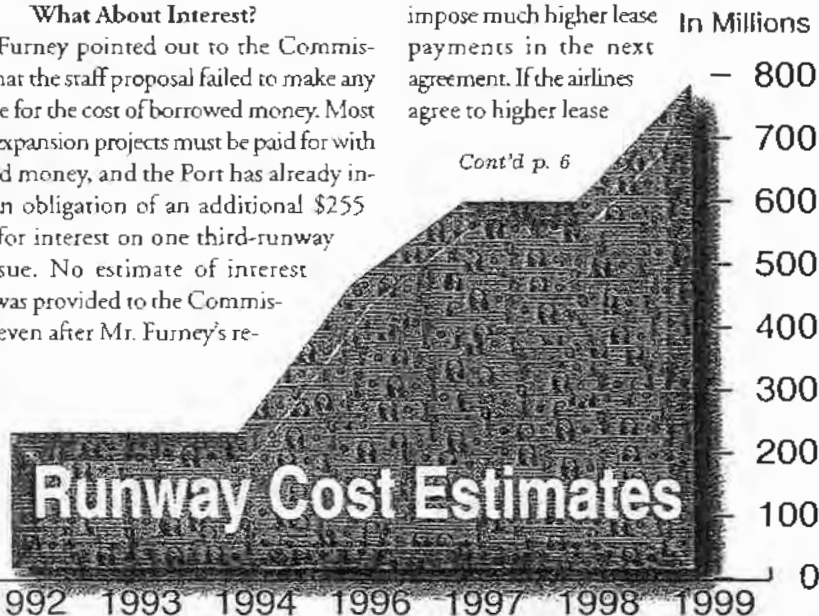
—An editorial view
page 5

estimate of how much would be forthcoming from any source. Nor did they identify any source that had actually committed to provide an additional funding. No report on negotiations with airlines for higher lease payments was presented.

Higher Lease Payments? Passengers Pay

One possible source would be an increase in the amounts paid to the Port by the airlines for lease of facilities. The existing leases will expire 31 December 2001, and the Port hopes to impose much higher lease

payments in the next agreement. If the airlines agree to higher lease



IN BRIEF

Port Can't Fund Runway

Port has only part of money to build runway. Airlines balk at funding the expansion. Cost of borrowing money likely to drive actual price tag over \$1.5 billion.

See article on page 3

Dirt Trucks Roll, But Not to Runway Site

The Port sent out press releases announcing the start of third runway construction and set the trucks a-rolling, but they aren't rolling to the third runway construction site. What's going on?

See article on page 4

Port to Settle with C.A.S.E. On Discharge Permit

Contaminated water from Sea-Tac Airport will be treated in a new \$20 million facility, according to sources involved in negotiations between the state Department of Ecology, C.A.S.E., and the Airport. Both C.A.S.E. and the Airport appealed the terms of a waste-water discharge permit issued earlier this year by the Ecology. C.A.S.E. has held out for much more stringent conditions, including a new facility to treat all waste-water. Settlement documents will be signed in early September, with the Port conceding most of what C.A.S.E. demanded. Good news for the people, fish, and birds along Miller and Des Moines Creeks.

Floatplanes May Fly From Seattle Waterfront

Kenmore Air spokesperson Tim Brooks said in late August that in the next few weeks the firm will probably re-activate its application to run 72 floatplane flights per day from Seattle's central waterfront. Brooks expects speedy approval from Seattle's Department of Construction and Land Use.

Truth in Aviation

The Newsletter of the Regional Commission on Airport Affairs

Vol. 5, No. 2

Fall 1998

New Wetlands Discovery Voids DOE OK Army Corps of Engineers Delays Permit Decision

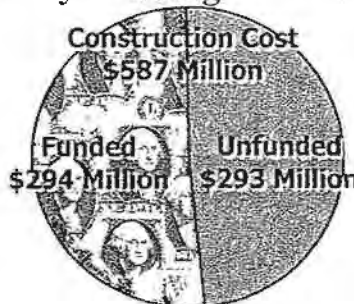
Sea-Tac third-runway construction schedules have been set back again, this time because of problems with permits for construction in wetlands in the headwaters of Miller Creek. The Airport's application now pending with the U.S. Army Corps of Engineers must be rewritten and re-submitted, owing to serious underestimates of the amount of wetlands to be filled. At least 8 and possibly more acres have been found, with more studies to do. A prior approval issued by the Department of Ecology has been rescinded.

As Sea-Tac expansion plans come under increasingly professional scrutiny, more and more problems emerge. Secur-

ing approval to fill in wetlands and to alter the headwaters of local creeks requires the Port of Seattle to obey tightly crafted regulations and specific plans, increasingly difficult to comply with, endangering success of the project.

To grant certification of the Port's compliance with sec. 401 of the federal Clean Water Act, the Department of Ecology has imposed what one observer calls the most stringent rules ever imposed on the Port, with tables of automatic penalties ranging up to \$1000 per day for relatively minor water-quality violations, accompanied by continuing requirements for a host of reports and follow-up plans. To the distress of local conservationists, however, Ecology also gave the Port approval for destruction of 11.42 acres of wetlands in the Miller Creek watershed on the promise of replacement wetlands in Auburn, in the watershed of the Green River. This action was rescinded because of the newly discovered wetlands. The Corps has a strong preference for not allowing wetlands to be filled at all and has told the Port to rework its plan so as to locate any replacements in the same drainage system.

Runway Funding Falls Short



See Story Pg. 3

Cancer Rates Higher Near Airport

Unusually high incidences of cancers, including rare brain cancers, have been reported in areas within three miles of Sea-Tac Airport. Area residents Rose Clark and Audrey Richter have been collecting cancer and other health data for years. Their work, summarized in an area map, shows higher than expected levels of cancers among past and present residents in the area, a finding confirmed in early Summer by preliminary work of the State Department of Health as to all cancers and as to the rare brain cancer, glioblastoma.

In a series of meetings chaired by Sen. Julia Patterson (D., 33), the State and County health departments have

agreed on a work program for further studies of health concerns around Sea-Tac Airport. The first step will be to analyze data in the state cancer registry, to learn what types of cancers are most prevalent around the Airport, with a report to be issued in November 1998. An effort will be made to locate all cases of glioblastoma in the Sea-Tac area, by using cancer registries, community records, and all available medical records, including the resources of Fred Hutchinson Cancer Research Center. Then, discovered glioblastoma cases will be mapped, to determine spatial relationships to the Airport.



IN BRIEF

April 9th Hearing On Wetlands

After a flood of adverse public comments, the U.S. Army Corps of Engineers has announced a public hearing on April 9 on the Port of Seattle's request for Federal permission to destroy wetlands in the site of the proposed third runway. The Port offers to create new wetlands in Auburn, in an unrelated watershed, as compensation. The hearing will be begin at 7 p.m. at the Performing Arts Center, Foster High School, 4242 So. 144th Tukwila. Please phone the RCAA office (206) 824-3120 to reserve seats on the bus.

See article on page 3

Federal Way, Tacoma Seek FAA OK For Flight Changes

Revised flight tracks, to lessen noise over Tacoma and Federal Way, will be discussed in a meeting on April 16 between a citizens' task force from the two cities and FAA. U.S. Rep. Adam Smith is spear-heading efforts to lessen impacts from the four-post plan (implemented in 1990.)

KCIA Management Wants Longer Runway

Plans for an 800-foot extension of King County International Airport's runway, to 10,000 feet, bringing jet traffic even closer to Georgetown's residential area, were unexpectedly announced to the public on February 18 by KCIA Management.

See article on page 2

Fuel Dumping?

Report suspected fuel dumping and unusual jet exhaust fumes to the Puget Sound Air Pollution Control Agency (PSAPCA), at (206) 343-8800 or 1 (800) 552-3565.

Truth in Aviation

The Newsletter of the Regional Commission on Airport Affairs

Vol. 5, No. 1 Spring 1998

AIRPORT EXPANSION PROGRAM TOO BIG FOR PORT STAFF TO HANDLE

Ambitious expansion projects at Sea-Tac Airport are starting to unravel, thanks to massive underestimates of costs and ever-growing scheduling problems. Trouble came to light on January 13, when a revised cost estimate for the new parking garage was released to the Port Commission, showing a 24 percent increase from a \$52.8 million estimate published only 11 months earlier. Undaunted, the Commission voted, 3-1, Jack Block dissenting, to plunge forward. Commissioner Gary Grant was asked, how much more will the price tag for other expansion projects increase in the next eight years? Grant replied, "That's a legitimate question, and one we'll be asking as well".

On January 23, a memorandum to the Commission reported that the complexity of managing all the 100-plus airport expansion projects was beyond the capability of Port staff. Gina Marie Lindsey, Director of the Aviation Division, and Michael Feldman (who now holds the title of Director of Aviation Professional & Technical Services) sug-

gested a slow-down of projects, new controls over capital outlays, and hiring more consultants to do such work as detailed engineering scheduling, design review, and contract administration. Lindsey and Feldman reported that the Port does not even have enough office space for all the needed staff.

In response, the Commission voted on February 24 to accept the staff proposal to seek consultants for a multi-year contract for program and construction management services for the expansion projects, at a cost of \$10.5 million for 1998 alone. During discussion, Mr Feldman commented that the present schedule for completion on various projects would require a tripling or quadrupling of the Port's normal rates of capital expenditure. He added, "... while there is urgency, certainly, to get on with the improvement program, we want to do it right, we are not interested in doing it fast." His conclusion: "Our current resources, and our delivery system, really are not adequate to deliver a program of this magnitude."

Continued on page 6

Port Changes Course, Supports Highline Schools Noise Study

Abandoning hope of favorable outcome in negotiations with the Port of Seattle, on February 12 the Highline School District announced an independent study of airport-related noise pollution in the District's schools, and the costs of solving classroom learning interference. The Highline school board has committed \$330,000 to the project, half of which comes from a grant by Governor Locke from his discretionary funds.

Announcement of the study was first belittled by the Port, but on March 4, Aviation Director Gina Marie Lindsey announced, "There is no cap at \$50 million" on the Port's potential contribution to noise remedies in the Highline Schools. She also retreated from the Port's refusal to consider paying for air

conditioning in schools. Highline School Superintendent Joe McGeehan warmly welcomed Lindsey's change of position.

In Spring 1997, the District had proposed to the Port that the two agencies jointly sponsor pilot studies of the noise problem. The negotiations failed: The Port would not commit to any assistance to the District unless the District accepted the third runway without further mitigation. While the Port public-relations machine claimed that the Port had offered \$50 million to deal with the problem, in fact, as of February 12, the Port had never made any written offer of cash assistance, in any amount, according to Highline board member Shay Shual-Berke, M.D., and the District's attorney, David Hokit.

The district plan has several steps. First, an opinion survey of residents in the district, followed by direct communication with the residents in public meetings (two were held on March 4 and

Continued on page 5

20 September 2002

Tony Piasecki
City Manager, City of Des Moines
21630 11th Ave. So
Des Moines, Washington
WA 98198-6838

Re: RCAA invoice to City of Des Moines, third-quarter, 2002

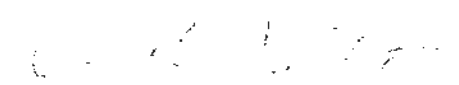
Dear Mr Piasecki:

Please find enclosed for staff & council review & action our invoice for services for the third quarter, 2002, per our contract with the City.

I note that no presentation to Council has been requested of us so far this year, though it has been the practice in the past to have such presentations on a quarterly basis.

Also, newspaper accounts of a recent Council meeting quote Mr Wasson as complaining that requests from the City for financial data have not been honored by RCAA. If that is what Mr Wasson said, he was in error. We have had no requests from the City this year until your letter terminating the contract between the City and RCAA. We did receive requests from an individual Councilmember but not from the City: it is our Board's understanding that requests for information (like all other communications) come to RCAA through the Administration. Further, our office has in fact furnished a complete record of RCAA's expenditures and income for all of 2001, mailed to each Councilmember (but never acknowledged) and, more recently, for 2002 through early September, to yourself.

Yours very truly,


Chas. H.W. Talbot
Office Administrator

encl

L02-263-DM



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FAX (206) 824-3451

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Allan M. Furney
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Dennis Hansen, M.D.
Jeanne Moeller
Len Oebser
Jane M. Rees

Affiliates

CANE

C.A.S.E. (Citizens
Against Sea-Tac
Expansion)

Seattle Community
Council Federation

Seattle Council on
Airport Affairs

REGIONAL COMMISSION ON AIRPORT AFFAIRS

19900 4th S.W.
Normandy Park, Washington
98166-4043
Telephone: 206.824.3120
FAX: 206.824.3451
E-mail: rcaa@earthlink.net

STATEMENT

20 September 2002

City of Des Moines
21630 11th Ave. So.
Des Moines, Washington 98198-6838

RE: Services, third quarter, 2002
As per contract between RCAA and the City of Des Moines

Amount due: \$7,000

INV02-03-DM

6 September 2002

Tony Piasecki
City Manager, City of Des Moines
21630 11th Ave. So
Des Moines, Washington
WA 98198-6838

Re: RCAA invoice to City of Des Moines, first & second-quarters, 2002

Dear Mr Piasecki:

Please find enclosed for staff & council review & action our invoices for services for the first and second quarters, 2002, per our contract with the City.

The general practice in years past has been for an RCAA representative to be scheduled to make a short presentation to Council from time to time (usually quarterly), at Council's request. We have not received such a request this year, but a presentation can be arranged easily enough; let me know the date.

Also, I am instructed to send you our standard year-to-date report on income & expenditures, which gives some idea of what our activities have been this year. It is current through today.

And may I call your attention to our new electronic newsletter? The first issue was posted on 12 August, focussing in a preliminary way the order of the PCHB on the sec. 401 case. We're rather pleased with it, & see this as replacing the print newsletter of the past. Find the first in the section for newsletter on our website, www.rcaanews.org. In future, there will be a special "button" for the current webletter. We'll have a new one up in a few days.

Yours very truly,

Chas. H.W. Talbot
Office Administrator

encls

L02-249-DM



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CANE

C.A.S.E. (Citizens
Against Sea-Tac
Expansion)

Seattle Community
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Seattle Council on
Airport Affairs

REGIONAL COMMISSION ON AIRPORT AFFAIRS

19900 4th S.W.
Normandy Park, Washington
98166-4043
Telephone: 206.824.3120
FAX: 206.824.3451
E-mail: rcaa@earthlink.net

STATEMENT

6 September 2002

City of Des Moines
21630 11th Ave. So.
Des Moines, Washington 98198-6838

RE: Services, first quarter, 2002
As per contract between RCAA and the City of Des Moines

Amount due: \$7,000.00

INV02-01-DM

REGIONAL COMMISSION ON AIRPORT AFFAIRS

19900 4th S.W.
Normandy Park, Washington
98166-4043
Telephone: 206.824.3120
FAX: 206.824.3451
E-mail: rcaa@earthlink.net

STATEMENT

6 September 2002

City of Des Moines
21630 11th Ave. So.
Des Moines, Washington 98198-6838

RE: Services, second quarter, 2002
As per contract between RCAA and the City of Des Moines

Amount due: \$7,000.00

INV02-02-DM

Itemized Categories Report

1/1/02 Through 9/6/02

Page 1

Cat/Sub	Date	Acct	Num	Description	Memo	Clr	Amount
INCOME							
0001 - Petty cash							
	8/1/02	RCAA2000	2685	Cash			-75.00
TOTAL 0001 - Petty cash							<u>-75.00</u>
6000 - i...							
6002 - Burien							
	1/9/02	Savings	DE...	Burien Qr 01-IV, Public	Qr 01-IV		7,000.00
	6/6/02	Savings	DE...	N Pk, Burien, Qr. 02-01			7,000.00
	8/9/02	Savings	DEP	Burien Qr. 02-I	Dep. 085		7,000.00
TOTAL 6002 - Burien							<u>21,000.00</u>
6003 - Des Moines							
	1/3/02	Savings	DEP	DM Qr 01-IV	078		7,000.00
TOTAL 6003 - Des Moines							<u>7,000.00</u>
6005 - Normandy Park							
	2/15/02	RCAA2000	DEP	Normandy Park Qr 01-IV	Dep 081		8,000.00
	6/6/02	Savings	DE...	N Pk, Burien, Qr. 02-01			8,000.00
TOTAL 6005 - Normandy Park							<u>16,000.00</u>
TOTAL 6000 - income contracts w cities							<u>44,000.00</u>
6700 - ...							
6701 - public - gen'l							
	1/9/02	Savings	DE...	Burien Qr 01-IV, Public	public contributions		65.00
TOTAL 6701 - public - gen'l							<u>65.00</u>
TOTAL 6700 - Contribs rec'd							<u>65.00</u>
6800 - interest income							
	1/7/02	Savings	DEP	Interest Earned	Dec 2001		1.95
	2/6/02	Savings	DEP	Interest Earned	Jan 2002		11.72
	3/6/02	Savings	DEP	Interest Earned	Feb 2002		6.97
	4/4/02	Savings	DEP	Interest Earned	March 02		6.61
	5/6/02	Savings	DEP	Interest Earned	Apr 02		4.09
	6/6/02	Savings	DEP	Interest Earned	May 02		2.69
	7/5/02	Savings	DEP	Interest Earned	Jun 02		9.97
TOTAL 6800 - interest income							<u>44.00</u>
TOTAL INCOME							<u>44,034.00</u>
EXPENSES							
7050 - ...							
7052 - water quality consultant							
	2/14/02	RCAA2000	2614	Greg Wingard	refresh deposit, inv rec'd 23 ...		-632.00
	4/4/02	RCAA2000	2644	Greg Wingard	refresh deposit, inv rec'd 23 ...		-993.88
	5/10/02	RCAA2000	2659	King County Dept Natural Re...	docs req'd by Greg Wingard		-35.00
	5/22/02	RCAA2000	2661	Greg Wingard	April special billing		-688.00
	7/12/02	RCAA2000	2672	Greg Wingard	Third-qr retainer		-2,560.00
	9/6/02	RCAA2000	2711	Greg Wingard	August arsenic work		-996.00
TOTAL 7052 - water quality consultant							<u>-5,904.88</u>
7055 - video, photo services							
	4/4/02	RCAA2000	2645	Brett Fish	PCHB hearing video-taping		-1,500.00

Itemized Categories Report

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Cat/Sub	Date	Acct	Num	Description	Memo	Clr	Amount
	8/1/02	RCAA2000	2680	Brett Fish	DM HE hearing; copy, video...		-43.52
	8/2/02	RCAA2000	2687	Brett Fish	aerial photo proj - 2002		-750.00
	9/6/02	RCAA2000	2704	Brett Fish	aerial photo proj - 2002 - ov...		-120.59
TOTAL 7055 - video, photo services							-2,414.11
7059 - office staffing							
	1/4/02	RCAA2000	2606	Chas. H.W. Talbot	office clerk sevices, inv 01-1...		-350.00
	1/4/02	RCAA2000	2607	Chas H.W. Talbot	Dec. off adm services; GL ...		-1,120.00
	2/14/02	RCAA2000	2618	Chas H.W. Talbot	Inv. 02-01-T; GL 7050-7059		-1,120.00
	2/14/02	RCAA2000	2619	Chas. H.W. Talbot	office clerk sevices, inv 02-0...		-360.00
	3/7/02	RCAA2000	2626	Chas. H.W. Talbot	office clerk sevices, inv 02-0...		-510.00
	3/7/02	RCAA2000	2627	Chas Talbot	Jan-Feb. office admr servic...		-1,400.00
	4/4/02	RCAA2000	2640	Chas H.W. Talbot	Mar. off adm services; GL ...		-1,120.00
	4/4/02	RCAA2000	2641	Chas. H.W. Talbot	office clerk sevices, inv 02-0...		-275.00
	5/2/02	RCAA2000	2655	Chas H.W. Talbot	Inv 02-04-T		-1,120.00
	5/2/02	RCAA2000	2656	Chas. H.W. Talbot	office clerk sevices, inv 02-0...		-315.00
	6/6/02	RCAA2000	2667	Chas H.W. Talbot	Inv 02-05-T		-1,400.00
	6/6/02	RCAA2000	2668	Chas H.W. Talbot	Inv 02-04-1-H, 05-H		-586.50
	7/12/02	RCAA2000	2673	Chas. H.W. Talbot	office clerk sevices, inv 02-0...		-190.00
	7/12/02	RCAA2000	2674	Chas Talbot	Jan-Feb. office admr servic...		-1,120.00
	7/12/02	RCAA2000	2676	Chas. H.W. Talbot	office clerk sevices, inv 02-0...		-150.00
	8/1/02	RCAA2000	2678	Chas. H.W. Talbot	office clerk sevices, inv 02-0...		-190.00
	8/1/02	RCAA2000	2683	Chas. H.W. Talbot	office clerk sevices, inv 02-0...		-190.00
	8/1/02	RCAA2000	2684	Chas Talbot	June Jly office admr service...		-1,400.00
	9/6/02	RCAA2000	2706	Chas. H.W. Talbot	office clerk sevices, inv 02-1...		-110.00
	9/6/02	RCAA2000	2710	Chas Talbot	Aug office admr services, In...		-1,120.00
	9/6/02	RCAA2000	2714	Chas. H.W. Talbot	office clerk sevices, inv 02-1...		-190.00
TOTAL 7059 - office staffing							-14,336.50
TOTAL 7050 - consultants							-22,655.49
7120 - ...							
7122 - webmaster							
	9/6/02	RCAA2000	2712	Means Talbot Associates	website maint, June - Aug; ...		-312.50
TOTAL 7122 - webmaster							-312.50
TOTAL 7120 - Website maint.							-312.50
8150 - Books, publs, subs							
	1/4/02	RCAA2000	2599	South County Journal	13-week sub., acct 6109634...		-35.00
	3/7/02	RCAA2000	2623	South County Journal	13-week sub., acct 6109634...		-35.00
	3/7/02	RCAA2000	2632	Des Moines News	inv dtd 6 March 2002, half-y...		-13.00
	4/18/02	RCAA2000	2647	Aviation Week Newsletters	Aviation & Aerospace Alma...		-106.00
	5/2/02	RCAA2000	2651	Federal Way News	half-year sub		-13.00
	6/6/02	RCAA2000	2664	South County Journal	13-week sub., acct 6109634...		-35.00
	6/6/02	RCAA2000	2670	West Seattle Herald	half-year sub.; GL 8150; In...		-21.00
	9/6/02	RCAA2000	2708	South County Journal	13-week sub., acct 6109634...		-35.00
TOTAL 8150 - Books, publs, subs							-293.00
8280 - ...							
8281 copier repairs, maint.							
	2/14/02	RCAA2000	2612	Seattle Photocopy Co.	inv. 32189		-195.24
	4/4/02	RCAA2000	2643	Sea/Tac Copy Systems	inv. 30107; dtd 3 iv 02		-441.72
	9/6/02	RCAA2000	2707	Seattle Photocopy Co.	inv. 32513 dtd 15 viii 02		-375.36
TOTAL 8281 copier repairs, maint.							-1,012.32
TOTAL 8280 - Copier expenses							-1,012.32
8600 - ...							
8601 - misc.							

Itemized Categories Report

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Cat/Sub	Date	Acct	Num	Description	Memo	Clr	Amount
	3/21/02	Savings	TXFR	From Savings To Checking	#02-03		-2,000.00
	4/8/02	Savings	TXFR	From Savings To Checking	#02-04		-6,000.00
	5/3/02	Savings	TXFR	From Savings To Checking	#02-05		-1,700.00
	5/28/02	Savings	TXFR	From Savings To Checking	#02-06		-700.00
	6/17/02	Savings	TXFR	From Savings To Checking	#02-07		-2,700.00
	7/17/02	Savings	TXFR	From Savings To Checking	#02-08		-4,000.00
	8/5/02	Savings	TXFR	From Savings To Checking	#02-09		-3,000.00
TOTAL TO RCAA2000							-32,100.00
Savings							
	1/9/02	RCAA2000	TXFR	From Savings To Checking	#02-01		2,000.00
	1/30/02	RCAA2000	TXFR	From Savings To Checking	#02-02		10,000.00
	3/21/02	RCAA2000	TXFR	From Savings To Checking	#02-03		2,000.00
	4/8/02	RCAA2000	TXFR	From Savings To Checking	#02-04		6,000.00
	5/3/02	RCAA2000	TXFR	From Savings To Checking	#02-05		1,700.00
	5/28/02	RCAA2000	TXFR	From Savings To Checking	#02-06		700.00
	6/17/02	RCAA2000	TXFR	From Savings To Checking	#02-07		2,700.00
	7/17/02	RCAA2000	TXFR	From Savings To Checking	#02-08		4,000.00
	8/5/02	RCAA2000	TXFR	From Savings To Checking	#02-09		3,000.00
TOTAL FROM Savings							32,100.00
TOTAL TRANSFERS							0.00
OVERALL TOTAL							-2,983.75

Itemized Categories Report

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Ca/Sub	Date	Acct	Num	Description	Memo	Clr	Amount
	3/7/02	RCAA2000	2624	Vilma Signs	inv. dtd 21 Fb 02		-565.76
	3/7/02	RCAA2000	2625	**VOID**Labels & Lists, Inc.	inv. 34127-8, dtd 21 ii 02	R	0.00
	3/7/02	RCAA2000	2628	J. Beth Means	inv 2002-01 -- flier design		-261.25
	3/7/02	RCAA2000	2630	The Copy Company	inv. 39981: #rd RW flier		-576.56
	3/7/02	RCAA2000	2631	The Copy Company	DM insert		-592.58
	3/19/02	RCAA2000	2634	**VOID**Labels & Lists, Inc.	inv. 34373-8, dtd 15 iii 02	R	0.00
	3/21/02	RCAA2000	2635	**VOID**U. S. Postal Service	refresh bulk-mail acc 01875	R	0.00
	4/4/02	RCAA2000	2637	The Copy Company	DM insert		-921.68
	6/6/02	RCAA2000	2665	Labels & Lists, Inc.	inv. 34127-8, replacement ck		-251.80
	6/6/02	RCAA2000	2666	Labels & Lists, Inc.	373		-387.68
	9/6/02	RCAA2000	2703	JR Mailing Services, Inc.	"Let's Be Clear", DM mailing		-1,476.02
TOTAL 8601 - misc.							-5,033.33
8604 - outreach - media adv.							
	1/29/02	RCAA2000	2609	Entertainment Communicatio...		c	-10,000.00
TOTAL 8604 - outreach - media adv.							-10,000.00
TOTAL 8600 - Outreach							-15,033.33
9350 - Office supplies							
	1/4/02	RCAA2000	2602	Office Depot	acct 6011-5666-0001-7572;...		-221.63
	2/14/02	RCAA2000	2613	Office Depot	acct 6011-5666-0001-7572;...		-142.92
	2/14/02	RCAA2000	2615	xpedx -- Stores Division	Acct # 003-2000081; inv dtd...		-74.09
	3/7/02	RCAA2000	2629	Office Depot	acct 6011-5666-0001-7572;...		-58.71
	4/4/02	RCAA2000	2638	Office Depot	acct 6011-5666-0001-7572;...		-84.75
	5/2/02	RCAA2000	2654	Office Depot	acct 6011-5666-0001-7572;...		-136.99
	7/12/02	RCAA2000	2677	xpedx -- Stores Division	Acct # 003-2000081; inv dtd...		-33.83
	8/1/02	RCAA2000	2679	xpedx -- Stores Division	Acct # 003-2000081; purch ...		-53.81
	8/1/02	RCAA2000	2681	Jim Bartlemay	office supplies		-21.69
	9/6/02	RCAA2000	2713	xpedx -- Stores Division	Acct # 003-2000081; inv. dt...		-58.64
TOTAL 9350 - Office supplies							-887.06
9425 - printing, copying ex hous							
	2/14/02	RCAA2000	2611	Port Of Seattle	inv.1148, dtd 10 i 02; cust n...		-8.40
	2/14/02	RCAA2000	2617	Kinko's Inc.	acct 0000130082 inv dtd 3...		-135.68
	2/14/02	RCAA2000	2622	Port Of Seattle	inv.1152, dtd 12 ii 02; cust n...		-1.05
	4/18/02	RCAA2000	2646	Port Of Seattle	3000 pp., 3rd RW project		-450.00
	4/18/02	RCAA2000	2648	Department of Ecology	v.2 Sea-Tac Recv'g Report	R	-126.89
	4/18/02	RCAA2000	2649	Phil Emerson	A/L lease docs		-47.70
	5/10/02	RCAA2000	2658	Port Of Seattle	fiscal documents		-14.25
	5/10/02	RCAA2000	2660	Port Of Seattle	fiscal documents		-51.90
	8/1/02	RCAA2000	2682	Chas H.W. Talbot	DM Creek Plan docs		-39.75
	8/29/02	RCAA2000	2689	Department of Ecology	GW RDPR 6 viii 02		-37.80
TOTAL 9425 - printing, copying ex hous							-913.42
9440 - ...							
9441 - NL - editorial services							
	9/6/02	RCAA2000	2705	Means Talbot Associates	design new webltr; inv dtd 1...		-231.25
	9/6/02	RCAA2000	2709	Means Talbot Associates	editorial & web work, webltr ...		-637.50
TOTAL 9441 - NL - editorial services							-868.75
9443 - NL -- postage							
	6/6/02	RCAA2000	2671	U. S. Postmaster	Permit 01875; std mail; imp...		-125.00
TOTAL 9443 - NL -- postage							-125.00
TOTAL 9440 - Newsletter							-993.75
9450 - Professional fees							
	1/4/02	RCAA2000	2603	Smith & Lowney, PLLC	inv. 10968, dtd 28 xii 2001 (...)		-50.00
TOTAL 9450 - Professional fees							-50.00

Itemized Categories Report

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Cal/Sub	Date	Acct	Num	Description	Memo	Clr	Amount
9480 - ...							
	9483 - AA&M -- postage						
	5/2/02	RCAA2000	265...	JR Mailing Services, Inc.	pstage		-1,440.19
	TOTAL 9483 - AA&M -- postage						-1,440.19
	TOTAL 9480 - Action Alerts &c						-1,440.19
9484 AAM Mailing Services							
	5/2/02	RCAA2000	265...	JR Mailing Services, Inc.			-638.16
	TOTAL 9484 AAM Mailing Services						-638.16
9700 - Telcom							
	1/4/02	RCAA2000	2600	Qwest	acct 206-824-3120 173-37		-154.12
	1/4/02	RCAA2000	2601	Verio, Inc. - 15	Acct 10041778, inv. 563 08...		-60.00
	1/4/02	RCAA2000	2604	Zone Telcom, Inc.	acct #24880; inv dtd 28 Dec...		-25.07
	2/14/02	RCAA2000	2616	Qwest Dex	inv. 000005410535, dtd 27 i...		-29.59
	2/14/02	RCAA2000	2620	Zone Telcom, Inc.	acct #24880; inv dtd 31 Jan ...		-23.98
	2/14/02	RCAA2000	2621	Qwest	acct 206-824-3120 173-37; i...		-151.74
	3/7/02	RCAA2000	2633	Qwest	acct 206-824-3120 173-37; ...		-165.00
	4/4/02	RCAA2000	2636	Qwest	acct 206-824-3120 173-37; ...		-165.00
	4/4/02	RCAA2000	2639	Zone Telcom, Inc.	acct #24880; inv dtd 31 Jan ...		-18.17
	4/4/02	RCAA2000	2642	Earthlink, Inc.	acct 0000-000004457265; ...		-65.85
	5/2/02	RCAA2000	2653	Qwest	acct 206-824-3120 173-37; ...		-147.63
	6/6/02	RCAA2000	2662	Zone Telcom, Inc.	inv rec'd 7 May		-11.57
	6/6/02	RCAA2000	2663	Qwest	acct 206-824-3120 173-37; ...		-149.40
	6/6/02	RCAA2000	2669	Earthlink, Inc.	acct 0000-000004457265; ...		-65.85
	7/12/02	RCAA2000	2675	Qwest	acct 206-824-3120 173-37; ...		-176.92
	8/1/02	RCAA2000	2686	Qwest	acct 206-824-3120 173-37; ...		-165.00
	9/6/02	RCAA2000	2715	Qwest	acct 206-824-3120 173-37; ...		-165.00
	TOTAL 9700 - Telcom						-1,739.89
9755 - business taxes & licenses							
	1/30/02	RCAA2000	2610	Department of Revenue	Or. 01-IV B&O		-465.36
	5/3/02	RCAA2000	2657	Department of Revenue	Qr. 02-01 B&O / 601 413 657		-346.82
	8/6/02	RCAA2000	2688	Department of Revenue	Qr. 02-02 B&O		-236.46
	TOTAL 9755 - business taxes & licenses						-1,048.64
9999 - US income tax							
	1/4/02	RCAA2000	2605	U.S. Internal Revenue Service	advance pay't		-2,500.00
	4/8/02	Savings	DEP	US IRS	Yr 99 tax refund?		2,000.00
	7/11/02	Savings	DEP	USIRS	Dep 084 Yr 00 refund?		500.00
	TOTAL 9999 - US income tax						0.00
Uncategorized Expenses							
	1/29/02	RCAA2000	2608	**VOID**		R	0.00
	TOTAL Uncategorized Expenses						0.00
	TOTAL EXPENSES						-47,017.75
	TOTAL INCOME - EXPENSES						-2,983.75
TRANSFERS							
RCAA2...							
	1/9/02	Savings	TXFR	From Savings To Checking	#02-01		-2,000.00
	1/30/02	Savings	TXFR	From Savings To Checking	#02-02		-10,000.00

EXCERPT

DES MOINES CITY COUNCIL MINUTES

March 3, 2003

RCAA Final Billing

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

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

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

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

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

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

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

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

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

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

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

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

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

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Des Moines Activity Center
Parking Lot Paving Project Contract

FOR AGENDA OF: August 14, 2003

DEPT. OF ORIGIN: Parks, Recreation and
Senior Services

DATE SUBMITTED: August 11, 2003

ATTACHMENTS:

A. Draft Contract between the City of Des
Moines and Northwest Asphalt, Inc.

CLEARANCES:

[x] Parks & Recreation Director

[x] City Attorney

B. Parking Lot Paving Bid Tabulation

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

Purpose and Recommendation:

The purpose of this agenda item is to award a Small Works Project for the installation of parking lot pavement and striping at the Des Moines Activity Center Parking Lot.

Motion: "I move to approve the Contract for the Des Moines Activity Center Paving Project with Northwest Asphalt, Inc. in the amount of up to \$17,675.64 plus tax and authorize the City Manager to sign the contract, substantially in the form as submitted. And to authorize City Manager to approve change orders not to exceed 15% of the total contract amount."

Background:

The Des Moines City Council approved Capital Improvement Program funds in the amount up to \$45,418.00 for the paving and striping of the Des Moines Activity Center parking lot at their meeting on July 17, 2003. The Paving Project was advertised for bid to contractors on the City's Small Works Roster with a public bid opening on Monday, August 11, 2003 at 10:00 a.m.

Discussion:

The Parking Lot Paving Small Works project consists of asphalt paving of approximately 22,500 square feet paving area over existing compacted base course and includes striping 75 parking spaces (includes 6 handicapped spaces) and 338 feet of thickened edge. Additional work will include the installation parking stall tire stops. Work is to be done per Washington State Department of Transportation specifications. The city received bids by paving contractors for the work (see Attachment B Parking Lot Paving Bid Tabulation). Northwest Asphalt, Inc. submitted the lowest and best bid for the project.

Staff requests that a contingency of up to 15% be approved for this project due to two issues: 1) the bid amount is much lower than expected (a 10% contingency allows less than \$2,000 for

change orders if needed) and 2) changes to the parking lot design requested by Senior Services staff during the bidding process will increase the striping costs by approximately \$200.00. The design change is to increase the number of parking stalls from 62 stalls to 75 stalls and the number of handicapped stalls from 3 stalls to 6 stalls.

Parks staff will contract directly with a company to provide parking lot stall tire stops at a cost of approximately \$5,000.

Alternatives:

None Provided

Financial Impact:

The Parking Lot Paving Project is budgeted as part of the 2003 Municipal Capital Improvement Plan as authorized by City Council at its meeting on July 17, 2003. The City Engineer's estimate for the bid portion of the project is \$40,000 including the cost of parking stall tire stops. The bid award falls well below this budgeted amount.

Recommendation/Conclusion:

Staff recommends approval of the Parking Lot Paving Project contract with Northwest Asphalt, Inc.

Concurrence

The Activity Center Parking Lot Paving Project was authorized in the 2003 Capital Improvement Program as approved by City Council. Plans were reviewed and approved by the City Engineer.

SECTION 2 - CONTRACT DOCUMENTS

**DES MOINES ACTIVITY CENTER
PARKING LOT PAVING PROJECT**

CONTRACT CHECKLIST

THE FOLLOWING FORMS ARE TO BE EXECUTED AFTER THE CONTRACT IS AWARDED:

(a) Agreement

This agreement to be executed by the successful bidder. Four (4) copies are required.

(b) Performance and Payment Bond

To be executed by the successful bidder and his surety company. Four (4) copies are required.

(c) Certificate of Insurance

All insurance certificates must show thirty (30) days cancellation notice by certified mail and Hold Harmless Statement. Insurance certificates are required for the prime contractor and all subcontractors prior to commencement of any work.

(d) Progress Schedule

Prior to beginning any work on site, a progress schedule, either in the form of a C.P.M. or Bar Chart, shall be submitted showing: (1) each element of work; (2) dates each element of work will be accomplished; and (3) materials order and delivery dates.

(e) Department of Labor and Industries Fees

The Contractor is responsible for all fees relating to the processing of the Department of Labor and Industries: (1) Intent to Pay Prevailing Wages, (2) Certificate of Prevailing Wages Paid.

PROPOSED AGREEMENT

(This document is a proposed form of agreement. It is subject to revision by agreement of both parties, following award of the bid, and prior to execution of the final contract.)

THIS AGREEMENT made and entered into this _____ day of _____, 20____, by and between The City of Des Moines, Washington, hereinafter called the "Owner", and _____, hereinafter called the "Contractor".

WITNESSED that the Owner and the Contractor for the hereinafter established consideration agree as follows:

- I. The work to be performed under this Contract shall be known as the Owner's "DES MOINES ACTIVITY CENTER PARKING LOT PAVING PROJECT".
The Contract shall be performed and completed under the supervision of and subject to the approval of the Owner or its authorized representative. The Contractor agrees to furnish all materials, tools, labor, equipment and other incidentals, and to perform all services and work as described in this Agreement and the contract documents, which consist of this Agreement and the following items, which are by this reference incorporated herein:

Exhibit A: Bid Documents
Exhibit B: Contract Documents
Exhibit C: General Conditions
Exhibit D: General Special Provisions & Technical Specifications
Appendix A: Prevailing Wages
Appendix B: Contract Plans

Standard Specifications for Road, Bridge and Municipal Construction, 2002, including the Division 1 APWA Supplement, prepared by the Washington State Department of Transportation and the American Public Works Association – Washington State Chapter.

- II. In consideration for the complete and faithful performance of the Contract, the Contractor shall be paid in accordance with the unit prices and/or lump sum prices set forth in the Bid Proposal. Payment shall be made for the actual quantities of work performed at the unit prices set forth in the bid. Actual quantities may be more or less than the estimated quantities set forth in the bid, for purposes of comparing bids, and the Contractor shall make no claim for anticipated profits for any decreases in the quantities. Quantities may be increased or decreased by the Owner.

IN WITNESS THEREOF, four (4) identical counterparts of this Agreement, 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, WASHINGTON
(Owner)

By: _____
Anthony Piasecki, City Manager

By direction of the Des Moines City Council

At an open public meeting on _____, 2003.

ATTEST:

This _____ day of _____, 20____

City Clerk

APPROVED AS TO FORM:

Linda A. Marousek, City Attorney

Contractor

By: _____

Title: _____

Address: _____

(Corporate Seal)

ATTEST: (If Corporation):

Title: _____
WITNESS (If individual or partnership)

GENERAL CONDITIONS

G-1. CONTRACT DOCUMENTS

The intent of these documents is to include all labor, material, appliances, transportation, utilities, and services necessary for the proper execution of the work and the terms and conditions of payment therefore. The documents are to be considered as one, and whatever is called for by one shall be binding as if called for by all of them.

G-2. MATERIALS, APPLIANCES, EMPLOYEES

The Contractor shall provide and pay for all labor, materials, tools, transportation, utilities, bonds, permits, insurance, and all other things necessary to properly and safely complete the work, unless otherwise provided in the Technical Provisions. Unless otherwise specified, all materials shall be new, and both materials and workmanship shall be of good quality. The Contractor shall only utilize workmen and subcontractors who are experienced and skilled in their trade.

G-3. ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. He shall defend any and all suits or claims for infringement of any patent or copyrights and shall save the Owner harmless from loss on account thereof.

G-4. PROTECTION OF WORK AND PUBLIC

The Contractor shall be responsible for any damage or claims resulting from her/his act or negligence while performing the work under this Contract. Materials delivered and work performed as well as adjacent property and the general public shall be adequately protected.

G-5. INSPECTION AND DEFECTIVE WORK

The Contractor shall permit and facilitate inspection of the work by the Owner and his agents and public authorities at all times. Any work which does not conform with the requirements of the Contract shall be repaired or replaced to the satisfaction of the Engineers. Any defects due to faulty materials or workmanship which become apparent within one (1) year from the date of final acceptance by the Owner shall be repaired or replaced unless otherwise provided in the Special Conditions.

G-6. CHANGES IN THE WORK

During the period when this Contract is in force, the Owner may find it necessary or advisable to make additions to, deductions from, or other changes in the nature of the work. No change shall be made without the prior written approval of the Owner establishing the nature of the change and compensation therefore. All changes involving an increase in the contract amount or time of completion will require a written Change Order.

G-7. FAILURE TO PERFORM THE WORK

In the event the Contractor should fail or refuse to prosecute the work properly, or fail to perform any provision of the Contract, the Owner may, after ten (10) days written notice to the Contractor, without prejudice to any other remedy he may have, make good the deficiencies and may deduct the cost thereof from the payment due or which thereafter may become due the Contractor, or, at his option, may terminate the Contract and take possession of all materials, tools, facilities, and appliances which may be on the site of the work and finish the work by such means which, in his opinion, are the most expeditious, and at the expense of the Contractor, shall be liable to the Owner for any excess costs or other damages occasioned by the Owner thereby.

G-8. PAYMENTS TO THE CONTRACTOR/RETAINAGE

At the end of each month, or other period as set forth in the Special Provisions, the Engineer will approve an estimate of the value of work satisfactorily performed to that time. Payment will be made in the amount said estimate less the total of all previous payments and retainage, payable on or before the 15th of the following month or as near after the first of the following month as the legally established regular meeting times of the governing and disbursing agencies will permit. All payments shall be in accordance with the laws of the place where the work is being performed. Payments due may be withheld on account of defective work not remedied, liens filed, damage by the Contractor to others not adjusted, or failure to make payments properly to subcontractors, or for material or labor.

Consistent with RCW 60.28.011, the City of Des Moines shall reserve a contract retainage of 5% (five percent) of the moneys earned by the Contractor as a trust fund for the protection and payment of claims by any person arising under the Contract and/or State of Washington, with respect to taxes imposed pursuant to Title 82 RCW which may be due from such Contractor.

As provided in WAC 82-32-010, the Contractor shall be required to exercise its option in writing on whether or not monies reserved from the amounts due the Contractor shall be retained by the public body, deposited by the public body in an interest bearing account in a bank, mutual savings bank, or saving and load association, or placed in escrow by the public body. This provision shall constitute official notice informing the Contractor of the options available and the method for exercising the option selected. Said option must be exercised prior to or at the time of submission of invoices for the first progress payment to be made under the contract. No progress payment shall be made until the Contractor has exercised its option in writing.

G-9. FINAL PAYMENT APPLICATION

Final payment to the Contractor will be made upon completing or receiving the following items:

1. Items specified for completion after substantial completion certification.
2. Ensure in writing that all claims have or will be settled.

3. Transmittal of required project construction records to the Owner.
4. Proof that taxes, wages, fees, and similar obligations were paid (certificates from Labor and Industries and the Department of Revenue.)
5. A signed Lien Release in a form acceptable to the Owner signed by all subcontractors and major suppliers.
6. Removal of all temporary facilities, markings, rubbish and similar elements.

G-10 THE ENGINEERS' STATUS

The Engineers shall have general supervision of the work. They have authority to stop the work, if necessary in their opinion, to ensure its proper execution. The Contractor shall comply with instructions given by the Engineers in accordance with the terms of the Contract, or by their authorized representatives acting within the scope of the duties assigned to them.

G-11. SURVEYS, PERMITS, AND REGULATIONS

The Engineers will furnish control points sufficient to properly control the construction of the work.

G-12. INSURANCE & INDEMNIFICATION REQUIREMENTS

Indemnification / Hold Harmless

The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Insurance

The Contractor 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 Contractor, their agents, representatives, employees, or subcontractors.

A. Minimum Scope of Insurance

Contractor 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 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, products-completed operations, personal injury and advertising injury, and liability assumed under an insurance contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City, and the City's consulting design engineer, R.W. Beck, Inc., shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO additional insured endorsement CG 20 10 11 85 or a substitute endorsement providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washing.
4. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

B. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. The Contractor'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 Contractor's insurance and shall not contribute with it.
2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, or forty-five (45) days prior written notice by regular U.S. Mail to the City Manager, has been given to the City.

D. Contractor's Insurance For Other Losses

The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

E. Waiver of Subrogation

The Contractor and the City waive all rights against each other any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other periods to the extend covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

F. Acceptability of Insurers

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

G. Verification of Coverage

Contractor 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 Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

H. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall finish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Contractor.

G-13. COMPLIANCE WITH APPLICABLE LAWS

The Contractor agrees to fully comply with all applicable Federal, State and local laws, orders, rules, regulations and ordinances, including but not limited to workmen's compensation, pension and social security laws, safety standards and building codes, and the Contractor shall indemnify and save harmless the Owner from any claim, liability or expense by reason of the failure of the Contractor or any of his subcontractors to comply with such laws, orders, rules, regulations or ordinances.

G-14. PERMITS AND REGULATIONS

The Contractor shall obtain and pay for all permits and licenses, but not permanent easements required in connection with the work, and shall give all notices, pay all fees and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Engineer in writing and any necessary changes shall be adjusted. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the Engineer, he shall bear all costs arising therefrom.

G-15. WAGE RATES

In conformity with the R.C.W. 39.12, no laborer, workman or mechanic employed in the performance of this Contract either by the Contractor or a subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by this Contract shall be paid less than the minimum hourly rate for his trade or occupation hereinafter set forth or, if none is set forth, the minimum hourly wage rates for his trade or occupation which prevail in the locality where the work is to be performed, and the Contractor agrees

that no such laborer, workman or mechanic shall be paid less than such rate. In case any dispute arises to what are the prevailing rates of wages for work of a similar nature and it cannot be adjusted by the parties involved, the matter shall be referred to the Director of Labor & Industries and his decision shall be final. These rates are subject to change to reflect increases and decreases in the rates which may prevail in the area from time to time during the performance of the Contract. No change in these rates or the rates actually paid by the Contractor shall constitute the basis for a change in the Contract Price.

G-16. RELATIONS WITH OTHER CONTRACTORS

The Contractor shall cooperate with all other contractors who may be performing work in behalf of the Owner on any work in the vicinity of the work to be done under this Contract, and he shall so conduct his operations as to interfere to the least possible extent with the work of such contractors. He shall promptly make good, at his own expense, any injury or damage that may be sustained by other contractors at his hands. Any difference or conflict which may arise between the Contractor and other contractors in regard to their work shall be adjusted and determined by the Engineer. If the work of the Contractor is delayed because of any acts or omissions of any other contractor or contractors, the Contractor shall have no claim against the Owner on that account other than for an extension of time.

When two or more contracts are being executed at one time in such manner that work on one contract may interfere with that on another, the Engineer shall decide which contractor shall cease work and which shall continue, or whether the work on both contracts shall progress at the same time, and in what manner.

When the territory of one contract is the necessary or convenient means of access for the transportation or movement of men, material, or appliances required for the execution of another contract; such privileges of access or any other reasonable privilege may be granted by the Engineer to the contractor so desiring, to the extent and amount, in the manner, and at the time, which may be reasonably necessary.

G-17. MEDIATION/ARBITRATION CLAUSE

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

G-18. VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

All questions related to this Agreement shall be resolved under the laws of the State of Washington. In the event that either party deems it necessary to institute legal action arising from this Agreement, such action shall be instituted in the King County Superior Court. The parties each consent to the personal jurisdiction of such court. Except as otherwise provided by law, it is expressly understood that neither party can institute legal

action against the other based on this Agreement until the parties have exhausted the mediation and arbitration procedures required by the previous paragraph.

G-19. 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. The Contractor is entitled to retain a complete set of work project for historical and evidentiary purposes. All information concerning the City and said project, which is not otherwise a matter of public record by law to be made public, is confidential and the Contractor will not, in whole or in part, now at any time, disclose that information without the express written consent of the City.

**DES MOINES ACTIVITY CENTER
PARKING LOT PAVING PROJECT**

#	ITEM DESCRIPTION	Northwest Asphalt, Inc.		Lakeland Paving Co., Inc.		Emerald Paving, Inc.	
		UNIT COST	TOTAL COST	UNIT COST	TOTAL COST	UNIT COST	TOTAL COST
1	Parking Lot Paving - 22,500 SF	\$0.74	\$16,650.00	\$0.74	\$16,650.00	\$0.80	\$18,000.00
2	Parking Lot Striping - 62 spaces	\$7.82	\$484.84	\$10.00	\$620.00	\$7.20	\$446.40
3	Thickened Edge - 338 Ft	\$1.60	\$540.80	\$1.50	\$507.00	\$1.00	\$338.00
	Total Base Bid	\$10.16	\$17,675.64	\$12.24	\$17,777.00	\$9.00	\$18,784.40
	Sales Tax (8.8%)	\$0.89	\$1,555.46	\$1.08	\$1,564.38	\$0.79	\$1,653.03
	Total Base Bid	\$11.05	\$19,231.10	\$13.32	\$19,341.38	\$9.79	\$20,437.43
	Alternate Additives:						
1	Asphalt Paving - per SF	\$0.67		\$0.78		\$0.80	
2	Base Course Rock - per CY	\$22.00		\$36.00		\$22.50	
	WSDOT spec. Section 9-03.9(3)						

AGENDA ITEM

SUBJECT:

Contract expenditure increase
for installation of Bi-Fold Divider Wall
for Des Moines Senior Activity Center
with SKM Construction, Inc.

ATTACHMENTS:

- A. Change Order #7
- B. Project Bid Tablation

AGENDA OF: August 14, 2003

DEPT. OF ORIGIN: Parks, Recreation, & Senior
Services

DATE SUBMITTED: August 12, 2003

CLEARANCES:

- ☐ Park & Recreation Director
- ☐ City Attorney

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL

Purpose and Recommendation:

The purpose of this agenda item is to request City Council approval of an increase of \$8,161.29 to the contract with Activity Center remodel contractor SKM Construction, Inc. for the installation of a bi-fold wall system to provide separation between the two large meeting rooms at the Des Moines Activity Center. Council authorization for this expenditure is required because the amount required to complete this change order exceeds the original contract amount and 10% contingency approved for the Activity Center Remodel Project.

Recommended Motion:

"I move to approve to increase the contract with SKM Construction, Inc. in the amount of \$7,515, plus sales tax, for the installation of a bi-fold divider wall system for Des Moines Activity Center and authorize the City Manager to sign contract, substantially in the form as submitted."

Background:

The Parks, Recreation, and Senior Services Department's Activity Center opened in March 2003. The original plans and specifications for the building remodel included a divider wall (moveable doors that could open and close as needed to separate building spaces) between the large dining room and the large classroom. Due to budget constraints, funding was not sufficient to afford all of the specified bid alternates at the time of the original contract signing and therefore the wall system was not installed as part of the initial construction. However, during construction it became evident that there is an urgent need to provide a noise and privacy barrier between rooms to optimize program offerings and for user comfort. Funds to pay for the wall system were raised by Senior Services participants and the budget

appropriations required to install the system were authorized by City Council at the July 17, 2003 meeting.

Discussion:

Installation of the divider wall will reduce interior noise level and program distractions in the building. Without the wall system, there is no way to separate the rooms of the facility to deaden the noise and allow for privacy when multiple activities are taking place in the building simultaneously. Activities meeting in the large classroom must compete with kitchen and dining hall noise. The dining hall is used for exercise and dancing classes, as well as the daily lunch program that all generate noise from the set up of tables and chairs, conversations, music, and lunch activity. The high noise level is especially distracting for older adults with hearing problems. The movable divider wall will completely close off the classroom from the noise of the dining room and front entrance and provide privacy for participants who are trying to focus on the class/ activity they are participating in. The divider wall can be easily opened up to benefit community rentals and special events by enlarging the dining room to handle more people.

A change order is the contractual method used to add the wall system to the contract. The scope of the change order includes: complete installation of a new header across the door opening to support the doors; framing to accommodate a 13' 6" x 7' door system; wall repair and paint to match existing; and installation of the door system and hinges and hardware. The French style doors are made of Douglas Fir stained to match existing wood with frosted glass glazing (see Attachment A. Change Order). The project cost has increase from the original bid (see Attachment B) due to additional construction required to retrofit the doors such as framing, adding walls and making repairs to existing walls.

Alternatives:

None Provided

Financial Impact:

City Council authorized the transfer of funds in the amount of \$8,000 to the city's Capital Improvement Program fund for use to construct the wall system at the July 17, 2003 meeting.

Recommendation/Conclusion:

It is recommended that the City Council approve the purchase of the divider wall for Des Moines Activity Center by increasing the contract with SKM Construction, Inc. in the amount of \$7,515.00 plus tax.

Concurrence:

This Activity Center Divider Wall System project was authorized by City Council.



CHANGE ORDER: # 7

Form #49

PROJECT: Activity Center Remodel CHANGE ORDER DATE: 8/15/2003

PROJECT NUMBER: 310.049.000.594.00.63.00

CONTRACTOR: SKM Construction, Inc.
 Phone: (425)235-5569
 Fax: (425)235-5569

Contract Date: _____
 Contract Start Date: _____
 Original Contract Substantial Completion Date: _____
 Amended Contract Substantial Completion Date: _____

The contract is changed as follows:

Plus or (Minus)

Install new header across opening to support door system, frame opening to accommodate 13'6" x 7'
 door system; install drywall above the opening and on both sides of door system, tape, texture, prime and
 paint to match; install top and bottom guide tracks and hardware; install 5- 32" x 7' douglas fire doors with
 full glass, stained and painted; doors connected using 12-1/4" radius plain bearing hinges; clean glass on units.
 Total Above: \$6,975.00 Add: frosted glass \$540.00 Total \$7,515.00 plus sales tax.

SUBTOTAL	\$7,515
15% Mark Up	
SUBTOTAL \$	7,515.00
TAX \$	646.29
TOTAL \$	8,161.29

Not valid until signed by the Contractor, Architect and Owner.

The original (Contract Sum) was including tax
 Net change by previously authorized Change Orders \$ -
 The Contract Sum prior to this Change Order was \$ 166,517.54
 The Contract Sum will be increased or decreased in the amount of \$ 8,161.29
 The Contract Time will be increased or decreased by: NA
 The date of Substantial Completion as of the date of this Change Order therefore is _____
 The **NEW** Contract Sum is: \$ 174,678.83

ARCHITECT CONTRACTOR CITY

BY: _____ BY: _____ BY: _____
 DATE: _____ DATE: _____ DATE: _____

Attach Work Change Directive and Change Order Request forms and shop drawings accordingly.

**CITY OF DES MOINES ACTIVITY CENTER REMODEL PROJECT
 BID TABULATION - October 22, 2002**

#	ITEM	SKM CONSTRUCT.	T.MILLER CONSTRUCT.	FREDHOES BLDG. CONST	SHINSTINE ASSOC.
	Base Bid:	117,500.00	\$125,000.00	174,000.00	188,000.00
	Sales Tax (8.8%)	\$10,340.00	\$11,000.00	\$15,312.00	\$16,544.00
	Total Base Bid	\$127,840.00	\$136,000.00	\$189,312.00	\$204,544.00
	<u>Additive Alternates:</u>				
	Flooring	AA-1:	AA-1:	AA-1:	AA-1:
	Doors & hardware	AA-2: 24,790.00	AA-2: \$23,000.00	AA-2: 0.00	AA-2: 9,100.00
	Door Hardware	AA-3:	AA-3:	AA-3: 0.00	AA-3:
	Entry Door 117A	AA-4: 9,000.00	AA-4: \$8,500.00	AA-4: 13,375.00	AA-4: 8,000.00
	Folding door 112C	AA-5: 5,700.00	AA-5: \$7,000.00	AA-5: 9,010.00	AA-5: 16,500.00
	Renov. Bathrooms	AA-6: 3,050.00	AA-6: \$6,000.00	AA-6: 6,636.00	AA-6: 6,000.00
	Casework	AA-7:	AA-7:	AA-7:	AA-7:
	Walk off mats	AA-8: 2,000.00	AA-8: \$250.00	AA-8: 1,800.00	AA-8: 450.00
	Fire Alarm	AA-9:	AA-9:	AA-9:	AA-9:
	Classroom	AA-10:	AA-10:	AA-10:	AA-10:
	Fabric awning	AA-11: 1,740.00	AA-11: \$4,500.00	AA-11: 5,600.00	AA-11: 5,700.00
	Add doors 118B	AA-12: 2,220.00	AA-12: 2,800.00	AA-12: 675.00	AA-12: 3,000.00
	Door 112D	AA-13: 3,100.00	AA-13: 5,800.00	AA-13: 1,025.00	AA-13: 3,700.00
	Roll-up doors	AA-14: 3,800.00	AA-14: \$4,000.00	AA-14: 2,300.00	AA-14: 3,700.00
	Install equip.	AA-15:	AA-15:	AA-15:	AA-15:
	Subtotal	\$55,400.00	\$61,850.00	\$40,421.00	\$56,150.00
	Sales Tax (8.8%)	\$4,875.20	\$5,442.80	\$3,557.05	\$4,941.20
	Total Alternate Bids	\$60,275.20	\$67,292.80	\$43,978.05	\$61,091.20
	Grand Total	\$188,115.20	\$203,292.80	\$233,290.05	\$265,635.20

