

AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
October 23, 2003 - 7:30 p.m.

CALL TO ORDER - Mayor Steenrod

- all present but Susan White
- Susan White excused

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

DEC 1
Study session -
council
indemnification
start
ord
EO

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.

- Judy Grande - cell tower

BOARD & COMMITTEE REPORTS

PRESIDING OFFICER'S REPORT

human services grants

Dan SOG
pool
Guy SOG
Richard pool

- motion to do
interlocals on pool.
passed 6-0

ADMINISTRATION REPORTS

CONSENT CALENDAR*

1. Motion is to approve the minutes from the special and regular meetings of October 2, 2003 and the regular meeting of October 9, 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 approve the Agreement for Professional Services with Prosecutor Susan Mahoney and to direct the City Manager to execute said agreement, substantially in the form as attached.

4. Motion is to approve the agreement with Association of Washington Cities to enroll and participate in the Workers' Compensation Group Retro Program and authorize the City Manager to sign the agreement, substantially in the form as submitted.

passed 5-0
removed by Steenrod
passed 6-0
passed 4-2
Steenrod
Peterson
N

br

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

OLD BUSINESS

1. Draft Resolution No. 03-275 - Final Acceptance of Highline Water District 2002 Comprehensive Water System Plan

passed 6-0 as modified

SUMMARY: As Highline Water District's 2002 Comprehensive Water System Plan has been officially accepted by the District's Commissioners, the Plan is now being present to Council for official Council action. The City Council previously reviewed the Draft Plan at the September 5, 2002 Council meeting.

2. Cingular Lease

Sherman Thomasson Benjamin *5-1 anyone against CWP*

SUMMARY: The purpose of this item is to allow Council discussion regarding the Cingular Communications Lease. This item was placed on the agenda of October 9, 2003, at the request of Mayor Steenrod and Councilmembers Thomasson and White.

NEW BUSINESS

1. Agreement With Net Assets Corp. for Conduits Service

tele com code amendments? public location priority

SUMMARY: Council will review a proposal to enter into an agreement for a service that would allow the City to provide lien and other real property information via the Internet to title companies and others who are interested in accessing this information.

2. Preliminary 2004 Budget

SUMMARY: Council will review the proposed budgets for the Legislative, Executive, Finance, Legal Services, Court, and Community Development departments. In addition, staff will provide an overview of the 2004 budgets for the Debt Service, Computer Equipment Operations & Capital Funds, Self-Insurance, Unemployment, Revenue Stabilization, and Facility Repair & Replacement Funds.

3. Traffic Unit Revenue Report

SUMMARY: Staff will present a report concerning traffic unit revenue.

4. Towing Services

SUMMARY: Staff will inform Council of the results of the Request for Proposals for towing/impound services.

NEXT MEETING DATE – Regular Meeting, October 30, 2003

ADJOURNMENT

passed 5-1

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:

Agreement with Net Assets Corporation for
Conduits Service

FOR AGENDA OF: October 23, 2003

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: September 4, 2003

ATTACHMENTS:

Net Assets Corporation Conduits Service
Agreements

CLEARANCES:

☐ Finance *[Signature]*

☐ Legal *[Signature]*

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

Purpose and Recommendation

The purpose of this agenda item is to request Council's approval to enter into an agreement with Net Assets Corporation for Conduits Service, providing Internet property title searches.

Suggested motion:

"I move to approve the agreement with Net Assets Corporation for Conduits Service for Internet property title searches and authorize the City Manager to sign the agreement, substantially in the form as submitted."

Background

Presently, the finance staff accepts requests from title companies for lien information on properties changing ownership or refinancing within the City of Des Moines, where we have a constructive interest, such as a Local Improvement District. These requests are made via the telephone and the U.S. Postal Service. Staff researches and responds to these requests with no charge to the title company, although the title company does charge their consumers a title search fee. In addition, the title companies call King County for additional lien information.

Net Assets Corporation Conduits Service will provide a complete database of all the properties located in the city available on-line. Instead of calling the city or requesting the information by mail, title companies will access Conduits Services' database. The title companies will be able to obtain a response more timely and generate documentation that supports their search. The city will no longer file liens with King County, thus all title companies conducting title searches will be required to access the

on-line database verifying that properties have clear title or else acquire payoff information on any city liens.

The service will cost the City \$8.00 per search. The City will then invoice the title companies for this service. We are recommending that the City Manager establish a \$25 fee for this service under his authority to set administrative fees.

Discussion

Conduits is a service from Net Assets that allows cities to provide lien and other real property information via the Internet to title companies and others who are interested in accessing this information. The city sends its lien and other real property data to Conduits, where the data is prepared for online use. Conduits will notify title companies, along with the county, that title searches for lien information must be accessed through the Conduits Services' Internet site. The city would no longer file liens with the county and the electronic record takes priority over the county information. This process will provide accurate up-to-date information on property liens. Printed reports of all search activity allow the city to bill the title companies for their access, typically \$25 per search, although some cities charge more, as much as \$58. Conduits will also bill the city, \$8, for each search performed by a title company. The title companies are already charging the consumer a fee of \$50.00 or more for title searches.

This service has been operating in Oregon for the past three and one-half years and is now moving into Washington. Bainbridge Island will be on-line in approximately two weeks, with Bellevue and Vancouver soon to follow. Staff has contacted thirteen of the cities in Oregon using the service, along with the above mentioned Washington cities and four title companies. All are very enthusiastic, including the title companies. All are in agreement that the software is easy to use and reliable. The title companies contacted were thrilled to have the information available instantly. In the past, response time may have taken up to two weeks.

As businesses are beginning to expect automated services, Conduits offers one of those rare win-win situations. It saves the cities labor costs and offers an advanced service to businesses requiring the information.

All system maintenance and upgrades are handled by Conduits at no extra charge and there are no maintenance fees.

Staff will be responsible for uploading and importing new data as it occurs and billing the title companies. The revenue from the title companies will cover these costs.

Alternatives

To leave the procedure as is, with the title company contacting the City directly and staff responding to the request at no charge. Currently, we respond to approximately ten calls per year. If we assessed a \$25 fee, this would generate \$250 a year. We would continue to file liens with King County and pay filing fees.

If we enter into an agreement with Net Assets Conduits Service, the title companies would conduct searches on each property changing ownership or undergoing a refinancing within the City, whether or not the city has a lien against the property. This would generate approximately net revenues of \$35,000.

Financial Impact

Conduits will bill the City of Des Moines \$8.00 for each search performed by a title company. The City of Des Moines will bill each title company \$25.00 per search. Conduits will save costs by eliminating current staff time researching property liens for title companies and filing lien information with the county. Staff will be maintaining the updates to the database and process a monthly billing to the title companies. It will also eliminate the county filing fees.

Recommendation/Conclusion:

It is recommended that the City Council move to authorize the City Manager to enter into an agreement with Net Assets for both Conduits Service Agreement and Conduits Service Level Agreement.

Concurrence

The Legal Department concurs with the recommendation.



Conduits™ Service Agreement

DATE: 11/15/2002

PARTIES:

NET ASSETS CORPORATION ("NETASSETS")
400 E. 2nd Avenue Suite 104, Eugene, Oregon 97401
World Wide Web: <http://www.nassets.com>

City of Des Moines ("ORGANIZATION")
21630 11th Avenue South
Des Moines, WA 98198

RECITALS

- A.** NETASSETS has developed various electronic information services software and applications, including "Conduits™", which is more fully described below.
- B.** ORGANIZATION desires to use Conduits™ under the terms and conditions set forth below.

AGREEMENT

This Agreement is made as of the date stated above, (the "Effective Date") and sets forth the terms and conditions under which the online web application known as Conduits™ will be used by ORGANIZATION, and made available for use by NETASSETS.

1. Definitions:

1.1 "Conduits™" shall mean the application used for publication of the ORGANIZATION's lien docket via the World Wide Web as created by NETASSETS, including web pages, graphics, data formats, and server components.

1.2 "Intellectual Property Rights" shall mean all proprietary information and all worldwide rights, title and interest of a person in, to and under any and all:

1.2.1 United States or foreign patents and pending patent applications therefore, including the right to file new and additional patent applications based thereon, including provisionals, divisionals, continuations, continuations-in-part, reissues and reexaminations;

1.2.2 copyrights; and

1.2.3 trade secrets, know-how, processes, methods, engineering data and technical information.

1.3 "Upgrade(s)" shall mean one or more upgrades, updates, enhancements, error corrections, new versions, new releases, bug fixes, patches and other modifications to software or documentation.

1.4 "Use" shall mean operate, perform and display Conduits™ using standard Internet web browsers.

1.5 "Transaction(s)" shall mean any search request initiated by an End-user for lien data related to an individual property for which a transaction fee will be assessed.

1.6 "End-user(s)" shall mean any individual, such as a title insurance company, that is given access to Conduits™ via an Administrator for which Transaction charges apply.

1.7 "Administrator(s)" shall mean parties or individuals who are members of, affiliated with, or otherwise associated with ORGANIZATION, and for which ORGANIZATION gives the right to administer the configuration of Conduits™ for use by ORGANIZATION.

1.8 "Documentation" shall mean all documents, tutorials, papers, or other materials intended for distribution with Conduits™ for use in administration and for use by End-users of Conduits™.

2. License Grant and Restrictions

2.1 Grant. Subject to the terms of this Agreement, NETASSETS hereby grants to ORGANIZATION, and ORGANIZATION hereby accepts, a non-transferable, non-exclusive license to use the Documentation (and all Upgrades thereto) and to operate and publicly display Conduits™ via the Internet for access by End-users.

2.2 Restriction. ORGANIZATION shall not have the right to rent, lease, sublicense or otherwise transfer its rights under this license.

3. Delivery and Payment

3.1 Delivery. NETASSETS shall provide the Conduits™ application via the World Wide Web and provide one (1) physical copy of administrative documentation and up to ten (10) physical copies of End-user Documentation. ORGANIZATION may request additional physical copies of administrative Documentation for each Administrator.

3.2 Payment/Search Fees. ORGANIZATION agrees to pay NETASSETS \$8 per lien search request by an End-user. NETASSETS will invoice ORGANIZATION monthly at its address noted on page 1 of this Agreement or at such other address as ORGANIZATION may designate by notice, and payment will be due within thirty (30) days of receipt of the invoice. Payments shall be made at NETASSETS' address noted on page 1 of this Agreement or at such other address as NETASSETS may designate by notice.

4. Use of Conduits™

4.1 Prohibited Actions. ORGANIZATION shall not modify Conduits™ or disassemble, decompile, reverse engineer or otherwise attempt to derive source code from Conduits™.

4.2 Entry of Lien Data. ORGANIZATION agrees to timely and accurately update the lien information data entered for access by the Conduits™ application system and to promptly report any problems encountered by ORGANIZATION or End-users in operation of the Conduits™ application.

4.3 Ownership Rights. Ownership of all Intellectual Property Rights in Conduits™ will at all times remain the property of NETASSETS. ORGANIZATION agrees not to remove or obliterate any copyright, trademark or proprietary rights notices of NETASSETS or NETASSETS's suppliers from Conduits™ or its Documentation. ORGANIZATION further agrees to reproduce all such notices found in the Conduits™ and its Documentation, and any Upgrades thereto.

5. Term of Agreement/Termination

5.1 Term. This agreement is effective from the date first stated above which is the date NETASSETS accepts it after execution by ORGANIZATION, and shall remain in effect until terminated.

5.2 Termination by ORGANIZATION. ORGANIZATION may terminate this Agreement:

5.2.1 At any time upon 45 days written notice to NETASSETS, or

5.2.2 Thirty (30) days after written notice to NETASSETS by ORGANIZATION that NETASSETS has breached any provision of this Agreement and has not cured such breach within the thirty (30) day period.

5.3 Termination by NETASSETS. NETASSETS may terminate this Agreement:

5.3.1 At any time upon 45 days written notice to ORGANIZATION;

5.3.2 Immediately upon written notice to ORGANIZATION in the event of any breach of Sections 4.1 and/or 4.3 hereof; or

5.3.3 Thirty (30) days after written notice to ORGANIZATION in the event that ORGANIZATION breaches any provision of this Agreement other than Sections 4.1 and/or 4.3 hereof and has not cured such breach within the thirty (30) day period.

5.4 Actions Upon Termination.

5.4.1 ORGANIZATION'S Actions. Upon termination ORGANIZATION shall immediately discontinue use of and return all complete or partial copies of Conduits™ and its Documentation, and shall delete Conduits™ or any portion thereof from its computer libraries.

5.4.2 Survival of Remedies/Effect of Termination for Breach. Remedies are cumulative, and termination of this Agreement shall not bar NETASSETS from pursuing any other remedy it may have available against ORGANIZATION for breach of the Agreement. ORGANIZATION shall hold NETASSETS harmless for any loss or other consequences of a termination of the license.

6. Warranty

6.1 Limited Warranty; Remedy. NETASSETS warrants that Conduits™, if properly installed and used, shall materially conform to the standards set forth in the Service Level Agreement accompanying documentation. ORGANIZATION shall promptly notify NETASSETS in writing upon the discovery of any non-conformance. NETASSETS shall correct any non-conformance of which it has been properly notified as specified in the Service Level Agreement.

6.2 Exclusions.

6.2.1 Damage/Misuse. Notwithstanding the warranty provisions above, NETASSETS shall have no warranty obligations with respect to any part or parts of Conduits™ which have been damaged in transit or by improper installation or operation, or by misuse, abuse or negligent use or repair or alteration or improper storage or which may have been damaged by use which does not conform to the specific or general instructions of NETASSETS or to the provisions of the Documentation, or if ORGANIZATION or any third party has modified or attempted to modify Conduits™ or if the damage has occurred due to causes external to Conduits™, whether or not through the fault of ORGANIZATION, or if ORGANIZATION has refused to implement changes recommended by NETASSETS.

6.2.2 Exclusion of Other Warranties. THE WARRANTY SET FORTH ABOVE SHALL BE EXCLUSIVE AND IN LIEU OF ALL OTHER LIABILITIES, OBLIGATIONS, CONDITIONS AND/OR WARRANTIES, EXPRESSED OR IMPLIED (INCLUDING BUT NOT LIMITED TO ANY IMPLIED AND/OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY IMPLIED AND/OR STATUTORY WARRANTIES ARISING FROM THE COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE), AND ORGANIZATION HEREBY WAIVES ALL OTHER RIGHTS, OBLIGATIONS AND/OR WARRANTIES AND ASSUMES ALL RISKS AND LIABILITIES IN RESPECT THEREOF. NETASSETS MAKES NO WARRANTY THAT THE OPERATION OF CONDUITS™ WILL BE ERROR

FREE OR WITHOUT INTERRUPTION. NETASSETS DOES NOT WARRANT THAT SOFTWARE SHALL OPERATE WITH ANY HARDWARE OR SOFTWARE OTHER THAN AS SPECIFIED IN THE DOCUMENTATION.

7. Limitation of Liability and Indemnification

7.1 **Exclusion of Consequential Damages.** IN NO EVENT SHALL NETASSETS BE LIABLE FOR ANY LOSSES OF OR DAMAGE TO REVENUES, PROFITS OR GOODWILL OR OTHER SPECIAL, INCIDENTAL, INDIRECT AND CONSEQUENTIAL DAMAGES OF ANY KIND, RESULTING FROM ITS PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THE TERMS OF THIS AGREEMENT OR ANY OF THE ATTACHMENTS HERETO, OR RESULTING FROM THE FURNISHING, PERFORMANCE, OR USE OR LOSS OF ANY SOFTWARE OR OTHER MATERIALS DELIVERED TO ORGANIZATION HEREUNDER, INCLUDING WITHOUT LIMITATION ANY INTERRUPTION OF BUSINESS, WHETHER RESULTING FROM BREACH OF CONTRACT OR BREACH OF WARRANTY OR OTHERWISE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 **Maximum Monetary Liability for Breach of Warranty.** Notwithstanding anything herein to the contrary, the maximum aggregate amount of money damages for which NETASSETS may be liable to ORGANIZATION under this Agreement, resulting from any cause whatsoever, shall be limited to the amounts actually paid by ORGANIZATION to NETASSETS under this Agreement.

7.3 **Third Party Providers.** ORGANIZATION ACKNOWLEDGES THAT IN CONNECTION WITH CONDUITS™, INFORMATION WILL BE TRANSMITTED OVER LOCAL EXCHANGE, INTEREXCHANGE AND INTERNET BACKBONE CARRIER LINES AND THROUGH ROUTERS, SWITCHES AND OTHER DEVICES OWNED, MAINTAINED AND SERVICED BY THIRD PARTY LOCAL EXCHANGE AND LONG DISTANCE CARRIERS, UTILITIES, INTERNET SERVICE PROVIDERS AND OTHERS, ALL OF WHICH ARE BEYOND THE CONTROL AND JURISDICTION OF NETASSETS AND ITS SUPPLIERS. ACCORDINGLY, NETASSETS ASSUMES NO LIABILITY FOR OR RELATING TO THE DELAY, FAILURE, INTERRUPTION OR CORRUPTION OF ANY DATA OR OTHER INFORMATION TRANSMITTED IN CONNECTION WITH USE OF CONDUITS™.

7.4 **Indemnification with Respect to End-users.** NETASSETS has no contractual relationship or other legal duty to End-user(s) and it assumes no liability with respect to the use of Conduits™ by End-user(s). Accordingly, ORGANIZATION agrees to defend, indemnify, and hold NETASSETS harmless for any losses, costs, claims, or other liabilities arising out of the use of Conduits™ by End-users.

8. Support and Maintenance

8.1 **General Support.** NETASSETS shall provide to ORGANIZATION the maintenance and support services as set forth in the Service Level Agreement.

8.2 Product Improvements.

8.2.1 NETASSETS may develop one or more Upgrades to Conduits™. Upgrades, when released by NETASSETS, will be provided to ORGANIZATION free of additional charge. If ORGANIZATION desires an Upgrade other than those produced at the discretion of NETASSETS, to meet its individual requirements, ORGANIZATION will notify NETASSETS in writing describing the proposed new feature or enhancement. NETASSETS will respond within ten (10) days of receipt of ORGANIZATION's request outlining the availability, if any, of the proposed feature or enhancement and the proposed terms under which the development of the proposed release could take place.

8.2.2 Development work undertaken at the request of the ORGANIZATION and any resulting Upgrades shall be subject to the terms and conditions of this Agreement. NETASSETS will use reasonable commercial efforts to provide the services as soon as practicable and no later than the completion dates set forth in mutually agreeable development project specifications.

9. Miscellaneous Provisions

9.1 No Assignment. Neither this Agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by ORGANIZATION, and any purported assignment or transfer shall be null and void.

9.2 Severability. If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this Agreement will not be affected. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY OR LIMITED WARRANTY IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH.

9.3 Entire Agreement/Modification. This Agreement and its attachments constitute the entire agreement between the parties concerning Conduits™ and supersede all prior agreements, whether written or verbal, between the parties. No purchase order, other ordering document or any other document which purports to modify or supplement this Agreement or any attachment hereto shall add to or vary the terms and conditions of this Agreement unless executed by both NETASSETS and ORGANIZATION. No amendment shall be considered to have been made to this Agreement unless it is in writing and is executed by both of the parties.

9.4 Governing Law, Venue, Jurisdiction. The parties agree that this Agreement shall be governed and construed by the laws of the State of Washington, USA. The parties hereby submit to the jurisdiction and venue of the Superior Court of the State of Washington for King County or, if appropriate, the federal courts of the Western District of Washington, USA.

9.5 Number, Gender, Captions. As used herein, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

9.6 Attorney Fees. In the event action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of appeal, as set by the appellate courts.

9.7 Notices. Any notice or other communication required or permitted to be given under this Agreement will be in writing, will be delivered personally or by mail or express delivery, postage prepaid, and will be deemed given upon actual delivery or, if mailed by registered or certified mail, on the third business day following deposit in the mails, addressed to the appropriate party at the address first set forth above. Either party may, by written notice, designate a different address for purposes of this Agreement.

Net Assets Corporation:

By: _____
Rick Gates, President

City of Des Moines

By: _____
Tony Piasccki
City Manager

Approved as to Form:

City Attorney



Conduits™ Service Level Agreement

DATE: 9/11/03

Net Assets Corporation's (NetAssets) Conduits™ application will be used by The City of Des Moines to provide lien docket information via the World Wide Web.

1. Conduits™ will be available 99.9% of the time from 6:00am to 10:00pm Monday thru Saturday. Any individual outage in excess of 20 minutes or 4 outages exceeding 5 minutes each will constitute a violation.
2. 80% of Conduits™ transactions will exhibit 10 seconds or less response time, defined as the interval from the time the server receives a transaction request to the time a response is generated and sent back. Missing the metric for business transactions measured over any business week will constitute a violation.
3. NetAssets will respond to service incidents that affect multiple users within 24 hours, resolve the problem within 48 hours, and update status every 12 hours. Missing any of these metrics on an incident will constitute a violation.
4. NetAssets will respond to service incidents that affect individual users within 24 hours, resolve the problem within 72 hours, and update status every 12 hours. Missing any of these metrics on an incident will constitute a violation.
5. NetAssets will respond to non-critical inquiries within 48 hours and deliver an answer within 72 hours. Missing any of these metrics on an incident will constitute a violation.

Net Assets Corporation

By: _____

Rick Gates, President

The City of Des Moines

By: _____

Tony Piasecki
City Manager

Approved as to Form:

City Attorney

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:

2004 Budget – Department Reviews
2004 Budget – Debt Service, Internal Service &
Reserve Funds

ATTACHMENTS:

Department Reviews Attachments 1- 42
Debt Service, Internal Service & Reserve Funds
Attachments A - M

FOR AGENDA OF: October 23, 2003

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: October 17, 2003

CLEARANCES:

☐ Finance

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to report to the City Council individual department operating budget information proposed for 2004. Department briefings scheduled include Legislative, Executive, Finance, Legal Services, Municipal Court, and Community Development.

Staff will provide an overview of the 2004 budgets for the Debt Service Funds, Computer Equipment Operations & Capital Funds, Self-Insurance Fund, Unemployment Fund, Revenue Stabilization Fund, and Facility Repair & Replacement Fund.

Background

The 2004 budget process focused on cost containment and staff was directed to maintain discretionary expenditures to 2003 levels. The base budgets provided were developed within these cost constraints. In addition, departments' have submitted their highest unmet budget needs for Council's review. The attachments detail each department's 2004 base budgets by expenditure category in comparison to the 2003 budget and 2003 estimated yearend. Explanations are provided for percentage changes in the 2004 budget from the 2003 budget.

Recommendation

No actions is required. This is intended to communicate the 2004 operating budget information.

passed 6-0

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Agreement for Professional Services -
Prosecuting Attorney Susan Mahoney

FOR AGENDA OF: October 23, 2003

DEPT. OF ORIGIN: Legal

ATTACHMENTS: 1. Proposed Contract;
2. Letter from Susan Mahoney
Dated August 20, 2003; and
3. Copies of Invoices for
Prosecution Services from
January through August,
2003.

DATE SUBMITTED: October 9, 2003

CLEARANCES:

[X] Legal *LAH*
[X] Police *BT*
[X] Court *SO*

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *A*

PURPOSE AND RECOMMENDATION

The purpose of this agenda item is to obtain Council approval of a new Agreement for Professional Services with our current Prosecuting Attorney, Susan L. Mahoney.

MOTION: "To approve the Agreement for Professional Services with Prosecutor Susan Mahoney and to direct the City Manager to execute said agreement, substantially in the form as attached."

BACKGROUND

Prosecutor Susan L. Mahoney entered into an agreement with the City in August, 2002, to provide professional legal support and clerical services, generally described as municipal court prosecution services for the Des Moines Municipal Court. This contract expired on August 7, 2003; and, in accordance with the terms of the agreement, the contract was extended through October 31, 2003 so that the parties could prepare a new contract to be presented to the City Council for approval.

DISCUSSION

Under the terms of her current contract, Ms. Mahoney has calculated her rate of pay, after expenses, at \$26.20 per hour (copies of January through August 2003 invoices are attached). The proposed

Agreement for Professional Services increases the rate of pay to \$5,800 per month from the previous \$5,300 per month. This amount would increase her hourly income to \$30.87. As a comparison, conflict public defense attorneys currently earn an hourly rate of \$40 to \$50, and the proposed amount of \$30.87 is below the going rate for contract defense attorneys.

The extension of Ms. Mahoney's agreement expires October 31, 2003. The new, proposed Agreement for Professional Services starts in November, 2003, at the current rate of \$5,300 per month for November and December; and the \$5,800 rate begins January 1, 2004 and lasts until the end of the term, December 31, 2004. The amount will be charged to the Police Department and the Legal Department.

Because Ms. Mahoney is now making a long-term commitment to the City, the contract also allocates a stipend of not more than \$600 for the calendar year 2004 to permit her to attend one multi-day Continuing Legal Education conference of the Washington State Association of Municipal Attorneys. These conferences include a specific continuing legal education program for city prosecutors, and they also provide a significant opportunity for networking with other city prosecutors to address issues that are of unique concern to municipal court prosecution.

In addition to the increase in compensation, because the Prosecutor works on behalf of the City but is not a regular City employee, it is recommended that the Indemnification/Hold Harmless section of the current Agreement be revised to specifically provide the Prosecutor with defense, indemnification, and legal representation for acts within the scope of her official duties, with the right to such protection determined as in DMMC 2.24 for regular City employees and officials. As a practical matter, this change involves little or no financial risk to the City, because prosecutors are, under state law, immune from suit based on their prosecutorial function.

CONSENSUS

The Municipal Court, Police Department, City Manager, and City Attorney have excellent professional working relationships with Prosecutor Susan Mahoney and are in consensus with approving the terms of the proposed agreement. Ms. Mahoney's ten years of previous experience as a King County prosecutor has been an asset in the prosecution of cases in Des Moines Municipal Court. She also provides our police officers with in-depth training and guidance on how to testify effectively in court hearings before our Municipal Court Judge.

CONCLUSION/RECOMMENDATION

It is recommended that the City Council direct the City Manager to execute the Agreement for Professional Services with Susan L. Mahoney, providing Prosecuting Attorney services and clerical support for cases in Des Moines Municipal Court.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2003, by and between the City of Des Moines, a municipal corporation of the State of Washington, herein referred to as "City" and Susan L. Mahoney, herein referred to as "Contractor".

In consideration of the covenants and conditions herein, the parties agree as follows:

(1) **Purpose.** The purpose of this Agreement is to retain Contractor to provide professional services described in the following Scope of Service.

(2) **Scope of Service.**

(a) Contractor agrees as follows:

1. Contractor shall provide professional legal and clerical support services generally described as municipal court prosecution services for the Des Moines Municipal Court. These services shall include the specific services identified in Exhibit A, attached hereto and incorporated by this reference.

Additional services shall be provided by Contractor as authorized and described in writing as provided in Section 4 of this Agreement.

2. Contractor shall submit a monthly report of actual hours worked and supply costs, as detailed in Exhibit A.

3. Contractor shall provide City with immediate notice of any change in Contractor's financial condition which could affect Contractor's ability to continue performance under this Agreement. In such event, City may terminate this Agreement as provided in Section 5.

(b) City agrees as follows:

1. City shall pay monthly for all work performed., City agrees to pay within twenty (20) days of receipt of the monthly report required by Section (2)(a)2. above. Should payment not be made when due and collection becomes necessary, the City agrees to pay any additional costs associated with such collection including, but not limited to, attorney fees, and 1.5% interest per month on any past due amount.

(3) **Compensation.** For services provided under this Agreement, Contractor shall be compensated as follows: a set monthly rate of \$5,300.00 for November and December 2003 services; with a set monthly rate of \$5,800.00 commencing January 2004 through the term of this Agreement. In addition, the City shall allocate a stipend of not more than \$600 to Contractor for the calendar year 2004 to permit Contractor to attend one multi-day Continuing Legal Education conference of

the Washington State Association of Municipal Attorneys, to reimburse Contractor for travel, lodging, and conference fees. This stipend shall not be paid if Contractor does not attend a multi-day Continuing Legal Education conference of the Washington State Association of Municipal Attorneys.

(4) **Term.** This Agreement shall expire on December 31, 2004, unless this Agreement is terminated prior to that date, as provided herein. This Agreement may be extended for up to two years upon written approval of the parties.

(5) **Termination.**

(a) **Without Cause.** This Agreement may be terminated by either party without cause by providing sixty (60) days written notification.

(b) **With Cause.** Either Contractor may terminate its relationship with City or City may terminate its relationship with Contractor with cause by providing seven (7) days written notification. Cause for termination shall include breach of any material term or condition of this Agreement.

(6) **Indemnification / Hold Harmless.** Contractor agrees to defend, indemnify, and hold harmless City, its officers, officials, agents, employees, and volunteers from any and all claims, injuries, damages, losses, suits, or actions, including attorney fees, arising out of or resulting from negligent acts, errors or omissions of the Contractor in performance of this Agreement. City agrees to defend, indemnify and hold harmless Contractor and her agents and employees from any and all claims, injuries, damages, losses, suits, or actions, including attorney fees, arising out of performance of official duties as municipal court prosecutor, on the basis of criteria and procedure set forth in Des Moines Municipal Code Chapter 2.24 for provision of legal representation for City employees and officials.

(7) **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 Contractor. Contractor shall obtain and maintain Professional Liability insurance appropriate to Contractor's profession. Professional Liability insurance shall be written with limits no less than \$500,000 per claim and \$1,000,000 policy aggregate limit. Contractor's insurance shall be primary insurance as respects the City. Contractor's insurance coverage shall not be cancelled except after thirty (30) days prior written notice to the City by certified mail, return receipt requested. Contractor shall furnish the City with written certificates evidencing compliance with insurance requirements within 30 days of commencement of work.

(8) **Notices.** If at any time after the execution of this Agreement it shall become necessary or convenient for one of the parties hereto to serve any notice, demand, or communication upon the other party, such notice, demand, or

communication shall be in writing and shall be served by depositing the same in the United States mail, registered or certified, return receipt requested, postage prepaid to:

- (a) City of Des Moines
Attn: City Attorney
21630 11th Avenue So., Suite C
Des Moines, WA 98198
- (b) Susan L. Mahoney
Attorney at Law
625 Commerce, Suite 230
Tacoma, WA 98402

or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Any notice so mailed shall be deemed to have been given two (2) days after the same is deposited in the United States mail.

(9) Governing Law. The existence, validity, construction, and enforcement of this Agreement shall be governed in all respects by the laws of the State of Washington.

(10) Mediation/Arbitration Clause. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under 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 settled through arbitration which shall be conducted under the American Arbitration Association's Commercial or Construction Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(11) Amendments/Authorization for Additional Services. This Agreement may be modified or amended and additional services or treatments may be authorized during the term of this Agreement upon the mutual written consent of the parties.

(12) Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competitive jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

(13) **Entire Agreement.** This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto and contains all of the covenants and agreements between them. Each party acknowledges that no representation, inducement, promise, or agreement, orally or otherwise, has been made by any party, or anyone acting on behalf of any party, which is not embodied herein.

(14) **Waiver.** The waiver by either party of any breach of any term, condition, or provision of the Agreement shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Agreement.

(15) **Captions.** The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

(16) **Time of Essence.** Time is of the essence for each and all of the terms, covenants, and conditions of this Agreement.

(17) **Concurrent Originals.** This Agreement may be signed in counterpart originals.

(18) **Ratification and Confirmation.** Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

APPROVED AS TO FORM

CITY OF DES MOINES

Linda A. Marousek
City Attorney

By _____
Anthony A. Piasecki
Its City Manager
As directed by the Des Moines City
Council in Open Public Meeting on
October 23, 2003.
Dated _____

Susan L. Mahoney

Dated: _____

THE LAW OFFICES OF
SUSAN L. MAHONEY

August 20, 2003

Linda Marousek
City Attorney, City of Des Moines
21630 – 11th Avenue South, Suite C
Des Moines, WA 98198

Re: Prosecution Contract

Dear Ms. Marousek,

It is hard to believe that a year has flown by so quickly. Per our contract, our Agreement for Professional Services entered into last year may be extended for two years upon written approval of the parties. I am hoping that we will be able to extend our agreement for that two-year period with some minor changes to the contract.

I enjoy my work for the City of Des Moines and believe that Des Moines has also benefited from my services. I am currently paid \$5300 per month. This amount is \$200 less per month than you paid your previous contract prosecutor and yet you receive significantly more services under our agreement. It is my desire to continue to provide the same high level of service to the City, but in order to do so I am requesting an increase in my monthly fee to \$5800 for the next year.

As you are aware, in addition to attorney time, I provide clerical staff to handle the high volume of administrative work involved. I also pay for supplies (files, copies, computer, printer, fax, postage, etc.), an additional phone line and toll free number to increase the accessibility for the public to the prosecutor's office, and subcontract to pay for extra attorney coverage which limits the amount of time the assistant city attorney needs to provide conflict coverage. I have also assumed an active role with the police department to provide additional training and consultation.

The City has also benefited financially from having a more experienced prosecutor who is always mindful of the limited financial resources available. I carefully screen filings and review all cases to insure that we are using our resources wisely to the maximum benefit of the community. I have worked hard to develop good working relationships with the court staff, police department, and defense attorneys. I am pleased

that all of these efforts have paid off in a system of high offender accountability and a safer community at a more reasonable cost.

I have attached copies of the invoices I have submitted over the past year (except for July 2003 which has been inadvertently deleted from my system). The invoices reflect the hours of attorney time and hours of paralegal time expended each month on this contract. I have also provided a cursory breakdown of certain contract-related expenses. What is not reflected on my monthly invoices are the overhead costs such as rent, malpractice insurance, office equipment maintenance and repair, bulk supplies, such as copier and printer paper, employee benefits, taxes, labor and industry payments, or other such business related expenses necessary for me to provide my contract services. In light of these expenses, I am paid an average hourly amount of \$26.02 for my services. I calculate this amount as follows:

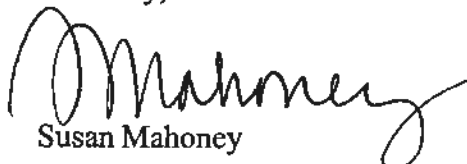
Monthly Contract Payment	\$5300
Less:	
Conservative Percentage Overhead Costs	\$1500
Clerical Support (avg 70 hrs per month @ \$16/hr)	<u>\$1120</u>
Subtotal	\$2680

\$2680 divided by 103 (avg attorney hrs per month) = \$26.02/hr

By way of comparison, I charge \$200/hr in my private practice, but due to my commitment to Des Moines, I am currently accepting half of the cases that I did prior to assuming this contract. Prior to this contract, I was also frequently available to pro tem judge in King County and earned approximately \$68/hr. Conflict public defenders earn approximately \$40 to \$50/hr. The raise I have requested per month would, if attributed solely to the attorney rate of pay, raise my hourly income to \$30.87. I am willing to continue at this proposed rate for a minimum of one year from January '04 to December '04 because I truly enjoy working with the City of Des Moines.

It is my sincere desire to continue my relationship with the City. Please let me know if additional documentation is needed to evaluate my request. I look forward to hearing from you soon.

Sincerely,


Susan Mahoney

THE LAW OFFICES OF
SUSAN L. MAHONEY

Request for Payment of Prosecution Services 1/1/03 through 1/31/03

Invoice Amount: \$5300

The following is a breakdown of time and expenses:

Attorney time:	In court Des Moines: 52 hours
	RALJ Argument: 4 hours
	Police Station Mtgs: 4 hours
	Calendar Prep/Briefs: 16 hours
	Citation Review: 12.5 hours
	Misc. Admin. 4.5 hours

TOTAL: 93 HOURS

Paralegal time: 76 hours

Supplies:	
Postage	\$18.07
Copies	\$47.85
Supplies	\$34.00
Phone	\$36.80
Fax:	<u>\$20.50</u>
TOTAL:	\$157.22

Tax ID # 91-2130419

THE LAW OFFICES OF
SUSAN L. MAHONEY

Request for Payment of Prosecution Services 2/1/03 through 2/27/03

Invoice Amount: \$5300

The following is a breakdown of time and expenses:

Attorney time:	In court Des Moines:	56 hours
	Police Station Mtgs:	3.5 hours
	Police FST Cert Class:	4 hours
	Citation Review:	9 hours
	Misc. Admin.	4 hours
	Calendar/Case Prep	16 hours
	Police Memo/Research	3 hours
TOTAL:		95.5 hours

Paralegal time: **75 hours**

Supplies:	
Postage	\$14.15
Copies	\$41.97
Supplies	\$62.43
Phone	\$31.21
Fax:	<u>\$22.50</u>
TOTAL:	\$172.26

Tax ID # 91-2130419

THE LAW OFFICES OF
SUSAN L. MAHONEY

Request for Payment of Prosecution Services 3/1/03 through 3/31/03

Invoice Amount: \$5300

The following is a breakdown of time and expenses:

Attorney time:

In court Des Moines:	68 hours (incl. 2 day special set Jury)
Police Station Mtgs:	4 hours
Citation Review:	9 hours
Misc. Admin.	2.5 hours
Calendar/Case Prep	22 hours (incl. Dyson prep)
Witness Interviews (Dyson)	<u>5 hours</u>

TOTAL: 110.5 hours

Paralegal time: 75 hours

Supplies:

Postage	\$ 7.40
Copies	\$50.86
Supplies	\$72.00
Phone	\$46.64
Fax:	<u>\$22.50</u>
TOTAL:	\$199.40

Tax ID # 91-2130419

**THE LAW OFFICES OF
SUSAN L. MAHONEY**

Request for Payment of Prosecution Services 4/1/03 through 4/30/03

Invoice Amount: \$5300

The following is a breakdown of time and expenses:

Attorney time:

In court Des Moines:	60 hours
Police Station Mtgs:	3 hours
Citation Review:	8 hours
Misc. Admin.	2.5 hours
Calendar/Case Prep	20 hours
TOTAL:	93.5 hours

Paralegal time: 75 hours

Supplies:

Postage	\$ 7.40
Copies	\$53.94
Supplies	\$144.74
Phone	\$33.64
Fax:	<u>\$22.50</u>
TOTAL:	\$262.22

Tax ID # 91-2130419

**THE LAW OFFICES OF
SUSAN L. MAHONEY**

Request for Payment of Prosecution Services 5/1/03 through 5/31/03

Invoice Amount: \$5300

The following is a breakdown of time and expenses:

Attorney time:

In court Des Moines:	60 hours
Police Station Mtgs:	1.5 hours
Citation Review:	11 hours
Misc. Admin.	3 hours
Calendar/Case Prep	<u>14 hours</u>
TOTAL:	89.5 hours

Paralegal time: 69 hours

Supplies:

Postage	\$ 7.40
Copies	\$57.22
Supplies	\$70.68
Phone	\$46.29
Fax:	<u>\$22.50</u>
TOTAL:	\$204.09

Tax ID # 91-2130419

THE LAW OFFICES OF
SUSAN L. MAHONEY

Request for Payment of Prosecution Services 6/1/03-through 6/30/03

Invoice Amount: \$5300

The following is a breakdown of time and expenses:

Attorney time:

In court Des Moines:	48 hours
Citation Review:	12 hours
Misc. Admin.	3 hours
Calendar/Case Prep	<u>16 hours</u>
TOTAL:	79 hours

Paralegal time: 72 hours

Supplies:

Postage	\$10.44
Copies	\$35.25
Phone	\$19.48
Fax:	<u>\$20.50</u>
TOTAL:	\$85.67

Tax ID # 91-2130419

MUST BE IN BY AUGUST 5TH

Request for Payment of Prosecution Services 7/1/03 through 7/31/03

Invoice Amount: \$5300

The following is a breakdown of time and expenses:

Attorney Time:

In court Des Moines:	60 hours
Citation Review:	15 hours
Misc. Admin.:	8 hours
Calendar/Case Prep:	15 hours
TOTAL:	108 hours

Paralegal Time: ~~67~~ **67 hours**

Supplies:

Copy machine	\$48.76
Postage	\$ 9.84
Phones	\$27.48
Fax	<u>\$20.50</u>
Total	\$106.58

Tax ID #91-2130419

THE LAW OFFICES OF
SUSAN L. MAHONEY

Request for Payment of Prosecution Services 8/1/03 through 8/31/03

Invoice Amount: \$5300

The following is a breakdown of time and expenses:

Attorney time:

In court Des Moines:	48 hours
Citation Review:	18 hours
Misc. Admin.	8.5 hours
Calendar/Case Prep	<u>2. hours</u>

TOTAL: 94 hours

Paralegal time: 7.5 hours

Supplies:

Postage	\$ 7.40
Copies	\$41.09
Phone	\$64.87
Fax:	\$20.50
Supplies	<u>\$154.03</u>
TOTAL:	\$287.89

Tax ID # 91-2130419

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:
Traffic Unit Revenue

ATTACHMENTS:

FOR AGENDA OF: October 23, 2003

DEPT. OF ORIGIN: Municipal Court

DATE SUBMITTED: October 21, 2003

CLEARANCES:

☒ Legal

☒ Municipal Court

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

PURPOSE AND RECOMMENDED ACTION

The purpose of this agenda item is to report the revenue collected from the citation issued by the Des Moines Traffic Unit.

BACKGROUND

In 2001, the Police Department presented before the City Council a request to put together a Traffic Unit. By putting together the traffic unit, this would help reduce the complaints the police department was receiving about speeding motorists driving through neighborhoods.

DISCUSSION

In July of this year, Council requested the expenditures and revenue reports for the Traffic Unit. The expenditures for the Traffic Unit were provided by the Finance Department, a budget was specially created for the Traffic Unit so that we could monitor all costs. Some of those costs included two traffic officers, two court clerks, a records clerk, prosecutions and public defender costs. The revenue information is from 2002, due to the fact DISCIS is not setup to generate revenue reports for specific officers, the Court manually imported the information from DISCIS into excel, we also had the citations issued from the Traffic Unit imported into excel from Spillman. The data was then merged together and then we filtered out the non-traffic unit revenue, which then gave us the amount of revenue that has been collected from the citations issued by the traffic unit.

FINANCIAL IMPACT

The costs for the traffic unit in 2002 was \$423,069. The revenues collected from the traffic unit citations for 2002 was \$432,000. The overall revenue for the traffic unit and patrol for 2002 was \$481,216.

RECOMMENDATION (OR CONCLUSION)

PRELIMINARY
SPECIAL MEETING DES MOINES CITY COUNCIL

MINUTES

October 2, 2003

The special meeting was called to order at 7:12 p.m. by Mayor Steenrod in the City Hall Conference Room, 21630 11th Avenue South, Suite A.

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Dan Sherman, Scott Thomasson and Susan White. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, and City Attorney Linda Marousek (via telephone).

Mayor Steenrod announced that the Council would hold an Executive Session for approximately fifteen minutes to discuss with legal counsel representing the City litigation or potential litigation to which the City was or was likely to become a party and about which public knowledge regarding the discussion was likely to result in an adverse legal or financial consequence to the City.

At 7:29 p.m., Assistant City Manager Loch announced that the Council would remain in executive session for an additional ten minutes.

No formal action was taken.

ADJOURNMENT

The special meeting adjourned at 7:38 p.m.

Respectfully submitted,

Linda A. Marousek
City Attorney

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

October 2, 2003

At 7:29 p.m., Assistant City Manager Loch announced that Council would remain in Executive Session for an additional ten minutes.

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

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

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Dan Sherman, Scott Thomasson and Susan White. Absent: Councilmember Sheckler. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, Finance Director Paula Henderson, Finance Manager Peggy Watson, and Deputy City Clerk Angela Chaufy.

Mayor Steenrod announced that Councilmember Sheckler would arrive later in the meeting.

[Editor's Note: Councilmember Sheckler never arrived at the meeting. He was excused from attendance later in the meeting.]

DISCUSSION ITEMS:

EDC Economic Development Forecast for Fall 2003

Mayor Steenrod introduced Richard Chapman, Vice President of Corporate Advisory Services for the Economic Development Council of Seattle and King County (EDC).

Mr. Chapman informed Council that the purpose of the EDC was to retain and recruit high-wage and family-wage jobs in the Seattle/King County region. The EDC provided business development information and business assistance with permitting, siting, finance referral and workforce issues. Mr. Chapman noted that Seattle was currently ranked No. 89 out of 149 cities on Forbes Best City Ranking List. He displayed a graph documenting the number of company inquiries received by the EDC and the employment growth figures for the area for the period of 1994 through 2002. Mr. Chapman noted that inquiries had peaked in 1996 while the local economy, as measured by employment growth, had peaked in 1997. The EDC was currently receiving approximately one sixth of the inquiries they received in 1996. Mr. Chapman predicted a 1.5 – 2% employment growth for the region in 2004. He said that Puget Sound was currently rated the fifth best area to expand or relocate a business. Ranking criteria included access to and affordability of health care, quality of life, education, transportation and availability of technically trained workers. Mr. Chapman explained that Washington State's tax structure discouraged business development here. Other states often offered incentives to businesses, had less stringent permitting processes, and did not have a budget deficit. Mr. Chapman briefly highlighted prospective companies such as International Speedway Corporation, Brain Fingerprinting Labs, Emit Technologies, and Amer Sports who were researching the area. He felt that philanthropist efforts in Washington had helped the local economy. Mr. Chapman said that the EDC was currently addressing the business climate through the following efforts:

Targeted marketing and recruitment programs

- Geographically target companies within a specific industry.
- Provide seed funds to help grow local companies.
- Host the King County Economic Development Forum in which “best practice” ideas may be shared.

Branding and marketing campaign

- Emphasize positive attributes of region.
- Place region on site selection consultant lists for expanding and/or relocating companies.
- Promote positive features of region through industry brochures and a website.

7E7-Dreamliner recruitment program

Assessment of the development environment report

Mr. Chapman informed Council that cities often joined together to promote their message. He said that the EDC would welcome information regarding Des Moines’ message and priorities in order to identify good business matches for the City.

Mayor Steenrod said that a meeting would be arranged with the Community Development Director to identify the city’s message and priorities.

In response to Mayor Steenrod’s questioning, Mr. Chapman stated that in order for a city to improve its economic condition, it must balance a healthy economy with the needs of its residents. He listed one-stop permitting processes and small tract housing lots as examples. Mr. Chapman also encouraged the city to work with other organizations to promote healthy communities. He distributed a list of priority recommendations to Council.

At 8:34 p.m., Mayor Steenrod declared a five-minute recess.

Motion to Excuse Councilmember Sheckler From Attendance

MOTION was made by Councilmember White and seconded by Councilmember Sherman to excuse Councilmember Sheckler from attendance. **VOTE ON MOTION:** Motion passed, 5-0. Mayor Pro Tem Benjamin was not present to participate in the vote.

Mayor Pro Tem Benjamin returned to the Council Chambers.

Year-to-Date Financial Report and Revenue Forecasts through 2005

Finance Director Henderson provided Council with a financial update of the City’s operating funds through August 2003 and the 2003 year end revenue and expenditure estimates. While displaying various charts, she explained the following year end estimate variances:

General and Street Fund Revenues

- Licenses/Permits (64.1% of budget) and Charges of Services (168.7% of budget) – Accounting services for engineering, plan review and plan check fees had been moved from the Licenses/Permits line item to the Charges for Service line item.

- Fines/Forfeits (82.6% of budget) – The number of citations issued had declined and the share of the City's traffic school profits had been reduced.
- Interest (21.3% of budget) – Interest rates had decreased. The current investment rate was 1.06%.
- Interfund (133.6% of budget) and Operating Transfer (10.8% of budget) – The general fund received reimbursement funds for engineering and accounting services from the CIP Fund. The reimbursement funds had been moved from the Operating Transfer Fund to the Interfund line item.

General and Street Fund Expenditures

- Other Services (105.1% of budget) - Included ACC and RCAA funding
- Capital Outlay (104.8% of budget) – Included the purchase of police laptop computer and a bumper crane and the completion of a sidewalk project. The replacement reserve money for the telephone system had been moved to a reserve fund.
- Operating Transfer (101.8% of budget) – Included the MCI Fund transfer for the Activity Center divider wall.

Departmental Expenditures

- Legislative (206.8% of budget) – Included Airport Defense.
- Judicial (85.9% of budget) – Jail services had been transferred from King County to other less costly locations.
- Legal (100.8% of budget) – Professional services costs increased due to lawsuits.
- Operating Transfer (101.8% of budget) – Included \$8,000 transfer to MCI Fund.

Finance Director Henderson anticipated the 2003 revenues to total \$14,010,060, 99% of the budgeted amount, and the 2003 expenditures to be \$13,213,472, 98.2% of the budgeted amount. While displaying a chart comparing the one-time revenues/expenditures to recurring revenues/expenditures, Finance Director Henderson noted that building activity was currently sustaining the city. She then reviewed the following information:

Marina Revenue Fund

- Anticipated Year-end Revenues: \$3,351,680 (99.5% of budget)
- Anticipated Year-end Expenditures: \$2,891,663 (98.7% of budget)
- Ending Fund Balance: \$481,594 (98% of budget)
The Marina will not transfer \$30,000 to their capital fund as there is not sufficient money to do so.

Surface Water Management Operations Fund

- Anticipated Year-end Revenues: \$1,244,210 (101.6% of budget)
- Anticipated Year-end Expenses: \$1,170,738 (95.6% of budget)
The City would not conduct a \$30,000 culvert study this year.
- Ending Fund Balance: \$183,985 (184.4% of budget)
The City will transfer less than 40% of the SWM operating revenues to the Capital Improvement Plan Fund.

Finance Director Henderson then provided Council with the following 2004 – 2005 Revenue Forecast information:

Property Tax

- 2004 Levy Rate - \$1.272/\$1,000 AV
- 2005 Levy Rate - \$1.247/\$1,000 AV

Sales Tax

- 2004 Recurring - \$1,426,000
- 2005 Recurring - \$1,440,000
- 2004 One-Time - \$944,500 (influenced by new construction activity)
- 2005 One-Time - \$600,000 (influenced by new construction activity)
- 2004 Local Criminal Justice - \$560,000
- 2005 Local Criminal Justice - \$560,000

Finance Director Henderson noted that a "Streamline Sales Tax Sourcing Study" was currently being conducted for the State's legislators. Adoption of this legislation would benefit the City as retailers would pay sales tax to the city in which the purchaser resides for delivered items.

Regarding franchise fees, Finance Director Henderson informed Council that television cable franchise fees were expected to increase 5.5% while solid waste contractor rates were expected to increase 1%. Approximately 1% of cable subscribers were migrating to satellite dish providers. While reviewing utility taxes, Finance Director Henderson noted that natural gas would experience a 13% rate increase October 1, 2003 while electricity rates would remain relatively stable. She informed Council that the House of Representatives had recently passed a bill (HR-49) which permanently banned the taxation of internet services and possibly telecommunication and cable taxes and franchise fees.

City Manager Piasecki said that staff hoped to draft a letter for the Mayor's signature encouraging Senators Murray and Cantwell to recognize the impact this bill would have on jurisdictions throughout the country and to insert language into the bill clarifying that it was not intended to remove cities and states' current taxation abilities.

Mayor Steenrod suggested that the issue be discussed in more detail at a future meeting.

Finance Director Henderson informed Council that leasehold taxes were subject to the rental of public property. The projected increase for 2004 and 2005 reflected the Marina rate increase. Gambling taxes were expected to increase due to the growth of new card room businesses within the City.

Upon Mayor Steenrod's questioning, City Manager Piasecki confirmed that the Community Development Director had been informed of the new card room's concerns regarding signage.

Finance Director Henderson informed Council that the 2004 and 2005 forecast for business license fees included a new fee to register external businesses providing services within the City. She estimated the following one-time new construction revenues:

Building Permit Charges for Services

- 2004 - \$1,282,000
- 2005 - \$1,220,000

Engineer Plan Review Services

- 2004 - \$490,465
- 2005 - \$350,000

Plan Check Fees

- 2004 - \$170,860
- 2005 - \$570,000

Finance Director Henderson anticipated the 2004 Intergovernmental Revenues to total \$1,026,896 and the 2005 Intergovernmental Revenues to equal \$995,460. The reduction of the estimated revenue was caused by the loss of local government assistance through Initiative 695. Finance Director Henderson reviewed the following forecasts:

Engineering Services - Includes right-of-way permits & plan review

- 2004 - \$600,465
- 2005 - \$460,000

Planning/Development Services – Includes zoning & plan check fees

- 2004 - \$340,860
- 2005 - \$740,000

Recreation/Senior Services Program Fees

- 2004 - \$538,000
- 2005 - \$538,000

Public Safety Fees – Includes adult probation services & detention fees

- 2004 - \$70,000
- 2005 - \$70,000

Miscellaneous Fees – Includes passports and fingerprinting fees

- 2004 - \$84,000
- 2005 - \$84,000

Finance Director Henderson explained that interfund revenues were the result of indirect costs to proprietary funds for general governmental services such as administration and finance. She projected the following interfund revenue amounts:

Marina

- 2004 - \$490,000
- 2005 - \$490,000

Surface Water Management

- 2004 – \$86,000
- 2005 - \$86,000 (*Editor's Note: Actual amount should have been \$115,000*).

Engineering and Accounting

- 2004 - \$253,600
- 2005 - \$258,000

Equipment Rental Operations

- 2004 - \$25,000
- 2005 - \$25,000

Computer Operations

- 2004 - \$10,000
- 2005 - \$10,000

Self Insurance

- 2004 - \$12,100
- 2005 - \$12,100

City Manager Piasecki identified the reduction in the Marina interfund transfer amount as a policy issue for Council. The Marina could potentially use cash rather than bonds to pay for improvements. He also suggested that Council discuss the Surface Water Management incremental increase during the budget process.

In response to Councilmember Thomasson's questioning, City Manager Piasecki confirmed that staff was currently reviewing the fee for traffic school.

In regard to interest earnings, Finance Director Henderson recommended that Council adopt an active investment strategy. Further details of this proposal would be provided to Council later during the budget process. Finance Director Henderson estimated both the 2004 and 2005 miscellaneous revenues to total \$123,830.

Upon questioning from Mayor Pro Tem Benjamin, Finance Director Henderson confirmed that the Surface Water Management revenue estimates included the Highline Community College improvement project impacts.

Mayor Pro Tem Benjamin indicated that he had more questions regarding the presentation.

Due to the time, Mayor Stenrod asked Mayor Pro Tem Benjamin to ask his questions during the Finance and Economic Development Committee meeting on Monday, October 6, 2003.

At 9:40 p.m., Mayor Stenrod declared a five-minute recess.

Cell Tower Health Effects

Assistant City Manager Loch introduced the subject. He noted that the information provided in the agenda packet was also available on the City's website. Assistant City Manager Loch introduced Health Physicist Andrew H. Thatcher and Des Moines resident Marc Gottshall.

Upon questioning from Councilmember Sherman, Mr. Thatcher reviewed his credentials and said that he served as a consultant for both private and public industry. As background information, Mr. Thatcher explained the electromagnetic spectrum. Cell towers were identified as being in the same approximate range on the scale as microwave ovens, televisions, cellular communication equipment, FM radio, UHF and VHF signals. He stated that, generally speaking, a cell tower's exposure level was much less than 1 microwatt/cm². The FCC had identified the public limit as 100 microwatts/cm². Mr. Thatcher said that television and AM radio signals usually mask cell tower signals. He reviewed several animal, cellular, and epidemiological

studies which sought to reveal whether Radio Frequency (RF) exposure through cell towers caused any health risks, specifically DNA breakage. Mr. Thatcher said there were no accurate studies that indicated DNA breakage due to RF exposure. He believed that the studies performed by Ray Petroly and Henry Lai were flawed. Mr. Thatcher said that Mr. Petroly, in his study, had compensated for a limited RF wave by lining the animals' cages with aluminum. The aluminum caused wave variations which prevented any estimation of the level of exposure. A follow-up study performed by T.D. Utteridge refuted Mr. Petroly's results. Mr. Thatcher said that Dr. Lai's study contained methodology problems due to the preparation process and a delay in testing the cells. Dr. Lai's study had been replicated five to seven times with the results indicating no DNA breakage due to RF exposure. Mr. Thatcher said that he would forward the results of a study performed in Norway to Council. He recommended that Council focus on the government studies performed by Canada, United Kingdom, Netherlands, and Sweden. Mr. Thatcher said that cell phones created a greater exposure risk than RF signals emitted from cell tower antennas. He stated that the scientific community agreed that RF exposures could not cause cancer nor did they have a promotional effect (cause health conditions in concert with other factors). In closing, Mr. Thatcher stated the following points:

- There was a lack of plausible biological mechanism for health effects.
- There was a lack of dose/response relationship.
- Exposure from towers to the public was too small to result in any effect. No study had identified any non-thermal effects at the RF level nor was there any reason to believe that effects of any type would be observed at that level.
- No one person's opinion should sway opinion.
- Weight should be given to the government studies.

At 10:25 p.m., **MOTION** was made by Councilmember Sherman, seconded by Mayor Pro Tem Benjamin, and passed unanimously to extend the meeting fifteen minutes.

In response to Councilmember Sherman's questioning, Mr. Thatcher confirmed that there were occupational and residential standards for cell towers. The amount of power emitted from the tower was related to the number of channels utilized. Mr. Thatcher was unsure whether the number of channels used could be controlled. He illustrated the approximate route of antenna signal waves and explained that the height of the tower determined the peak density level distance. Mr. Thatcher reported that the average home had a power density factor of 5 to 20. He informed Council that two studies designed to measure the effects of continuous exposure indicated no change in the results. Mr. Thatcher said that since RF signals were absorbed within one inch of the skin, organs were not affected by the waves. Upon questioning from Mayor Pro Tem Benjamin, Mr. Thatcher said that he had a Masters in Health Physics, was certified as a Health Physicist, and had been nominated to serve as Health Physicist for the United States. He said that the City was paying one half of his salary for his testimony at the meeting while Cingular was paying the other half. He stated that he had no other financial interest with Cingular. In response to Councilmember Petersen's questioning, Mr. Thatcher explained that cell towers emit a signal at a 135-degree angle but that the signal was lost due to background interference.

At 10:40 p.m., **MOTION** was made by Councilmember Thomasson, seconded by Councilmember Sherman, and passed unanimously to extend the meeting to 11:00 p.m.

Assistant City Manager Loch informed Council that Dr. Lai had been invited to address Council. As he could not attend, Des Moines resident Marc Gottshall had asked to present information that suggests cell towers do create adverse impacts.

Mr. Gottshall informed Council that FEMA had reported that emergency responders using the 800 MHz signal could experience interference from cell towers. Chief of Fire District No. 26 had indicated that he was aware of this happening in Seattle when operating Nextel communication equipment which operates in the 800 MHz range. Mr. Gottshall encouraged Council to read the studies performed in France and Spain. He said that results of a Dutch study regarding third generation transmitters had indicated health risks. The study was performed on people residing up to 300 meters from the antennas. Mr. Gottshall reported that studies in Latvia and China indicated neuromuscular and short-term memory problems in people as a result of cell tower exposures. He noted that the Cingular tower was to be sited near an elementary school. Mr. Gottshall stated that one study indicated nerve damage at Global Systems for Mobile Communications (GSM) range. He stated his belief that the proposed tower was a GSM tower. Mr. Gottshall encouraged Council to consider the information provided in his appeal of the SEPA threshold determination. He said that epidemiological studies conducted by five different countries had indicated the same result. In response to Councilmember Sherman's questioning, Mr. Gottshall said that he was only aware of studies performed on people residing within 900 feet of a tower. He questioned if the United States had conducted or was conducting any cell tower exposure studies.

Councilmember Thomasson noted that Mr. Thatcher had focused on cancer causing effects while Mr. Gottshall had presented behavioral and physiological effects.

Mr. Thatcher said that physiological effects from cell towers were uncertain. Some people had reported dizziness or nausea due to cell phone use. Mr. Thatcher stated that the dizziness or nausea could be a result of heat generated by cell phone usage. He said that an equal number of studies indicated a memory loss and response effect as did not. Mr. Thatcher stated that studies do not always take into account other exposures. He identified one study as flawed as it had selectively picked its participants and identified the desired outcome.

Mayor Steenrod asked the City Manager to check if Council had received the appeal information Mr. Gottshall had mentioned.

NEXT MEETING DATE – Regular Meeting, October 9, 2003

ADJOURNMENT

At 10:58 p.m., **MOTION** was made by Councilmember White, seconded by Councilmember Petersen, and passed unanimously to adjourn the meeting.

Respectfully Submitted,

Angela M. Chaufy
Deputy City Clerk

ACTION ITEMS FROM OCTOBER 2, 2003 MEETING

- Arrange a meeting of the Community Development Director and the EDC to identify the city's message and priorities.
- Provide Council with further information regarding HR-49 which could potentially affect the city's current taxation abilities.

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

October 9, 2003

The regular meeting of the Des Moines City Council was called to order at 7:40 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 Councilmember White.

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. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Domestic Violence Court Advocate Kristen Gabel, Harbormaster Joe Dusenbury, Public Works Director Tim Heydon, Community Development Director Judith Kilgore, Park and Recreation Director Patrice Thorell, Development Services Manager Robert Ruth, and Deputy City Clerk Angela Chaufy.

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

COMMENTS FROM THE PUBLIC

Bob Pond, 23116 30th Avenue South

Mr. Pond informed Council that semi-trucks have been parking on 30th Avenue South. He asked that a sign prohibiting their parking be placed at the north end of the street. Mr. Pond noted that the Midway Furniture sign was in need of repair. He asked for an early morning police sweep to remove individuals who were sleeping behind the store. Mr. Pond told Council that motorized scooters were accidents waiting to happen as they were often operated at night without any lights. He believed that the people of Kings Arm Motel should be held responsible for their actions. Mr. Pond said that he would like to see a record of the number of police calls related to the motel.

Nadine Hansen, 22033 10th Avenue South

Ms. Hansen requested a reconsideration of the City's lease with Cingular. She asked Council to conduct environmental impact and health studies. Ms. Hansen noted that a school, a park, and houses were located in the vicinity of the approved cell tower site.

Marc Gottshall, 22003 10th Avenue South

Mr. Gottshall asked Council to reconsider the lease option with Cingular. He distributed correspondence regarding biological studies of microwave radiation at low intensities. Mr. Gottshall said that, even if only ten of the studies were correct while the rest were in error, a serious issue was still to be considered. He informed Council that several of the appellants were out of town and unable to appear before Council.

Karen Bortner, 22021 10th Avenue South

Ms. Bortner informed Council that she had purchased her home in May 2003. If she had known about the pending cell tower, she would not have bought the house. She informed Council that her 13-year-old daughter had been diagnosed and treated for leukemia eight years ago. While

her daughter was doing well now, she still had an increased risk of heart disease and suffered from a calcium deficiency. Ms. Bortner reported that studies have indicated a connection between cell towers and heart problems, calcium concerns, short-term memory loss, and sleeplessness. She asked Council to find a better location for the cell tower.

Denny Burnham, 26826 15th Avenue South

Mr. Burnham asked to defer his comments.

John Burdine, 1413 South 237th Court

Mr. Burdine requested that Council reconsider the cell tower issue due to the unintended consequences associated with the towers. He asked Council to find a location for the tower that was not so close to children and sports fields.

Joe Hendricson, 22017 10th Avenue South

Mr. Hendricson asked Council to reconsider the Cingular lease. He questioned why the City was interested in having a lease for a cell tower as there appeared to be several associated health concerns. He likened it to hormone replacement for women. Mr. Hendricson reported that he had heard that the City had initiated the request for the cell tower. He believed that the long-term effects of cell towers could not be determined without long-term studies. He questioned why the City should be subjected to the possibility of health risks or the worry associated with their unknown health risks.

Catherine Carbone Rogers, 22516 10th Avenue South

Ms. Carbone Rogers urged Council to reconsider the Cingular lease. She voiced concern about the effects of microwave radiation potentially caused by cell towers. The microwave radiation effects were yet unknown as the technology was too new. Ms. Carbone Rogers said that it was a proven fact that children's brains and bodies were more vulnerable to health effects. If the City must have a cell tower, she asked that it be located at a site that would not expose children to the risks. In response to Councilmember Sherman's questioning, Ms. Carbone Rogers informed Council that she had received several questions of concern from Des Moines Elementary School parents although no parents had indicated that they would remove their children from school should the tower be constructed.

Mayor Pro Tem Benjamin said that parents had questioned him concerning the status of the cell tower.

Alex White, 22030 7th Avenue South

Mr. White distributed an article listing Des Moines as one of Washington's fastest shrinking cities. He asked Council to encourage business through the City's permitting process, identification of associated costs, and clarification of procedures and regulations. Mr. White said that business owners should receive consistent treatment and not be subjected to political decisions.

Brenda Siegrist, 20731 7th Place South

Ms. Siegrist thanked the Public Works Department for their fair treatment and thorough efforts concerning the removal of illegally placed political signs. She said that, three weeks ago, her political signs began to disappear within a few hours of placement. She read RCW 29.85.275 regarding the unauthorized removal or defacement of signs. Ms. Siegrist said that she had filed a police report regarding her missing signs and she planned to proceed with prosecution.

Denny Burnham, 26826 15th Avenue South

Mr. Burnham informed Council that was working with Ms. Sicgrist to place political signs. He said that he was confident Councilmember Thomasson was not responsible for the removal of the signs but that over-zealous people were removing them. Mr. Burnham asked the incumbents to tell their supporters to stop removing the challengers' signs. Mr. Burnham questioned why, during a Public Works' sweep of the City, political signs had been removed from his and Mr. Bogovich's yards.

BOARD AND COMMITTEE REPORTS

Political Sign Removal

Councilmember Sheckler noted that the issue of the illegal removal of political signs came up every campaign season. If anyone was doing such a thing, he should stop.

Port of Seattle Meeting

Councilmember Sheckler reported that he had attended a meeting with the Port of Seattle. The purpose of the meeting was to discuss subjects of concern to the airport's surrounding cities and the Highline School District, excluding the Third Runway issue. Councilmember Sheckler identified the following concerns of Des Moines:

- To discontinue referring to the buyout area on South 216th Street as a burrow pit. The Port has agreed to identify the area as the buyout area.
- To maintain and enhance the Des Moines Marina area as an attraction.
- To provide economic vitality and avoid any drop in property values.

Councilmember Sheckler said that he was encouraged by the good dialog at the meeting. He reported that the City would provide the Port of Seattle with its vision and the specific details pertaining to the achievement of that vision.

Economic Development

Councilmember White announced that she would miss the remaining October 2003 meetings due to her daughter's surgery in California. She emphasized her interest in economic development and said that she would e-mail correspondence to the Council regarding that subject.

ADMINISTRATION REPORTS

Comments from the Public – Bob Pond

City Manager Piasecki said that he would follow-up on Mr. Pond's comments immediately.

Comments from the Public – Alex White

City Manager Piasecki noted that the figures used in the study identifying Des Moines as one of the state's fastest shrinking cities was based on Office of Financial Management (OFM) information. The OFM calculates population projections based upon a number of factors including a snap-shot of the number of apartment vacancies at any certain time. He noted that each time a physical census has been performed, Des Moines' population has increased.

Comments from the Public – Hendriksen

City Manager Piasecki announced that Cingular had approached the City about the cell tower. Per the terms of the agreement, Cingular would pay \$1,200 per month to the City. The agreement also contained an annual escalator clause based on inflation. After five years, the lease amount would be reevaluated against the current market.

Comments from the Public – Denny Burnham

City Manager Piasecki asked Mr. Burnham and Mr. Bogovich to provide their addresses to him so that he could research the reason for the removal of political signs from their yards.

Status of Chief of Police Position

City Manager Piasecki informed Council that an initial offer had been proposed to one of the two finalists for the Chief of Police position. He hoped to soon announce the name of the new Chief of Police.

Air Monitoring System Grant

City Manager Piasecki noted that he had distributed a draft letter addressed to Mary Berg, Program Manager of the Air Program for the Department of Ecology to Council. The purpose of the letter was to encourage the Department of Ecology to submit a grant application to the U.S. EPA for a \$200,000 grant to place an air toxics monitoring station near SeaTac Airport. If Council concurred, he recommended that the Mayor sign the letter.

Council agreed that the Mayor should sign the letter.

CONSENT CALENDAR was read by Deputy City Clerk Chaufly.

1. Motion is to approve the minutes of September 25, 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 #91219 through #91368 & electronic fund transfers in the total amount of \$510,396.88

Payroll fund transfers in the total amount of \$351,958.45

3. Draft Resolution No. 03-001 [Assigned Res. No. 963] - 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. 03-001 setting a public hearing for November 13, 2003, to consider vacation of the southern half of public right-of-way known as 19th Avenue South (previously identified as 20th Street), between South 222nd Street and South 223rd Street, in the City of Des Moines.

4. Draft Resolution No. 03-270 - Title: ~~A Resolution of the City Council of the City of Des Moines, Washington, regarding the Steven J. Underwood Memorial Park Field Lighting Project, and authorizing application for funding assistance for a Youth Athletic Facilities Program project to the Interagency Committee for Outdoor Recreation, as provided in chapter 79A.25 RCW.~~

Motion is to approve Draft Resolution No. 03-270 authorizing application to the ~~Interagency Committee for Outdoor Recreation.~~

5. Motion is to increase the City Manager's authority to approve change orders for the floating breakwater anchoring system from 10 to 21%, and that additional Marina Depreciation and Improvement funds in the amount of \$17,800 be allocated to the Redondo Improvement Project.

In regard to Item No. 5, Harbormaster Dusenbury informed Council that actual water depths were significantly greater than indicated on the project's plans. As the bid price had been based upon the incorrect depth calculations, additional money was needed to purchase the correct Seaflex anchor lines. Staff would address the impact of the miscalculation with the project consultant.

Mayor Pro Tem Benjamin removed Item No. 4.

In regard to Item No. 2, Councilmember Thomasson questioned whether the street should be identified as 19th Place South.

Public Works Director Heydon explained that he had researched the original plat and found that the street was an unopened right-of-way with multiple names. A more detailed map of the area would be presented to Council at the hearing.

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

REMOVED CONSENT CALENDER ITEM

Draft Resolution No. 03-270 [Assigned Res. No. 964] – Authorizing Application to Interagency Committee for Outdoor Recreation

In response to Mayor Pro Tem Benjamin's questioning, Park and Recreation Director Thorell verified that the youth football players in Des Moines would have a place to play football.

MOTION was made by Councilmember Thomasson, seconded by Councilmember Sherman and passed unanimously approve Draft Resolution No. 03-270 authorizing application to the Interagency Committee for Outdoor Recreation.

AGENDA REVISION

Mayor Steenrod announced that the public hearing for the Department of Justice Grant Funds for the City's Domestic Violence Program would be conducted as the first order of business.

PUBLIC HEARING

Department of Justice Grant Funds for Domestic Violence Program

Mayor Steenrod read the rules for conducting a public hearing. She opened the public hearing.

City Attorney Marousek informed Council that the City was eligible to receive funds from the Local Law Enforcement Block Grant. The funding was needed to continue the City's Domestic Violence Court Advocate position through December 2004.

As the majority of victims do not want to participate in the prosecution of their cases, Domestic Violence Court Advocate Gabel said that she often tries to resolve the issues before going to trial.

Mayor Steenrod called for proponents. She placed the speaker under oath.

PROPONENT

Denny Burnham, 26826 15th Avenue South

Mr. Burnham voiced support for the continued funding of the Domestic Violence Court Advocate position. He said that it was an opportunity for the city to spend money on a program that helped people.

OPPONENTS – None.

Mayor Steenrod closed the public hearing.

MOTION was made by Councilmember Sherman, seconded by Councilmember Thomasson, and passed unanimously to accept the Local Law Enforcement Block Grant in the amount of \$19,183, funding the City's Domestic Violence Advocate Program, and to authorize the City Manager to execute the necessary papers to implement such program.

At 8:38 p.m., Mayor Steenrod declared a ten-minute break.

CONTINUED PUBLIC HEARING

SEPA Appeal & Unclassified Use Permit Zenith Viewpointe

Mayor Steenrod reopened the SEPA Appeal and Unclassified Use Permit hearing for Zenith Viewpointe.

Councilmember White recused herself from participation.

Mayor Steenrod announced that the purpose of the item was to provide additional information requested by Council at the September 11, 2003 City Council meeting. The Council would use this and other information entered into the record 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.

In response to Councilmember Sheckler's question, Community Development Director Kilgore informed Council that SEPA rules allowed for a "phase review" of the project.

MOTION was made by Councilmember Thomasson and seconded by Mayor Pro Tem Benjamin to accept testimony regarding the Unclassified Use Permit (UUP) and the development exception while reserving the right to ask additional questions regarding SEPA issues.

Councilmember Thomasson noted that Council could not take action on the UUP and development exception until SEPA direction had been provided.

Councilmember Sheckler voiced support for the motion. He mentioned that Councilmember Petersen wanted to be present when SEPA action was taken.

VOTE ON MOTION: Motion passed unanimously.

City Attorney Marousek distributed a handout clarifying the SEPA appeal standard of review. Per case law, the SEPA decision standard of review was adequate if it contained a reasonably thorough discussion and mitigation of probable significant adverse environmental impacts of the proposed actions.

At 9:08 p.m., Mayor Pro Tem Benjamin left the Council Chambers.

Development Services Manager Ruth informed Council that DMMC 18.32.010 defined an unclassified use as a use that possessed characteristics of such unique and special form as to make impractical their being included automatically in any classes of use as set forth in the various zones. The purpose of an unclassified use review was to determine that the characteristics of any such use was not unreasonably incompatible with the type of uses permitted in surrounding areas. According to DMMC 18.86.092(b), the applicant must demonstrate that

- a) The environmentally sensitive area was lawfully altered at the time the alteration occurred;
- b) The alteration had significantly disrupted the natural functions of the environmentally sensitive area;
- c) The proposal utilized to the maximum extent possible the best available construction, design, and development techniques which would result in the least adverse impact on the environmentally sensitive area;
- d) The proposal incorporated the development standards of DMMC 18.86.070 through 18.86.087 and the surface water design manual to the maximum extent possible; and
- e) The proposal was consistent with the purpose and intent of DMMC 18.

In response to Councilmember Sherman's questioning regarding "natural functions", Development Services Manager said that the criteria was subject to interpretation.

At 9:15 p.m., Mayor Pro Tem Benjamin returned to the Council Chambers.

Proponents

Howard Jensen, Seattle, WA

As attorney for the applicant, Mr. Jensen offered the following information to Council:

Development Exception

Had the area been altered before?

- The area had been fully developed and the vegetation had regrown.
- Testimony stating that the hillside was presently not adequately controlling surface water runoff had been received.
- The proposal would improve the existing surface water management situation as the project was required to comply with surface water management regulations.

Would the best available construction, design, and development techniques be utilized?

- The project had been designed to follow the contour of the land with minimal excavation. Rockeries and retaining walls would allow the project to conform to the natural slope as much as possible.
- Council could dictate specific conditions to ensure this requirement was met.
- The intent of the applicant was to provide the best possible project.

Mr. Jensen reviewed the permitted uses for the property. He encouraged Council to evaluate the proposal against the identified permitted uses as they established the standard for review. He believed that the proposed project would create less impact to the neighborhood than the property's permitted uses. Mr. Jensen stated that the use of the surrounding properties, single-family residential housing and the Masonic Temple, must also be considered. He said that staff had done a good job evaluating the unclassified use permit, SEPA issue, and development exception. He informed Council that staff had placed additional conditions on the project to mitigate impacts of incompatibility with the surrounding properties. With one exception, Mr. Jensen said that the applicant agreed with the conditions imposed by staff. The exception dealt with staff's proposed condition requiring the setback to be modulated with the height of the building. This would result in a thirteen-foot setback for the top level of the development. Mr. Jensen recommended that Council approve a ten-foot setback for the building's vertical span. He informed Council that the Planning Agency had concurred with staff's conditions plus added an addition provision which would reduce the development from three buildings to two. Mr. Jensen told Council that staff was not in agreement with this additional condition. He distributed a diagram comparing a two building design to a three building design (Exhibit 11). Mr. Jensen said that the two building layout resulted in a bulkier design, while the three building arrangement provided a view corridor and was more aesthetically pleasing. Mr. Jensen recommended that Council adopt staff's conditions with the exception of the additional setback requirement. In closing, he encouraged Council to keep in mind the types of uses that were permissible on the property without their approval. He distributed a legal brief summarizing his position concerning the SEPA Appeal (Exhibit 12).

Alex White, Applicant

Regarding the Planning Agency's proposed condition to limit the development to two buildings, Mr. White stated that staff's objective was to separate the commercial building from the residential area. He felt that the three building layout would be more compatible with the surrounding single-family homes.

Upon questioning from Mayor Steenrod, Development Services Manager Ruth explained that the Planning Agency believed that the additional ten feet gained by combining two of the buildings would add value to the project's open space. Staff, however, felt that the additional open space was not significant, would create a building with more mass and would reduce the amount of light and airspace between the two buildings. Development Services Manager Ruth stated staff's recommendation to allow up to six dwelling units and to increase the setback of the upper level to thirteen feet. He informed Council that the criteria for approval had been satisfied.

Councilmember Sheckler asked for clarification on the proposed distance between the buildings for the two building layout versus the three building layout.

OPPONENTS

Nancy Rogers, 524 2nd Avenue, Suite 520, Seattle

Attorney Nancy Rogers entered “Zenith Community – Response to Misstatements of Law Regarding SEPA Standards” (Exhibit 13) into the record. She then distributed and reviewed the “Zenith Community – Summary of Primary Concerns” (Exhibit 14). She identified the community’s primary concerns as:

- The standard by which a UUP decision was made should be whether the proposal was reasonably compatible with the types of uses permitted in surrounding areas rather than to what intensity the use should be allowed.
- The staff report incorrectly assumes that, as mitigated, the project would not be unreasonably incompatible with types of uses permitted in surrounding areas.
- No evidence that the office and condo development would serve the everyday needs of the neighborhood had been presented.
- The scale of the project and gross over-counting of lot area to obtain a higher floor area does not ensure a limited intensity land use in keeping with the intended purpose of the N-C zone.
- The N-C zoning appeared to be the result of an error made in 1985 when the City Attorney sent a memorandum to the City Clerk calling for an administrative correction to the City’s zoning map, changing the Zenith Store property from RS-15,000 to B-N.
- In violation of DMMC 18.20.040, the applicant was incorrectly allowed to include all of the public street right-of-way in his lot dimensions.

Ms. Rogers stated that the inclusion of the street right-of-way in Mr. White’s calculation was prima facie evidence of the unreasonable incompatibility of the project. The calculation created a substantially larger project for the property than the maximum project size anticipated under N-C zoning. Ms. Rogers said that the development exception should not be approved as the past site alterations had not significantly disrupted the natural functions of the slope. In addition, the amount of excavation required by the proposed project would greatly exceed the best available construction, design, and development techniques that would result in the least adverse impact to the sensitive area. Ms. Rogers urged Council to deny approval of the project. In response to Mr. Jensen’s comments regarding surface water runoff, Ms. Rogers stated that the runoff was caused by the roadway rather than from the property.

AGENDA REVISION

Mayor Steenrod announced that Draft Resolution No. 03-275, Final Acceptance of Highline Water District 2002 Comprehensive Water System Plan, and the Cingular Lease would not be discussed at this meeting. The subjects would be placed on the October 23, 2003 agenda.

City Manager Piasecki announced that Highline Water District had submitted their Comprehensive Water System Plan to the City on September 30, 2003. Council had ninety days from that date to take action on the Plan.

PUBLIC HEARING, CONTINUED

SEPA Appeal & Unclassified Use Permit Zenith Viewpointe, Continued

Mayor Steenrod placed all speakers under oath to testify to the truth to the best of their knowledge.

Mel Bogovich, 23635 Marine View Drive

Mr. Bogovich stated that the Des Moines Comprehensive Plan required the preservation and integrity of existing single-family neighborhoods. He said that the Zenith neighborhood was the least dense area in Des Moines. The proposed development would insert an incompatible high density land use into a unique area that was entitled to protection. Mr. Bogovich felt the proposed development was not consistent with prior land use decisions for the neighborhood. He informed Council that he had tried to develop three additional family housing units on his property and had been denied. He said that he had a letter from Mr. Ruth defining congestion and density. Mr. Bogovich questioned how moving one lot to the south would solve the congestion and density problem. In closing, Mr. Bogovich said that zoning would not solve density and congestion in a neighborhood.

Robert Benson, 23905 Marine View Drive

Mr. Benson informed Council that his home had been constructed in 1938 as a store, was transformed into a post office, and then remodeled into a five-unit apartment complex. Mr. Benson purchased the property in 1974 and voluntarily reduced the complex to three units. He said that the proposed development would cause increased parking on Marine View Drive and interfere with his tenants' parking. Mr. Benson reported that he had been told by the City planners that there would be no change in the grade of South 239th Street but he had seen evidence that there might be as the driveway would be too steep. The grading of the street would cause him and his neighbor to no longer have access to their yards from South 239th Street. He said that the project was unacceptable and incompatible with the surrounding neighborhood.

Lloyd Lytle, 23911 Marine View Drive

Mr. Lytle displayed a picture of cars parked on Marine View Drive (Exhibit 16). He said that he opposed the proposed project on the grounds that the large multi-family buildings would be incompatible with the character of the surrounding residential neighborhood. Traffic density, parking needs, and noise would be increased. Mr. Lytle informed Council that the proposed site was only fifty feet wide. He noted that normal single-family homes in the area required 15,000 feet while the proposed project called for six to eight living units plus two office units being located on 9,600 square feet. Mr. Lytle said that recent King County records showed the property as RS-15,000. He believed the property had been incorrectly zoned N-C. Mr. Lytle said that the city was apparently going to give the developer the adjacent portion of South 239th for his driveway and parking requirements. If the City wanted to give property away, Mr. Lytle stated that it should be for the benefit of the community and not for the enrichment of a particular investor. He said that, in the past, others such as Mr. Bogovich had not been allowed to build single-family homes on a larger piece of property due to density issues. Mr. Lytle stated that the proposed development would degrade surrounding property values. The view of the proposed development would be facing south rather than west. Mr. Lytle said that the Planning Department and developer had compared the proposed development to the Masonic Home. He told Council that the Masonic Home was situated on 30 acres and did not abut any property lines. Mr. Lytle stated that parking for the project would migrate on to Marine View Drive creating a dangerous traffic situation.

Alice McCabe, 23902 7th Avenue South

Ms. McCabe said that the proposed project would bring many risks and additional traffic to the neighborhood. She believed that South 239th Street had been deemed too steep for vehicle traffic previously and yet was now okay for office parking and eight living units. Ms. McCabe said that the project was incompatible with the present neighborhood. According to her measurements, the distance between the utility boxes on the north and south side of South 239th Street was 21 feet rather than 31.5 feet, as measured by the developer. Ms. McCabe questioned how a road, sidewalk, and setbacks could share 21 feet. She said that she and Mr. Benson accessed their property from South 239th Street. Ms. McCabe demanded that the project be denied as the traffic, the size of the buildings, the density of the project, the grading of the road, and the shared use of South 239th Street did not make sense for the neighborhood.

Bob Pond, 23116 30th Avenue South

Mr. Pond said that the City should not sell out single-family homes because they are so desperate for tax revenue. He stated that the single-family home was the basis for the American system. Mr. Pond suggested that the developer move his project to the Pacific Ridge area as much land was available for improvement. He questioned why a residential area that did not want this type of development should be attacked. If the project was approved, Mr. Pond said that Des Moines would become a multi-family, high density, commercial land that would take all-comers because it was desperate.

At 10:25 p.m., **MOTION** was made by Councilmember Thomasson, seconded by Councilmember Sherman, and passed unanimously to extend the meeting to 11:00 p.m.

Ed Pina, 24215 7th Avenue South

When the Zenith area was in the process of being annexed to Des Moines, Mr. Pina said that he had expressed his concern that the City would allow the development of condominiums in the area to the Zenith Land Use Council. The City Attorney had told him that condominium development in the area would not be possible as the community corporation would control it. Mr. Pina informed Council that he had served two terms on the Planning Agency when the Comprehensive Plan was being developed. Again, he was advised that the area's zoning would not allow condominium development. Mr. Pina asked Council to not let a small tax increase affect a neighborhood that has existed for a long time.

Peter Skelly, 23622 7th Avenue South

Mr. Skelly objected to staff's allowance of the over-counting of property area to the benefit of the developer so that the number of units and floor area of the project's buildings could be significantly increased. Mr. Skelly stated that the Municipal Code clearly defined building site and lot size and staff's October 2002 code interpretation was bogus. He referred Council to DMMC 12.04 for a clear separation between private development sites and public rights-of-way. Mr. Skelly said that the Des Moines Comprehensive Plan indicated that there should be no more than eighteen dwellings per acre. This would allow for four units on the site rather than the six units recommended by staff. Mr. Skelly said that the project was incompatible with the existing single family neighborhood. He believed that the Comprehensive Plan established the protection of single-family neighborhoods as a high priority for the City. Mr. Skelly said that residents were concerned that City staff was neither protecting them nor following the policies set forth by

the Comprehensive Plan and zoning code. If approved, Mr. Skelly said that Council would not be serving the residents but special interests. He urged Council to reject the requested UUP.

Jerry Bergman, 620 South 239th

Mr. Bergman said that the zoning history of the property was cloudy. He stated that the purpose of N-C zoning was to provide a service that served the everyday needs of the surrounding residents. If N-C zoning was not in affect nor guaranteed then the N-C zoning should be removed. Mr. Bergman said that he had provided information regarding a hearing examiner's decision concerning a similar issue in Medina in a letter to Council dated August 9, 2003. Mr. Bergman noted that the density and intensity of Judson Park and Masonic Retirement Centers were different than the property situated on the west side of the road. He said that the Zenith neighborhood had a legally binding agreement with the City as a result of the beach access lawsuit in the 1980's. At that time, the neighborhood was designated "parking restricted to residents only". The boundaries were established by an L.I.D. created by Ordinance No. 895 and confirmed by Ordinance No. 984. A variance request (File No. HV94-010) to reduce front and back setbacks on a property south of the Zenith store site had been denied on May 16, 1984. The Bogovichs' request to subdivide a single-family residential lot had been denied due to congestion and density concerns. Mr. Bergman said that none of these proposed actions compared to the Zenith Viewpointe development. He said that the development would significantly alter the existing density and intensity and it would destroy the unique character and aesthetics of the neighborhood. Mr. Bergman noted that the Zenith Viewpointe development could be 35 feet high while the setback requirements were reduced. He stated said that past Councils had recognized the unique character of the Zenith neighborhood and had helped the residents improve it. Mr. Bergman questioned whether Council wanted to be responsible for allowing a multi-family development and for ruining the neighborhood.

Jan Bergman, 620 South 239th

Ms. Bergman said that she would like to donate her three-minutes to George Pettibone.

Debbie Workman

Ms. Workman reviewed the purpose of N-C zoning as described in DMMC 18.20. She said that it did not appear that the proposed development would provide services to the residents. Ms. Workman informed Council that the store was originally a single-family home. Since it was no longer a store, she believed that the property should revert back to RS-15,000. Ms. Workman presented an unofficial record from Transnation Title Insurance Company dated March 2002 which identified the property as RS-15,000 (Exhibit 15). She said that residents were very concerned with the office space/condominium development as they were promised, in 1982, that condos would not be constructed on Marine View Drive in the Zenith area. She believed approval of the proposed development would set a precedent.

Howard Jensen

As attorney for the applicant, Mr. Jensen said that Exhibit 15 could be entered into the record but the value of the document should be considered.

Alex White, 22030 7th Avenue South, #204

Mr. White said that he would like to provide the City Attorney with a copy of the lot's official property profile which indicated that the property was zoned N-C.

Keith Workman, 23903 7th Avenue South

Mr. Workman said that he would like to donate his three-minutes to George Pettibone.

Roger Gallington, 23913 6th Avenue South

Mr. Gallington said that other speakers had adequately covered most of his concerns. As business customers were restricted from the commercial venture on the property, he questioned how Council would enforce this restriction.

Scott Wayne, Des Moines

Mr. Wayne voiced agreement with Mr. White's comments calling for support of business in the Des Moines' community and asking for a fair and objective ruling, not one based upon political reasons. Mr. Wayne reviewed the purpose of the N-C zone as listed in DMMC 18.20.010. He said that the code identified an objective of the zone as to maintain a limited intensity of land use compatible with serving the neighborhood residential area, rather than the community. Mr. Wayne said his concerns regarding the square footage of the lot had been covered by two other speakers. He reported that the September 11, 2003 City Council meeting minutes indicated that Councilmember Thomasson had questioned the square footage issue while Mayor Pro Tem Benjamin had said that the project looked good on paper but did not fit aesthetically. Mr. Wayne said that the action of questioning the approval of the UUP against the established land use codes was in direct support of Mr. White's request for an objective and reasonable rulings. Mr. Wayne stated that Mr. White's proposed project was unreasonably incompatible with the neighborhood and did not comply with the City's code.

Shirley Robertson, 23660 7th Avenue South

Ms. Robertson said that if Council looked at the property in question and studied the proposed project, they would determine that the plan was not compatible with the existing Zenith neighborhood. She felt that the project would not in any way preserve the integrity or character of the area. Ms. Robertson said that the residents would like to have their neighborhood maintained as a single-family neighborhood.

Linda Darimont, 23910 6th Avenue South

Ms. Darimont expressed her concern about the safety of the neighborhood children as they walked to and from their assigned school bus stops. She noted that elementary aged children currently used the undeveloped South 239th Street to access the bus stop in front of the old Zenith Store from 7th Avenue South. Their only other option was to walk to South 236th Street or South 240th Street and then to Marine View Drive. They would then need to walk on Marine View Drive to the bus stop. As there are no sidewalks on the west side of Marine View Drive, Ms. Darimont felt it was dangerous to expect young children to walk that route. If the Zenith Viewpointe project was approved, Ms. Darimont felt it would be difficult for the children to safely get through South 239th Street during construction. She noted that the proposed plans showed a narrow public walk. She questioned whether the hill would be negotiable due to its steepness and its slickness during winter rains. Ms. Darimont also questioned who would be responsible for maintaining the walkway. She said that middle and high school students would also be put at risk while walking to their bus stop. Ms. Darimont told Council that the Zenith Viewpointe project was out of place in the neighborhood and the extra traffic and residents would compromise the safety of the families currently residing in the neighborhood.

At 10:55 p.m., **motion** was made by Councilmember Sheckler, seconded by Mayor Pro Tem Benjamin and passed unanimously to extend the meeting by fifteen minutes.

George Pettibone, 23653 Marine View Drive

Mr. Pettibone presented Council with the history of the subject property. He said that the grocery store had been built twenty to thirty years prior to 1944. The original store was attached to a house which was constructed in 1908. Mr. Pettibone maintained that the single-family property had been non-conforming for approximately one century. He said that, in 1958, King County Ordinance No. 18801 adopted a new zoning map (Exhibit 17), zoning codebook, and Comprehensive Plan book. According to 1958 through 2002 King County records, the property was zoned RS-15,000. In 1982, the property was annexed to Des Moines through the adoption of Ordinance No. 550. Ordinance No. 550 clarified that Des Moines would maintain King County zoning in the annexed area. Mr. Pettibone informed Council that, in 1985, the City Attorney directed the City Clerk to amend the zoning map, changing the RS-15,000 zoning to B-N. This action was unlawful as it had no public notice, no Zenith Land Use Council review, and no Council action. Mr. Pettibone contested that the property owned by Bob Benson, rather than the Zenith Store property, should have been zoned B-N. Mr. Pettibone said that he had filed ten public record requests and staff had stalled the last five requests. He informed Council that he had spoken to the King County's Chief Commercial Property Assessor Bob Rosenburger, former Mayor Richard Kennedy, and former City Attorney Jim Gorham regarding the issue. All of them had confirmed that the Zenith Grocery store site was non-conforming property on a single-family residential lot.

Mayor Steenrod asked that Mr. Pettibone provide the City Manager with copies of his requests for public information.

City Attorney Marousek assured Council that the City had complied in every way with the public disclosure laws and Mr. Pettibone had been afforded every opportunity legally and professionally to review the documents. She could provide records documenting compliance.

Mr. Pettibone said that he had a letter from the City stating that staff had not finished his last five requests. Mr. Pettibone informed Council that he had purchased his house in 1992. When questioning the real estate agent regarding the Zenith Store property, Mr. Pettibone said that he had been told not to worry as two houses could not be built on a single-family lot. He also had his attorney research the property. The attorney reported that the Zenith Store had been grandfathered into the City. When the store closed, the property would be zoned RS-15,000. Mr. Pettibone said that the store might have been illegally subleased for the period of 1997 through 1999. In closing, Mr. Pettibone said that the property had reverted back to RS-15,000. The City owed Mr. White an apology and he should be permitted to only construct a single-family house on the property.

Councilmember Thomasson asked that a copy of the Comprehensive Plan adopted under Planning Director Eric Shields be made available to all parties.

City Attorney Marousek told Council that the testimony regarding zoning could be ruled out-of-order and not relevant to the issues before Council as this was not a zoning hearing but a UUP hearing.

At 11:10 p.m., **motion** was made by Councilmember Thomasson, seconded by Councilmember Sherman and passed unanimously to extend the meeting by five minutes.

Corinna Harn, 23910 6th Avenue South

Ms. Harn disagreed with the City Attorney's statement as everything Council considered was based up the assumed zoning of the property. She asked Council to reconsider that particular issue. Ms. Harn stated that everything Mr. White and his attorney had presented had been based upon their view of the property's zoning. Ms. Harn informed Council that she had reviewed Mr. Pettibone's documents. She agreed that the zoning was a result of the former City Attorney's mistake which resulted in an erroneous and illegal attempt to rezone the property. Ms. Harn voiced agreement with Mr. White's comments concerning ensuring that the rules are followed. She asked that the City Attorney to review the information presented by Mr. Pettibone to determine whether the property was truly zoned RS-15,000 rather than N-C. Ms. Harn stated her belief that the zoning should be RS-15,000. She said that compliance with rules also referred to compliance with the site size of the property. She stated that the rules indicate that the right-of-way cannot be included in the lot size calculation. She presented a section of the Greater Des Moines Comprehensive Plan map which states that the maximum density of single-family and multi-family areas was indicated by the number of dwellings per residential acre excluding the right-of-way (Exhibit 18). Ms. Harn believed that the property would need to be substantially regraded in order to achieve appropriate access to the development. She asked Council to review a survey of the property and determine the width of the property and of the right-of-way. Ms. Harn asked Council to follow the rules regarding access to the property. She said that, at this point, the City only had legal access from the north. In closing, Ms. Harn said that, if the property was grandfathered in as a business, it should now revert back to RS-15,000.

MOTION was made by Councilmember Thomasson, seconded by Mayor Steenrod, and passed unanimously to continue the hearing to October 30, 2003.

Ms. Rogers said that Mr. Pettibone had additional exhibits regarding excavation. She asked that he be allowed to present that information to Council as his time had been interrupted.

City Attorney Marousek noted that the record for acceptance of evidence had not been closed. Council could ask questions of speakers. If any speakers wish to be available for Council's questions, they should be available at the next meeting.

NEXT MEETING DATE - Regular Meeting October 23, 2003

ADJOURNMENT

The meeting expired at 11:15 p.m.

Respectfully submitted,

Angela M. Chaufly
Deputy City Clerk

ACTION ITEM FROM 10/09/03 MEETING

- Respond to Mr. Pond's issues regarding his neighborhood.
- Research why political signs had been removed from the vicinity of Mr. Burnham and Mr. Bogovich's yards.

passed as modified

AGENDA ITEM

SUBJECT: Draft Resolution Accepting
Highline Water District 2002
Comprehensive Water System
Plan

AGENDA OF: October 23, 2003

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: October 1, 2003

ATTACHMENTS:

1. Draft Resolution 03-275 approving the Highline Water District 2002 Comprehensive Water System Plan
2. September 30, 2003, Letter of Transmittal from Thomas D. Keown, P.E., of the Highline Water District.
3. Highline Water District Resolution 02-11-GC Adopting the Plan and King County Ordinance #14499 Approving the Plan
4. Minutes from the September 5, 2002, Council Meeting.

CLEARANCES:

[] Finance
[X] Public Works *[Signature]*
[X] Legal *[Signature]*

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

Purpose and Recommendation:

The purpose of this agenda item is for the Council to approve the Highline Water District 2002 Comprehensive Water System Plan. The plan has been finalized by the Water District and approved by their Commissioners.

Recommended Motion

"I move to approve Draft Resolution No. 03-275 approving the Highline Water District 2002 Comprehensive Water System Plan." *w/ insertion of language stating*

Background:

Such Approval is valid until WA State Dept. of Health & King City's approval expires.

Water Districts within the State of Washington are required to have Comprehensive System Plans which are updated on a regular basis. This Plan is an update of the Highline Water District's 1996 Plan. Because of the critical importance of water for the health and safety of the citizens, cities are included in the review and approval process of Water District Comprehensive Plans. Since the District Commissioners have officially accepted the plan, a Draft Resolution will be brought before the City of Des Moines for official Council action on the Plan. The action can be anything from acceptance, to acceptance with conditions, to rejection. The Des Moines City Council has previously reviewed the Draft Plan at the September 5, 2002, meeting.

Discussion:

Highline Water District has had a history of having well written Comprehensive Plans which cover the important elements of future water system planning in sufficient detail so that it is clear what needs the District requires in order to serve their existing and expected future customers. This document is an extremely important instrument that provides the foundation on which the whole Water District is built.

Items in the plan include not only new facilities to serve future growth and system deficits, but also replacement of components that are past their useful life. All of these needs, along with the normal District day-to-day operating expenses, are used as input in the financial plan. The financial plan provides the basis for the District's monthly water rates and hookup charges.

The Highline Water District has done an excellent job of following their past Comprehensive Plans. The result is that the District system is stronger and more reliable than it was in 1996 when the last plan was approved. Thus, they are in a better position to provide a good level of service to their customers.

The Council and City staff only had minor questions and comments regarding the Draft of this Plan, which was reviewed at the September 5, 2002, Council meeting.

Alternatives:

The Council could choose to not approve the Comprehensive Plan Update. Lack of any action on the part of the City would result in plan approval for the District. Given the importance of domestic water to the existing and future citizens of the City, and the economic vitality of the community, it seems advisable that Council review and approve this important document.

Financial Impact:

While the Highline Water District Comprehensive Plan will not have a significant financial impact on City government in Des Moines, (given that most City buildings are served by Water District No. 54 water), it does affect the water rates and hookup fees for a majority of the citizens in the City.

Recommendation/Conclusion:

It is recommended that Council approve the Highline Water District 2002 Comprehensive Water System Plan. If one wishes to review the document, copies are available at the Highline Water District office, at the City Manager Secretary's office, and at the Public Works Director's office. Representatives from the District will attend the Council meeting in order to answer any questions Council may have.

Concurrence:

The Highline Water District is officially requesting City concurrence now that the District Commissioners have given their final approval to the 2002 Comprehensive Water System Plan.

LEGAL DEPARTMENT'S FIRST DRAFT 10/01/03

DRAFT RESOLUTION NO. 03-275

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, approving the Highline Water District's 2002 Comprehensive Water System Plan.

WHEREAS, Highline Water District provides water services for a large portion of the City of Des Moines, and

WHEREAS, on April 18, 2002, the City of Des Moines received a copy of Highline Water District's 2002 Water System Plan, and

WHEREAS, at an open public meeting held on September 5, 2002, the Des Moines City Council heard from Highline Water District representatives who presented the City Council with the Highline Water District's 2002 Comprehensive Water System Plan, and

WHEREAS, the Highline Water District adopted its 2002 Comprehensive Water System Plan by Resolution No. 02-11-6C on November 6, 2002, and

WHEREAS, the adopted Highline Water District 2002 Comprehensive Water System Plan was transmitted to the City of Des Moines for approval on September 30, 2003, and

WHEREAS, RCW 57.16.010 (6) provides that the Des Moines City Council has ninety (90) days from the date that Highline Water District adopted its 2002 Comprehensive Water System Plan to review such plan and approve, conditionally approve, or reject such plan, and since all the City Council concerns were addressed at that time, and

WHEREAS, it is in the public interest to approve the Highline Water District's 2002 Comprehensive Water System Plan; now therefore,

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

The Des Moines City Council hereby approves the
Highline Water District's 2002 Comprehensive Water System
Plan, attached as Exhibit "A" and incorporated herein by
reference.

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

MAYOR

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

p:\users\linda\doc\agenda\Draft Resolution No. 03-275

HIGHLINE WATER DISTRICT

23828 30th Ave. S., Kent, WA 98032 - P.O. Box 3867, Kent, WA 98032
Office: (206) 824-0375 / Fax: (206) 824-0806

**LETTER OF
TRANSMITTAL**

ATTENTION:	MR. TIMOTHY C. HEYDON, P.E.
COMPANY:	CITY OF DES MOINES DEPARTMENT OF PUBLIC WORKS
ADDRESS:	21650 11 TH AVENUE SOUTH DES MOINES, WA 98198-6317

DATE:	SEPTEMBER 30, 2003
RE	
DES MOINES CITY COUNCIL MEETING (10/9/03) APPROVAL OF HWD COMPREHENSIVE PLAN	

WE ARE SENDING YOU: ☒ ATTACHED ☐ UNDER SEPARATE COVER VIA _____ THE FOLLOWING ITEMS:

- | | | | | |
|---|---------------------------------------|--------------------------------|----------------------------------|---|
| ☐ SHOP DRAWINGS | ☐ PRINTS | ☐ PLANS | ☐ SAMPLES | ☐ SPECIFICATIONS |
| ☐ COPY OF LETTER | ☐ CHANGE ORDER | ☐ _____ | | |

COPIES	DATE	NO.	DESCRIPTION
2			HWD 2002 COMPREHENSIVE WATER SYSTEM PLAN
2			HWD RESOLUTION #02-11-6C ADOPTING PLAN / KING COUNTY ORDINANCE #14499 APPROVING HWD PLAN

DECEIVED

SEP 30 2003

By 1 to City Hall
1 to Tim

THESE ARE TRANSMITTED AS CHECKED BELOW:

- | | | | |
|--|---|------------------------------------|-------------------------|
| ☐ FOR APPROVAL | ☐ APPROVED AS SUBMITTED | ☐ RESUBMIT | COPIES FOR APPROVAL |
| ☒ FOR YOUR FILES | ☐ APPROVED AS NOTED | ☐ SUBMIT | COPIES FOR DISTRIBUTION |
| ☒ AS REQUESTED | ☐ RETURNED FOR CORRECTIONS | ☐ RETURN | CORRECTED PRINTS |
| ☐ FOR REVIEW AND COMMENT | ☐ TRACINGS | ☐ SIGNATURE | |
| ☐ LEGAL DESCRIPTION | ☐ QUOTATION | ☐ PAYMENT | |
| ☐ APPROVED BILLS | ☐ | ☐ | |
| ☐ FOR BIDS DUE _____ 19 _____ | ☐ PRINTS RETURNED AFTER LOAN TO US | | |

REMARKS	TIM, PER OUR TELEPHONE CONVERSATION REGARDING APPROVAL OF THE DISTRICT'S COMPREHENSIVE PLAN BY THE DES MOINES CITY COUNCIL AT THE OCTOBER 9, 2003 MEETING, I HAVE ENCLOSED TWO COPIES OF THE DISTRICT'S COMPREHENSIVE PLAN ALONG WITH TWO COPIES OF THE HWD RESOLUTION AND KING COUNTY ORDINANCE FOR YOUR USE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ME AT (206) 824-0375, EXT. 102.
	TOM

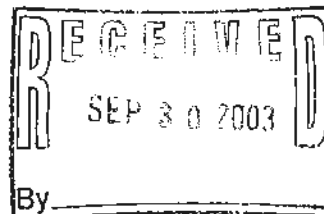
COPY TO:		SIGNED:	<u>W. Jones</u>
		NAME:	THOMAS D. KEOWN, P.E.
		TITLE:	CONSTRUCTION/OPERATIONS MANAGER

IF ENCLOSURES ARE NOT AS NOTED, PLEASE NOTIFY US AT ONCE.

ATTACHMENT 2



HIGHLINE WATER DISTRICT
King County, Washington



RESOLUTION 02-11-6C

RESOLUTION ADOPTING THE HIGHLINE WATER DISTRICT 2002 COMPREHENSIVE
WATER SYSTEM PLAN

Background

Whereas, by passage of Resolution 00-8-25A, the Board of Commissioners authorized Penhallegon Associates Consulting Engineers update the District's Comprehensive Water System Plan in accordance with all applicable rules and regulations, as well as the District's policies and procedures; and

Whereas the Plan is in compliance with Chapter 246-290 of the Washington Administrative Code (WAC) and the requirements of King County and all other jurisdictions within which the District operates; and

Whereas the Plan was developed in accordance with the South King County Coordinated Water System Plan (SKC CWSP), which establishes the framework for water system planning in the southern portion of King County; and

Whereas on October 14, 2002 the Council of King County approved without conditions the Highline Water District 2002 Comprehensive Water System Plan by Ordinance No. 2002-0447

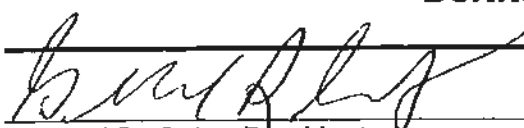
Action

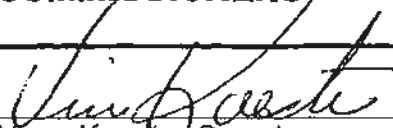
NOW THEREFORE, BE IT RESOLVED:

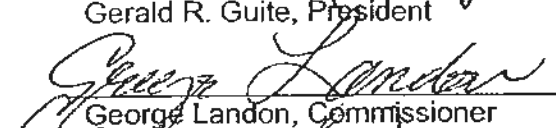
1. The Board of Commissioners hereby adopts the Highline Water District's 2002 Comprehensive Water System Plan.

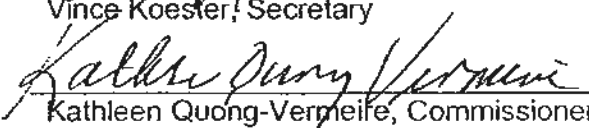
Adopted by the Board of Commissioners of Highline Water District, King County, Washington, at a Regular Open Public Meeting held this 6th day of November 2002.

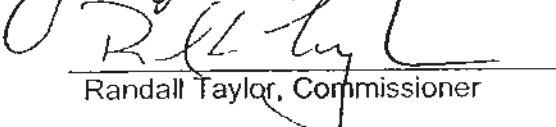
BOARD OF COMMISSIONERS


Gerald R. Guite, President


Vince Koester, Secretary


George Landon, Commissioner


Kathleen Quong-Vernhefe, Commissioner


Randall Taylor, Commissioner



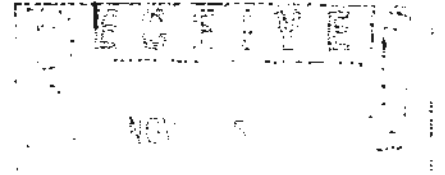
KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

October 15, 2002

Ordinance 14499



Proposed No. 2002-0447.1

Sponsors Patterson

AN ORDINANCE approving the Highline Water District
2002 Comprehensive Water System Plan.

PREAMBLE:

K.C.C. 13.24 requires approval of comprehensive plans for water utilities as a prerequisite for granting right-of-way franchises and approval of right-of-way construction permits.

The Highline Water District currently provides water service to approximately 65,000 people living in parts of the cities of Burien, Des Moines, Federal Way, Kent, Normandy Park, SeaTac, and Tukwila, and urban unincorporated King County. The population served in 20 years is projected to increase by about 35 percent due to growth within the service area.

The city's water sources include water purchases from the City of Seattle and a number of wells. Approximately 90 percent of the district's water is purchased from Seattle; 10 percent is obtained from the Angle Lake and Des Moines wells. The district's

Ordinance 14499

17 14 other wells have not been used in some time. The district recently entered into a new
18 sixty-year contract with Seattle for its water supply.

19 The district currently uses 6.65 million gallons of water per day (mgd) on an
20 average basis and over 16.5 mgd during days of maximum demand. By 2020, the
21 average and maximum demands may increase to over 7.8 mgd and 19.6 mgd,
22 respectively, assuming existing patterns of water use remain the same.

23 The plan contains a six-year capital improvement program valued at nearly
24 \$31,000,000. It includes the costs of water main replacement, well and reservoir
25 improvements, and improvements to water treatment.

26 The King County utilities technical review committee (UTRC) reviewed and
27 approved the plan on July 10, 2002. The UTRC recommends that the council approve
28 the plan.

29 A determination of non-significance for the plan was issued on January 25, 2002,
30 in accordance with the state Environmental Policy Act. The district intends to adopt the
31 plan after King county and state approval.

32 **BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:**

33 SECTION 1. The Highline Water District 2002 Comprehensive Water System

34 Plan, Attachment A to this ordinance, is hereby approved without conditions.

35

Ordinance 14499 was introduced on 9/16/2002 and passed by the Metropolitan King County Council on 10/14/2002, by the following vote:

Yes: 12 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Pullen, Mr. Gossett, Ms. Hague and Ms. Patterson

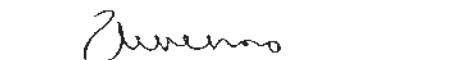
No: 0

Excused: 1 - Mr. Irons

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Cynthia Sullivan, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 23 day of October, 2002.


Ron Sims, County Executive

RECEIVED
2002 OCT 23 AM 10:44
CLERK
KING COUNTY COUNCIL

Attachments A Highline Water District 2002 Comprehensive Water System Plan

EXCERPT
DES MOINES CITY COUNCIL MINUTES
September 5, 2002

DISCUSSION ITEMS

Highline Water District 2002 Comprehensive Water System Plan Update

Public Works Director Heydon advised Council that the purpose this evening is to brief Council on the Draft Comprehensive Water System Plan Update of the Highline Water District and to solicit any comments Council may have on the work completed to date. He noted that the Plan was last updated in 1996. He further noted that because of the critical importance of water for the health and safety of citizens, cities are included in the review and approval process of Water District Comprehensive Plans. No formal action is required of Council this evening, but after the District Commissioners have officially accepted the plan, an ordinance will be brought before the Council for official action on the Plan. He introduced Tom Keowin, Highline Water District Engineer and Susan Boyd of Penhallegon Associates Consulting Engineers, Inc. for Highline Water District.

Ms. Boyd proceeded to review the following:

Project Goals

- Establish a plan for orderly development of the system
- Comply with regulatory requirements
- Identify land use and population trends and projections
- Document historical use trends/develop projections
- Identify existing & projected system needs
- Develop a detailed Capital Facilities Plan (CFP)
- Review financial capabilities to implement CFP

Service Area

- Approximately 18 square miles
- Provides service to 65,000 people, 20,000 employees, 17,000 connections & 32,000 ERU's
- Services to 8 jurisdictions including the City of Des Moines

Land Use

- 70.19% Single-Family, 8.87% Multi-Family, 5.19% Commercial, 1.69% Business Park, 2.81% Industrial, 0.13% Agricultural, 3.68% Airport, 2.51% Parks, 1.47% Water and 3.16% Major Roads

Ms. Boyd also reviewed current and projected:

- Population and Employment
- Sales by Customer Class

- Historical/Project Demands

She then reviewed:

Capital Facilities Plan, a total of nearly \$28 Million

- Distribution System Investment - \$18 Million
- Storage Facilities Improvements - \$3,500,000
- Source Improvements - \$6 Million

Financial Analysis Recommendations

- Apply for Funding Assistance: Public Works Trust, FEMA & Others
- Rate Study Underway to Determine Impact of New Wholesale Contract: Include cost of service analysis and review General Facilities charges

In conclusion, Ms. Boyd made the following points:

- Highline Water District's water system is sound and without significant deficiencies
- Project recommendations are primarily prioritized renewal and replacements
- Significant growth is expected in certain areas while SR-509 realignment displaces customers in other areas
- continued coordination with City of Des Moines and other jurisdictions is key

Upon questioning by Council regarding rate increase to users from the new water supply agreement with the City of Seattle, Ms. Boyd replied under the new agreement rate increase is exempt until the year 2012. She also noted that a rate study is underway since rates have not gone up since the year 2000.

Public Works Director Heydon concluded by noting that overall this is a well written Comprehensive Plan which covers the important elements of future water system planning in sufficient detail so that it is clear what needs the District requires in order to serve their existing and expected future customers. He noted that the final plan will probably come back to Council sometime in November.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:

*Agreement with Association of Washington
Cities for Workers' Compensation Group
Retro Program*

ATTACHMENTS:

1. City of Des Moines' 2004 Premium Projection
2. City of Des Moines Refund and Fee Example
3. City of Des Moines Developed Loss Ratio / Estimated Refund
4. Retro Rating Timeline
5. AWC Worker's Compensation group Retro Program Participation Agreement and Group Enrollment Application

FOR AGENDA OF: October 23, 2003

DEPT OF ORIGIN: Personnel

DATE SUBMITTED: October 16, 2003

CLEARANCES:

☒ PERSONNEL

☒ LEGAL

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL

PURPOSE AND RECOMMENDATION:

The purpose of this agenda item is to request Council's approval to enter into an agreement with Association of Washington Cities for participation in a Workers' Compensation Group Retro Program.

Suggested Motion:

"I move to approve the agreement with Association of Washington Cities to enroll and participate in the Workers' Compensation Group Retro Program and authorize the City Manager to sign the agreement, substantially in the form as submitted.

BACKGROUND:

The City of Des Moines submits a quarterly premium to State of Washington Department of Labor and Industries (L&I) for industrial insurance benefits. This program provides medical care, wage replacement benefits, return-to-work assistance and survivor benefits for employees who experience a job-related injury or occupational disease.

The quarterly premium is based upon the accident fund and medical aid rates established by L&I and the City's experience modification factor. The City's experience modification factor is determined by the City's claim costs and worker hours for the previous three years (Attachment 1).

Presently, if the premiums paid by the City exceed the actual claim costs, the excess funds are deposited into L&I's reserve account. Conversely, if the actual claim costs exceed the premiums, the shortage is paid through L&I reserves.

L&I allows "like businesses" to form Group Retro pools that provide employers an opportunity to receive a refund of their excess workers' compensation premiums and spread risk. On average, the retro group refunds are between 20-35% per year.

Association of Washington Cities (AWC) has formed such a pool and is inviting cities to participate.

DISCUSSION:

The goals of the AWC Workers' Compensation Group Retro Program are to

1. Offer participants an opportunity to qualify for refunds on standard premiums paid to the Department of L&I;
2. Reduce the frequency and severity of industrial injuries; and
3. Reduce the participant's experience factor.

When a refund is available to the Retro Group, AWC will first refund the service fee (6.5% of the City's annual premium) to each participating city. If additional refund money is available, those cities whose actual claim costs were less than the premiums paid, will receive additional money on the basis of a merit-rated formula. If, however, a city's claim costs exceeded the standard premium, the refund will be limited to the city's service fee.

To facilitate the financial stability of the Retro Pool, during the first three years of enrollment in the Group Retro Program, one half of any additional money will be returned to qualified cities while the other half will be placed in reserves. The reserve fund will be necessary if the Retro Pool, collectively, has a very bad year and the collective claims' costs exceed the collective premiums paid. The difference will be reimbursed to L&I through the reserve fund.

In order to address the second and third goals of the Retro Program, AWC has secured a third party administrator, CompManagement Inc., to assist the enrolled cities in reducing the frequency and severity of industrial injuries. CompManagement Inc. will provide risk management services, claims management services, accident prevention training materials, education, and an annual on-site audit. Once an on-the-job injury has occurred, the City will complete the initial paperwork and forward it to CompManagement Inc. for submittal to L&I. CompManagement Inc. will then manage the claim until closed. Specifically, they will insure the worker receives his entitled compensation amount, verify time loss benefits, confirm permanent loss or disability awards, and maintain all claim paperwork. If the City questions the validity of an employee's injury or his missed time, CompManagement Inc. will protest the issue and manage the claim up to the Board of Appeal level. The City will be assigned one CompManagement Inc. claims agent and will have access to all claim documents via the Internet. By actively seeking to control claim costs, the city's experience rating should decrease resulting in reduced premiums.

ALTERNATIVES:

Leave the process as it is. L&I would continue to keep all premiums paid over claim costs. Staff would continue to perform claim management services.

FINANCIAL IMPACT:

The service fee for the participation in the Workers' Compensation Retro Program is 6.5% of the city's premium payment. If Des Moines elected to participate, the service fee for 2004 would be approximately \$16,016.00, (Attachment 1: \$246,397 x 6.5%). Assuming a refund is received, the City would be refunded the 2004 service fee in October 2005 and the first premium refund would be distributed in December 2005 (Attachment 4).

For illustrative purposes, Attachment 3 provides information regarding the estimated refund amount Des Moines would have received if they had participated in a Group Retro Program during Years 2000 through 2002.

RECOMMENDATION/CONCLUSION:

Staff recommends that the City Council authorize the City Manager to enter into an agreement with Association of Washington Cities to enroll and participate in the Workers' Compensation Group Retro Program.

CONCURRENCE:

The Legal Department concurs with the recommendation.

ASSOCIATION OF WASHINGTON CITIES

City of Des Moines

2004 PREMIUM PROJECTION

BASED UPON:

2002/03 WORK HOURS

2004 PROPOSED RATES APPLIED TO

2004 EXPERIENCE MODIFICATION FACTOR OF:

1.3483

CLASS	WORK HOURS	ACCIDENT FUND RATE	PREMIUM	MEDICAL AID RATE	PREMIUM	MANUAL PREMIUM
803	94,856	0.5261	\$49,904	0.3819	\$36,226	\$86,129
1301	0	0.6000	\$0	0.3498	\$0	\$0
5305	93,338	0.0574	\$5,358	0.0564	\$5,264	\$10,622
6901	31,805	0.0000	\$0	0.0750	\$2,385	\$2,385
6904	0	0.4281	\$0	0.2672	\$0	\$0
6905	87,034	0.4513	\$39,278	0.3055	\$26,589	\$65,867
7203	3,370	0.0913	\$308	0.1183	\$399	\$706

310,403	\$94,847	\$70,863	\$165,710
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EXPERIENCE MODIFICATION IMPACT	<u>\$57,717</u>
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STANDARD PREMIUM	\$223,427
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SUPPLEMENTAL PENSION PREMIUM (AT 2004 RATE OF .0740)	<u>\$22,970</u>
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TOTAL PREMIUM:	\$246,397
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LESS EMPLOYEE PORTION:

1/2 MEDICAL AID	\$47,772
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1/2 SUPPLEMENTAL PENSION	<u>\$11,485</u>
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NET PREMIUM PAYABLE:

\$187,140

CLASS CODE DESCRIPTIONS:

803 Cities & Towns All Operations
1301 Elec Light & Power
5305 Cities & Towns Admin
6901 Volunteers - Excl Law Enforcement Officers
6904 Cities & Towns Firefighters
6905 Cities & Towns Law Enforcement
7203 Community Service Workers

ATTACHMENT 1

ASSOCIATION OF WASHINGTON CITIES

Refund and Fee Example*

Based upon 2003 Premium Information

City of Des Moines

Estimated Refund

\$ 172,399 (L & I Standard Premium) X 25% ** = \$ 43,100 **

Less:

Equity Retention @ 50%*** 21,550

Service Fee****

\$ 193,631 (L & I Total Premium) X 6.5% = \$ 12,586

Estimated Net Retro Year Refund \$ 8,964

Standard Premium = (Accident Fund + Medical Aid Fund) X Experience Factor

Total Premium = Standard Premium + Supplemental Pension

* Returns are based on a number of factors, such as premium size, claim costs and related factors, therefore returns are not guaranteed.

** Based on L&I average for all retro participants.

*** Percent of refund retained to protect against possible assessment. Equity will be refunded once group has met equity requirements set by the advisory committee.

***Service fee is billed annually in advance

Developed Loss Ratio / Estimated Refund

City of Des Moines

Without Participation in Workers' Compensation Group Retro Program

Fiscal Year (7/1 – 6/30)	Standard Premium	Developed* Losses	Developed Loss Ratio
2000	\$78,832	\$254,659	323.0%
2001	\$75,705	\$380,378	502.4%
2002	\$83,201	\$ 68,694	82.6%
TOTALS	\$237,738	\$703,731	296.0%

With Participation in Workers' Compensation Group Retro Program

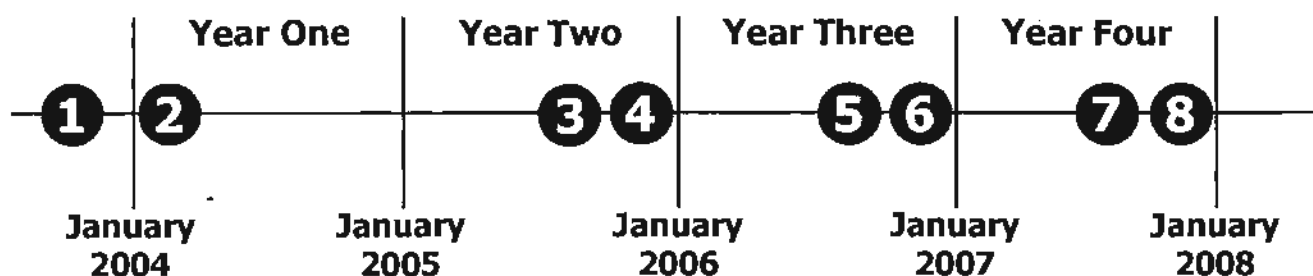
Fiscal Year (7/1 – 6/30)	Standard Premium	Service Fee (6.5%)	Developed* Losses	Estimated Refund
2000	\$78,832	\$5,124	\$254,659	\$5,124 **
2001	\$75,705	\$4,920	\$380,378	\$4,920 **
2002	\$83,201	\$5,408	\$ 68,694	\$21,000
TOTALS	\$237,738	\$15,452	\$703,731	\$31,044

* Developed losses are approximately incurred losses x 2. Used to protect L&I from over-refunding.

** Developed losses exceeded Standard Premium. Refund limited to service fee.

AWC

Retro Rating Timeline



- 1** December 2003 - Deadline for signed enrollment
(Staggered enrollment can occur on a quarter)
- Year One**
- 2** January 2004 - Enrollment Date
(April, June, October)
- Year Two**
- 3** October 2005 - Year One 1st Adjustment - includes refund on service fees
- 4** December 2005 - Refund distributed
- Year Three**
- 5** October 2006 - Year One 2nd Adjustment - return service fee on Year 2
- 6** December 2006 - Refund distributed
- Year Four**
- 7** October 2007 - Year One 3rd Adjustment - final adjustment - refund 50% of available refund with 50% retained as equity in reserve account; return Year 3 service fee
- 8** December 2007 - Refund distributed

Refund (Assessment) = Claims Dollars/Premium Dollars
A refund is not guaranteed, depending on developed losses, an assessment may apply.

ASSOCIATION OF WASHINGTON CITIES WORKERS' COMPENSATION GROUP RETRO PROGRAM

Participation Agreement and Group Enrollment Application Government, Utilities & Related Services

As a member in good standing with the Association of Washington Cities

Member Name

L&I Account Number

Enrolls by this agreement as a participating member in the Group Retrospective Rating Plan Agreement submitted by AWC.

This contract agreement renews provided the member submits, and is approved by Labor & Industries, a valid "Application For Group Membership And Authorization For Release Of Insurance Data" (L&I retro application form).

1. Goals of the Plan:

- A. Offer participants an opportunity to qualify for refunds on Standard Premium paid to the Department of Labor & Industries
- B. Reduce the frequency and severity of industrial injuries; and
- C. Reduce participants' experience factor

2. Administration & Management of the Plan:

AWC will be responsible for the day-to-day operation of the Plan. Duties include, but are not limited to:

- A. Assisting plan participants in reducing the frequency and severity of industrial injuries;
- B. Educating plan participants in the most appropriate ways to control costs;
- C. Claims Management Services;
- D. Introduction and training materials;
- E. Annual Retrospective Review; and
- F. Administration of State Fund claims while enrolled in AWC Group Program.
- G. Loss Control and Risk Management Services.

AWC Retro Advisory Committee

A committee consisting of no more than seven member cities/towns will be assembled to advise the AWC Retro Plan Administrator on operational issues including contract terms, distribution of refunds, program enhancements, conditions for continued participation and other issues. This committee shall meet at least once per year to develop policy, review participants, adjust the contract terms or address any other issues regarding the successful administration of the plan.

3. Member Agrees To:

- A. During contract term, maintain an individual account for workers' compensation insurance in good standing with the Department of Labor & Industries;
- B. Comply with all applicable laws, rules and regulations set forth by L&I;
- C. Participate in safety and loss control programs available as an AWC Retro Plan member;
- D. Maintain membership in the Association of Washington Cities through the final retro year adjustment;
- E. Pay a Service Fee of six and one half percent (6.5%) of total Industrial Insurance Premium, billed annually in January.
- F. If you do not pay your service fee as agreed the member will forfeit any refund.

4. Refunds/Adjustments:

- A. It is understood and agreed by the employer that all refunds, exceeding Service Fees of six and one half percent (6.5%) of Industrial Insurance Premium, will be made on the basis of a merit rated formula based on performance. However, should the Member's retro premium exceed their standard premium, the member will not be eligible for a refund beyond their service fee. Plan participants also acknowledge that returns are based on a number of factors, such as premium size, claim costs, and related factors, therefore returns are not guaranteed.
- B. Employers acknowledge that AWC is enrolled in Plan B with a Maximum Premium Ratio (MPR) of 1.15. If a group assessment develops for any Plan Year, those members that caused the assessment will be assessed first, up to a maximum liability of fifteen percent (15%) of the participating member's Standard Premium. If necessary to cover the assessment, the remaining members shall pay the balance on the basis of their individual percentage of the total group premium. Penalties become due and payable within 30 days of notification of the amount. If you do NOT re-enroll in the program, any refund will be held until the final adjustment of that Retro year.

5. Indemnification/Liability:

Each party shall indemnify and hold harmless the other and its directors, officers, employees, agents, parents, subsidiaries, successors and assigns from and against any and all liabilities, claims, suits, actions, demands, settlements, losses, judgments, costs, damages, and expenses (including reasonable attorney's fees) arising out of or resulting from, in whole or part, the acts or omissions of the indemnifying party, its employees, agents or contractors and the indemnifying party's affiliated companies and their employees, agents or contractors.

Authorized By:

(Name)

(Title)

(Signature)

(Address)

(City/Town Applicant)

(Date)



APPLICATION FOR GROUP MEMBERSHIP AND AUTHORIZATION FOR RELEASE OF INSURANCE DATA

Mail to association

Association of Washington Cities
1076 Franklin St. S.E.
Olympia, WA 98501

Employer

Retro ID _____

UBI _____

Account ID _____

Include sub accounts



Application Deadline **12/15/03**

Coverage Year Beginning **01/01/04**

If you have more than one L&I industrial insurance account you must list all accounts that are of a similar business nature on the reverse side of this form and check the sub account box above. If you have questions about this requirement please contact the business association listed above or L&I at (360) 902-4851.

As a member of the sponsoring organization listed above, this employer applies for enrollment in the retrospective rating group sponsored by the organization. L&I will notify the sponsoring organization of acceptance or denial of your application to participate in the group. It is the responsibility of the sponsoring organization to notify you of this acceptance or denial. As a pre-requisite of enrollment each of your industrial insurance accounts must be in good standing at the time of enrollment or you will not be allowed to participate in retrospective rating.

By signing this application, the employer named above agrees with all of the following conditions:

- L&I will automatically re-enroll the employer as a member of the group in future coverage periods provided the employer's industrial insurance account is in good standing at the time of re-enrollment. If the employer does not want to participate in future coverage periods the employer or sponsoring organization must notify L&I in writing prior to the beginning of the respective coverage period.
- The employer authorizes L&I to furnish the sponsoring organization or their designee with data and information obtained from the employer's industrial insurance account(s).
- The sponsoring organization will represent the employer in all matters applicable to retrospective rating participation and the employer's industrial insurance account(s).
- The employer agrees to comply with L&I rules, regulations and laws and is bound by the terms of the agreement between the sponsoring organization and L&I.
- The employer will cooperate with L&I claims management activities and will participate in the sponsoring organization's claims management and workplace safety initiatives.
- All retrospective rating adjustments that may be earned by the employer will be given to the sponsoring organization. L&I is not involved in the distribution of a group refund to the individual group members except in the case of defunct group.

These conditions are in effect immediately and will remain in effect through the term of any agreement between the sponsoring organization and L&I.

NOTE: L&I disclaims any interest in any other contract you may enter into with the sponsoring organization as their pre-requisite of your participation in the retrospective rating group that they sponsor, and L&I neither approves or disapproves of any language or provision contained in these other contracts.

RETURN this application directly to the above organization.

DO NOT send this application directly to L&I.

Signature of an owner, partner or corporate officer of the employer named above is required to participate in this retrospective rating group.

Type or print name	Title	
Date	Owner, partner, corporate officer	Signature

AGENDA ITEM

SUBJECT: Cingular Communications Lease

AGENDA OF: October 23, 2003

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: October 2, 2003

ATTACHMENTS:

1. Cingular lease

CLEARANCES:

[] Park & Rec. _____

[X] Legal _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose:

The purpose of this agenda item is to allow Council discussion regarding the Cingular Communications Lease. This item was placed on the agenda at the request of three members of the City Council.

COMMUNICATIONS SITE LEASE AGREEMENT

THIS COMMUNICATIONS SITE LEASE AGREEMENT ("Lease") dated as of 29 Aug, 2003, is between Pacific Bell Wireless Northwest, LLC, a Delaware limited liability company, d/b/a Cingular Wireless ("Lessee"), whose address is 2445 - 140th Avenue, NE, Suite 202, Bellevue, WA 98005, and City of Des Moines, a municipal corporation ("Lessor"), whose address is 21630 11th Avenue South, Des Moines WA 98198.

The parties hereto agree as follows:

1. Premises. Lessor represents that Lessor owns the real property legally described in Exhibit "A" commonly known as 1000 S. 220th Street, Des Moines WA 98198 (Assessor's Parcel Number 082204903403). Subject to the following terms and conditions, Lessor leases to Lessee that portion of Lessor's property ("Lessor's Property") approximately TBD square feet of space as depicted in Exhibit "B", including any applicable easements for access and utilities (the "Premises"). 405



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

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

4. Term. The term of this Lease ("Term") shall be five (5) years commencing with the date Lessee commences construction of its mobile/wireless communications facilities on the Premises, excluding preliminary testing, survey and utilities work (the "Commencement Date"). Lessee shall have the right to extend the Term of this Lease for two (2) additional Terms ("Renewal Term") of five (5) years each. Each Renewal Term shall be on the same terms and conditions as set forth herein. This Lease shall automatically be extended for each successive five (5) year Renewal Term unless Lessee notifies Lessor in writing of Lessee's intention not to extend this Lease at least thirty (30) days prior to the expiration of the first five year Term or any Renewal Term.

5. Rent.

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

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

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

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

6. Improvements; Access.

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

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

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

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

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

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

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

7. Interference with Communications.

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

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

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

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

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

8. Taxes.

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

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

9. Termination.

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

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

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

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

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

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

13. Indemnification.

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

attributable to the negligent or intentional act or omission of Lessor, its employees, agents or independent contractors.

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

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

15. Assignment/Sublease/Additional Users.

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

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

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

16. Title and Quiet Enjoyment.

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

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

17. Repairs/Removal/Restoration.

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

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

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

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

19. Mediation/Arbitration.

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

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

20. Miscellaneous.

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

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

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

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

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

(d) Subordination. Lessor shall obtain for the benefit of LESSEE a commercially reasonable subordination, non-disturbance and attornment agreement (a "Non-Disturbance Agreement") from each holder of a mortgage, deed of trust, deed to secure debt or other similar instrument now or hereafter encumbering the Leased Property (a "Mortgage"), confirming that Lessee's right to quiet possession of the Leased Property during the term of this Agreement (including any extensions thereof) shall not be disturbed as long as LESSEE is not in default hereunder. No such subordination shall be effective unless the holder of such Mortgage shall, either in the Mortgage itself or in a separate agreement with LESSEE, agree that in the event of a foreclosure, or conveyance in lieu of foreclosure, of Lessor's interest in the Leased Property, such holder shall recognize and confirm the validity and existence of this Agreement and the rights of Lessee hereunder, and this Agreement shall continue in full force and effect and Lessee shall have the right to continue its use and occupancy of the Leased Property in accordance with

the provisions of this Agreement as long as Lessee is not in default of this Agreement beyond applicable notice and cure periods. Lessee shall execute in a timely manner whatever instruments may reasonably be required to evidence the provisions of this paragraph. In the event the Leased Property is encumbered by one or more Mortgages on the Commencement Date, Lessor, no later than thirty (30) days after the Commencement Date, shall obtain and furnish to Lessee a Non-Disturbance Agreement in recordable form from the holder of each such Mortgage.

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

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

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

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

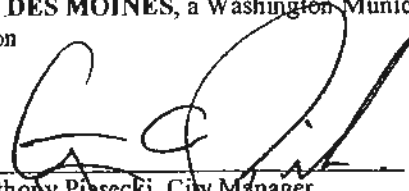
(i) This Lease constitutes the entire Lease between the parties, and supersedes all understandings, offers, negotiations and other leases concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments, modifications or waivers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

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

LESSOR:

CITY OF DES MOINES, a Washington Municipal Corporation

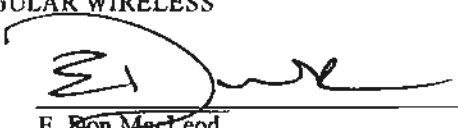
By:


Anthony Pisecski, City Manager
City of Des Moines

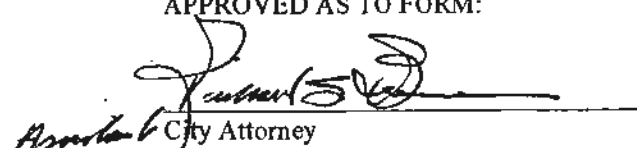
LESSEE:

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

By:


E. Bon MacLeod
Seattle Network Director

APPROVED AS TO FORM:

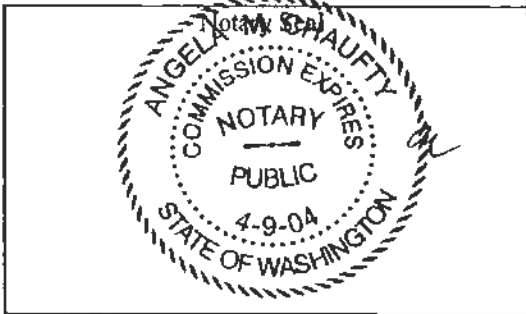

City Attorney

LESSOR'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

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

DATED: 8/11/03



Angela M. Chaufly
(Signature of Notary)
Angela M. Chaufly
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: 4/9/04

CINGULAR'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

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

DATED: 29 August 2003

Notary Seal

Alma N. Newgard
(Signature of Notary)
ALMA N. NEWGARD
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: March 22, 2005

EXHIBIT A

LEGAL DESCRIPTION OF LESSOR'S PROPERTY

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

Legal Description:

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

EXHIBIT B**DESCRIPTION OF PREMISES**

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

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

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

Notes

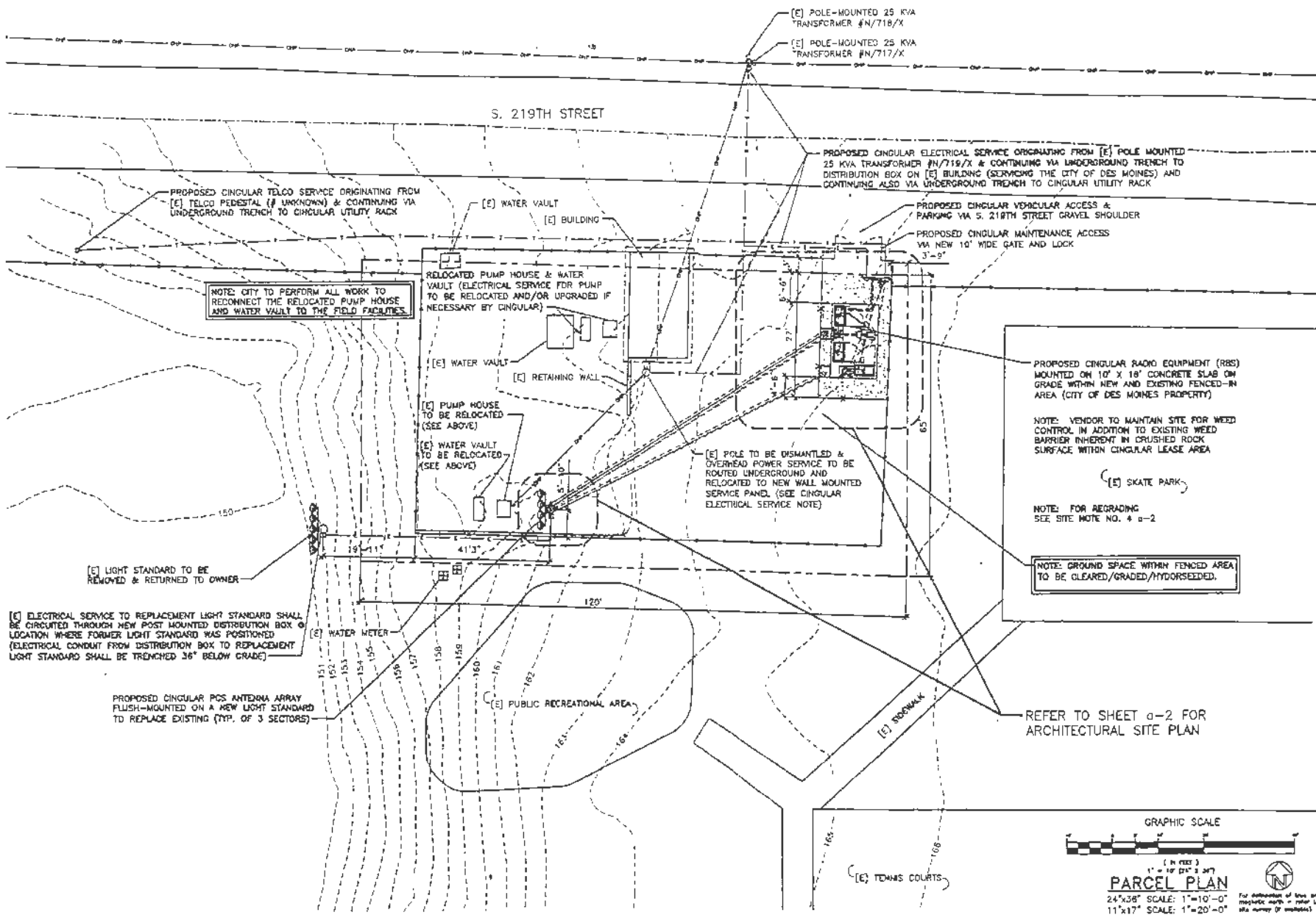
1. This Exhibit may be replaced by a land survey or Site Plan of the Premises once it is received by Lessee.
2. Setback of the Premises from the Lessor's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable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

[illegible]

1. VESPA ANTENNA BO CENTER & LEADERS WITH FULL SITE COORDINATION SHEET FORM #1, ENGINEER
2. ALL SPACED ANTENNAS GOX AND LEADING WIREWORK TO BE PAINTED TO MATCH NEW LIFT STANDARD
3. 1 CONTRACTOR TO MEET WORKING ANTENNA AND CENTER SHALL BE PROVIDED TO CONTRACTOR PRIOR TO INSTALLATION BY CHAIRMAN INTERCONNECT ENGINEER.
4. CONTACT: MR. JOHN HANSEN
PH: (206) 244-9000
5. CONTRACTOR SHALL REMOVE AND RESTORE ALL DETACHED AIDS TO THEIR EXISTING CONDITION.
6. 5. REMOVE SPACE WHEN SPACED AIDS TO BE CURED/STAYED/MONITORED.
7. 6. CENTRAL PENDING-AID SHALL BE ACCESSED & LOGGED INDEPENDENTLY OF OTHERS THAT PROPOSED TRAVEL SHALL BE SORTED TO WHICH EXISTING SPACED TRAIL
7. AFTER CONSTRUCTION & INSTALLATION WORKING ANTENNAS SHALL NOT BE PAID WITHIN SPACED AREA

COAX LENGTHS ARE CALCULATED FROM THIS DRAWING SET. ANY DEVIATION FROM THE PROPOSED DESIGN MAY REQUIRE ALTERATION OF COAX LENGTHS. CONTRACTOR SHALL ENSURE THAT FINAL DESIGN AND COAX LENGTHS ARE COORDINATED.

SECTOR	LENGTH	# COAX	DIAMETER
SECTOR "A"	148'	4	1 5/8"
SECTOR "B"	148'	4	1 5/8"
SECTOR "C"	148'	4	1 5/8"



DATE: 02-24-03

DRAWN BY: JBK

CHECKED BY: RBH

REVISIONS

DATE	DESCRIPTION	INITIALS
03-04-03	PRELIM CD'S JBK	
04-04-03	FINAL CD'S NL	
05-04-03	REV. FINAL CD'S JBK	
06-04-03	FINAL 2D'S JFO	

SITE NUMBER

WA-455-01

D.T. DES MOINES

1000 S. 220TH ST.

DES MOINES, WA 98158

a-1

EXHIBIT B1
SCOPE OF WORK

Cingular Wireless Construction at Des Moines Field House Park

General

- A. Per § 3 of the Lease, Tenant is preparing, executing, filing, and complying with all required Governmental Approvals and Regulations.
- B. Tenant to clean site daily during construction. At end of each day, site must be left safe and secured.
- C. Tenant understands that this is a public facility, and that it must be in service during most, if not all, hours of construction required by this Contract. Tenant to ensure that construction will not interfere with the Americans with Disabilities Act (ADA) accessible entrance.

Scope of Work

- A. Tenant to remove existing left field light pole, which will be retained by Landlord to be used at another ball field. Tenant to replace with new left field light pole to new area agreed upon by Tenant and Landlord as depicted in approved Construction Drawings. Tenant to reinstall MUSCO field lighting fixtures on the new left field light pole per MUSCO and Landlord field lighting standards.
- B. Daily removal and disposal of all materials, debris and trash generated by this project.
- C. One-year guarantee on all work performed by Tenant.
- D. Verify location of all underground utilities before commencement of Work. Remove no utilities, unless depicted on approved Construction Drawings. All utilities to run underground. If unexpected conditions arise, stop work and immediately notify Landlord. In all phases of the work, the Tenant, at no additional cost, shall repair all damage caused by the Tenant to any existing utilities.

Landlord Responsibilities

- A. Locate all above-ground utilities
- B. On-site Landlord observation and construction supervision.

**RECORDING REQUESTED BY, AND
WHEN RECORDED, RETURN TO:**

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

MEMORANDUM OF AGREEMENT

Grantor: CITY OF DES MOINES, a Washington Municipal Corporation
Grantee: PACIFIC BELL WIRELESS NORTHWEST, LLC, a Delaware limited liability company, d/b/a Cingular Wireless
Legal Description: NW 1/4 SE 1/4 S8 T22 N R 4 E (abbreviated legal)
Official legal description attached as Exhibit A
Assessor's Tax Parcel ID No.: 082204 - 9034-03
Site Number & Name: WA 455-01 DT DES MOINES

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

RECITALS

WHEREAS, Lessor and Lessee have executed that certain Communication Site Lease Agreement ("Agreement") dated as of 29 August, 2003, covering certain premises ("Premises") situated on certain real property located in the County of King, State of Washington, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference; and

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

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

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

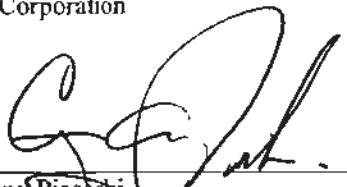
2. **Expiration Date**. The term of the Agreement is scheduled to commence with the issuance of a local building permit and shall expire five (5) years thereafter, subject to Lessee's option to extend the term for two (2) additional terms of five (5) successive years each.

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

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

LESSOR:

CITY OF DES MOINES, a Washington
Municipal Corporation

By: 
Anthony Piasecki
City Manager

LESSEE:

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

By: 
E. Don MacLeod
Seattle Network Director

APPROVED AS TO FORM:

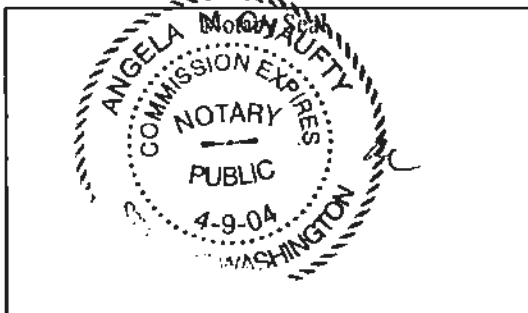

City Attorney

LESSOR'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
COUNTY OF King) ss.

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

DATED: 8/11/03



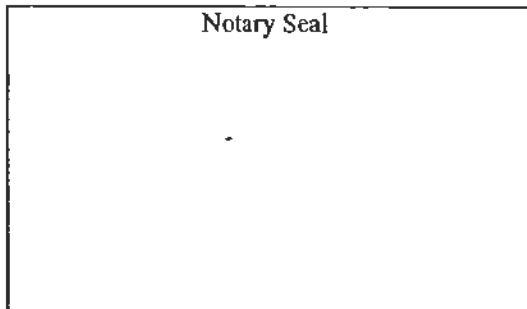
Angela M. Chaufly
(Signature of Notary)
Angela M. Chaufly
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: 4/9/04

CINGULAR'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

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

DATED: 29 August 2003



Alma N. Newgard
(Signature of Notary)
ALMA N. NEWGARD
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: March 22, 2005

**EXHIBIT A
LEGAL DESCRIPTION**

Site Number: DT DES MOINES

Site Name: WA455-01

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

Legal Description:

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

LEGAL DESCRIPTION:

PARCEL A:

The West 120 feet of the North 75 feet of the East 607 feet of the South 368 feet of the Northwest quarter of the Southeast quarter of Section 8, Township 22 North, Range 4 East W.M.;
EXCEPT the North 10 feet thereof conveyed to King County by deed recorded under Recording No. 4801585, records of King County, Washington.

Situate in the County of King, State of Washington.

PARCEL B:

Beginning 932 feet West of the Southeast corner of the Northwest quarter of the Southeast quarter of Section 8, Township 22 North, Range 4 East W.M.;
THENCE North along the East line of Hanes' Addition to Des Moines a distance of 369.7 feet;
THENCE East 200 feet;
THENCE South 369.7 feet to the North line of New Addition to Des Moines;
THENCE West to place of beginning;

ALSO, all of fractional Block 52, The New Addition to the Town of Des Moines, according to the Plat thereof recorded in Volume 4 of Plats, Page 84, records of King County, Washington;
EXCEPT the South 10 feet of the North 30 feet of that portion of the East 932 feet of the Northwest quarter of the Southeast 1/4 of said Section 8, and the West 15 feet of the East 30 feet of the East 932 feet of the Northwest quarter of the Southeast quarter of section lying Southerly of S. 219th Street and Westerly of 11th Ave. S. as now established by King County.

Situate in the County of King, State of Washington.

PARCEL C:

The North 80 feet of the South 180 feet of the West 100 feet of the East 531.9 feet of the Southeast quarter of the Northwest quarter of the Southeast quarter of Section 8, Township 22 North, Range 4 East W.M., records of King County, Washington.

Situate in the County of King, State of Washington.

Fidelity National Title Company of Washington
ALTA Commitment, Page 3
Order No. N211336

SCHEDULE A (continued):

LEGAL DESCRIPTION (continued):

PARCEL D:

Lots 15 and 16, Block 54, NEW ADDITION TO THE TOWN OF DES MOINES,
according to the Plat thereof recorded in Volume 4 of Plats, Page 84,
records of King County, Washington.

Situate in the County of King, State of Washington.

PARCEL E:

Lots 15 and 16, Block 53, NEW ADDITION TO THE TOWN OF DES MOINES,
according to the Plat thereof recorded in Volume 4 of Plats, Page 84,
records of King County, Washington.

Situate in the County of King, State of Washington.

PARCEL F:

The South 368 feet of the West 100 feet of the East 632 feet of the
Northwest quarter of the Southeast quarter of Section 8, Township 22
North, Range 4 East W.M.;

EXCEPT the East 75 feet of the North 120 feet thereof;

ALSO, the South 367.7 feet of the West 100 feet of the East 732 feet of
the Northwest quarter of the Southeast quarter of said Section 8.

Situate in the County of King, State of Washington.

SCHEDULE A (continued):

LEGAL DESCRIPTION (continued):

PARCEL G:

Beginning 345 feet West of the Southeast corner of the Northwest quarter of the Southeast 1/4 of Section 8, Township 22 North, Range 4 East W.M.;
THENCE North 367.6 feet to the South line of the Ethel O. Peck Road;
THENCE West along said South line of said road 195.1 feet;
THENCE South to the North line of the New Addition to the Town of Des Moines;

THENCE East 186.9 feet to the point of beginning;
LESS the South 100 feet of the West 100 feet of the above described property deeded by W.R. Case and Louise Case, husband and wife, to the above named Grantor (Des Moines Civic Betterment Committee) under date of June 22, 1938 and recorded under Recording No. 3001205;
AND LESS the North 80 feet of the South 180 feet of the West 100 feet of the above described property deeded by W.R. Case & Louise Case, husband and wife, to Des Moines Civic Betterment Committee under the date of October 20, 1938 and recorded under Recording No. 3020598;

ALSO, fractional Blocks 55 and 56, New Addition to the Town of Des Moines, as recorded in Volume 4 of Plats, Page 84, records of King County, Washington, together with all rights accruing to the same by reason of the vacation of street and alley adjoining.

Situate in the County of King, State of Washington.

NOTE FOR INFORMATIONAL PURPOSES ONLY:

The following may be used as an abbreviated legal description on the documents to be recorded, per amended RCW 65.04. Said abbreviated legal description is not a substitute for a complete legal description within the body of the document.

Ptn S8-T22N-R4E

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:
Towing/Impound Services

FOR AGENDA OF: October 23, 2003

DEPT. OF ORIGIN: Police

DATE SUBMITTED: October 16, 2003

ATTACHMENTS:

- 1) Evaluation Spread Sheet
- 2) Memorandum From Commander Tucker
Regarding RFP Evaluation

CLEARANCES:

☐ Legal

☒ Police

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

Purpose and Recommendations:

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 RoadOne (Dick's Highline Towing) be awarded the contract.

Recommended Motion:

"I move that the City Council award the towing and impound contract to RoadOne (Dick's Highline Towing), and authorize the City Manager to finalize and sign the agreement."

Alternative Motions:

"I move to reject all responses to RFP Number PD-03-001 and direct staff to re-issue the RFP with the following changes: _____."

"I move to reject all responses to RFP Number PD-03-001"

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 involved in accidents, towing abandoned vehicles, towing vehicles that are being impounded (driver's arrested for various offences/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.

As a result of an action brought by a citizens group and a Superior Court Judge's ruling that the relationship between the City of Des Moines and the previous towing/impound provider (Pete's Towing) violated state law, the city currently receives towing/impound services from RoadOne (Dick's Highline). These services are being provided without a written agreement between RoadOne and the City.

On September 4, 2003 Council directed staff to issue an RFP for towing/impound services with some minor modifications to previous RFP documents. This RFP was modified and let to bid with a closure date of September 25, 2003. The City received three responses to the RFP. These responses have been reviewed with the recommendations presented before council.

Discussion:

Staff conducted an in-depth review of the proposals during the first week of October. This review included site visits, contacts with the managers, equipment review, and reference contacts. In conducting these reviews it was found only two contractors meet all proposal standards (Airport Towing and RoadOne). In the review process a comparison spreadsheet was constructed outlining the essential criteria requirements each tow company had to meet (see attached *Evaluation Spread Sheet*). RoadOne (Dick's Highline) provided the best response to the pricing schedule. For example a Class "A" Tow from RoadOne (Dick's Highline) is listed as \$84.00, and an Airport Towing Class "A" Tow is \$285.59. The attached memo from Commander Tucker summarizes the criteria, issues, and concerns with each responding tow company.

Financial Impact:

The financial impact to the City of Des Moines and the citizens who have their vehicles towed will be reduced since the fees RoadOne (Dicks Highline) proposed are lower than the amount currently being charged.

Alternatives:

Council can direct staff to issue an RFP with the same requirements and timeframes as RFP Number PD-03-001 in hopes of gaining a greater response, or direct that certain changes be made to the document before the 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.

Recommendation:

Staff recommends towing/impound services be provided to the City of Des Moines and our customers via a written contract. Entering into a written agreement with RoadOne (Dick's Highline) would accomplish this recommendation.

Original RFP documents are available for examination by contacting Commander Kevin Tucker at Des Moines Police Department.

MEMORANDUM

Date: October 16, 2003

To: Tony Piasecki
City Manager

From: Kevin Tucker
Commander

Subject: October 2003 Towing RFP Review

At the close of the RFP we received Three (3) bid submittals (September 25, 2003 at 1630 hours). The three responding bids were from Dick's Highline Towing, Airport Towing and Gene's Towing. I have reviewed all three bid documents, conducted site visits on two out of the three. (I did not conduct site visit on Gene's Towing due to distance from City of Des Moines as well as being non-responsive in the bid submittal). 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 are two bids which meet all specification required by the City of Des Moines. These two are Airport Towing and Dicks Highline Towing. 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)

- Meets all RFP requirements

Airport Towing

- Meets all RFP requirements

There were two bids which did not meet the specifications listed in the RFP. These two were Airport Towing (Alternate Proposal) and Gene's Towing.

Airport Towing (Alternate Proposal)

- 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

Gene's Towing

- Did not complete and return form "Specifications For Vehicle Towing And Impound Services"
- Did not complete and return form "Exceptions"
- Did not submit "Proposal Guarantee"
- Excess of 4 miles from city limit
- Only one Class "A" Tow Truck at Federal Way site
- Closest Class "C" Tow Truck in Puyallup, Tacoma or Lakewood
- Did not provide list of employees for records check

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 \$84.00 per tow. The next closest Class "A" tow is Airport Towing at \$285.59. I also subtotaled all contractor rates per proposal and found Dicks Highline came in at \$436.00 for all services. The next closest was Airport Towing at \$1,651.40.

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.

Attachments:

1. 3-page comparison matrix
2. RFP Road One (Dicks Highline)
3. RFP Airport Towing
4. RFP Gene's Towing

	RoadOne (Dicks Highline)	Genes Towing Inc	Airport Towing	Airport Towing (Alternate)
Contractor Rates				
Service Calls (\$)	\$50.00	\$48.50	\$69.50	\$59.95
Towing Includes 1st Hour Class "A" Truck	\$84.00	\$92.50	\$285.59	\$121.30
Towing Includes 1st Hour Class "B" Truck	\$77.00	\$145.00	\$325.24	\$160.95
Towing Includes 1st Hour Class "C" Truck	\$77.00	\$243.00	\$396.24	\$231.95
Standby Time 15 minute intervals after 1 st hour Class "A" & "B" Truck	\$16.00	\$23.13 (Class A) \$36.25 (Class B)	\$76.36	\$30.33
Standby Time 15 minute intervals after 1 st hour Class "C" Truck	\$16.00	\$60.75	\$99.06	\$57.99
Winching (15 minute intervals)	\$19.00	\$36.25	\$76.36	\$60.66
Drive Line removal	\$ 0	\$ 0	\$40.00	\$40.00
Dolly Rental-included in tow tee	\$ 0	\$ 0	\$40.00	\$40.00
Mileage Fee (after 10 Miles)	\$2.00	\$ 0	\$4.00	\$4.00
Vehicle Release between 8:00 p.m. and 8:00 a.m.	\$35.00	\$56.50	\$142.80	\$60.65
Storage (1 st 12 hours no charge) Amount for each additional 24-hour period. Inside Storage	\$30.00	\$45.00	\$57.95	\$48.95
Storage (1 st 12 hours no charge) Amount for each additional 24-hour period. Outside Storage	\$30.00	\$35.00	\$38.30	\$33.75
<i>Total Package Costs</i>	<i>\$436.00</i>	<i>\$821.88</i>	<i>\$1,651.40</i>	<i>\$950.48</i>

Other Conditions	RoadOne (Dicks Highline)	Genes Towing Inc	Airport Towing	Airport Towing (Alternate)
(Forms Completed?) <i>Specifications For Vehicle Towing And Impound Services</i>	YES	NO, DID NOT RETURN WITH BID	YES	YES
(Forms Completed?) <i>Instructions Regarding Proposals</i>	YES	YES	YES	YES
(Forms Completed?) <i>Special Provisions</i>	YES	YES	YES	YES
(Forms Completed?) <i>Non-Collusion Affidavit</i>	YES	YES	YES	YES
(Forms Completed?) <i>Certificate As To Corporate Principal</i>	YES	YES	YES	YES
(Forms Completed?) <i>Exceptions</i>	YES	NO, DID NOT RETURN WITH BID	YES	YES
(Forms Completed?) <i>Proposal Form</i>	YES	YES	YES	YES
Proposal Guarantee Submitted?	YES, Check for \$5,000	NO, DID NOT SUBMIT	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	No, Not at Federal Way lot, Only 1 Class A at Federal Way Site	Yes, 5 Class A	Yes, 5 Class A

Other Conditions	RoadOne (Dicks Highline)	Genes Towing Inc	Airport Towing	Airport Towing (Alternate)
Class "C", by ownership, lease, purchase contract or temporary use agreement. (At all times)	Yes	YES, but based in Puyallup, Tacoma and Lakewood	Yes	Yes
24-7 dispatch office?	YES, Nextel Radios	N/A	YES, Nextel Radios	YES, Nextel Radios
20 minute response time?	YES, except rush hour	N/A	YES, except rush hour	YES, except rush hour
Storage Lot? (No further than 4 miles from the city limits)	YES, 2012 S. 146 th St Seatac, WA 98168 3.7 driving miles	NO, 4.6 Miles from 272 and SR99 and 4.3 Miles from Redondo South	YES 817 S. 149 th St, Burien, WA 98166 3.1 driving miles	YES, 817 S. 149 th St, Burien, WA 98166 3.1 driving 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
Physical Conditions and Security of storage lot?	OK	N/A	OK	OK
Shelter in good repairs and securable?	OK	N/A	OK	OK
Radio Equipment?	Nextel	N/A	Nextel	Nextel
Staff Records Checks Results?	YES	Did not Submit List of Employees	YES	YES
WSP Standards and Inspections within set guidelines?	YES	YES	YES	YES

Received

MAY 05 2003

By McKay Chadwell, PLLC

Yo

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

CITIZENS FOR DES MOINES, Inc., and
ALLAN FURNEY,

Plaintiff,

v.

GARY W. PETERSEN, individually and as City
of Des Moines Councilmember,

Defendant.

No. 02-2-03706-2KNT

ORDER GRANTING
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT

THIS MATTER came on for hearing before the undersigned Judge of the above-captioned Court on motions for summary judgment by the Plaintiffs and the Defendant.

Plaintiffs appeared personally and through their counsel of record, Michael D. McKay, Peter B. Gonick and McKay Chadwell PLLC. The Defendant appeared through his counsel of record Scott M. Missall and Short Cressman Burgess PLLC. This Court has considered oral arguments of counsel, the motions and responses filed by the parties, the Stipulation of Facts filed by the parties and the documents and pleadings previously filed in this case.

This Court being fully advised in the matter, having determined that there are no genuine issues of material fact, and that Plaintiffs are entitled to summary judgment as a matter of law, hereby ORDERS:

1. The Defendant's Motion for Summary Judgment is DENIED.

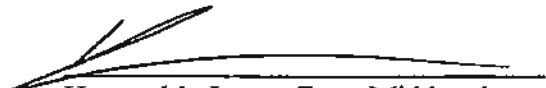
ORDER GRANTING PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT - 1

McKay Chadwell, PLLC
600 University St., Suite 1601
Seattle, Washington 98101
(206) 233-2800 Fax (206) 233-2809

- 1 2. Plaintiffs' Motion for Partial Summary Judgment is GRANTED.
- 2 3. Mr. Gary W. Petersen is hereby declared to be in violation of RCW 42.23.030.
- 3 4. Pursuant to RCW 42.23.050, all contracts as described in the Findings of Fact and
- 4 Conclusions of Law entered between the City of Des Moines and Pete's Towing
- 5 while Gary W. Petersen was a Des Moines City Councilmember are void as to the
- 6 City of Des Moines.
- 7
- 8 5. Gary W. Petersen shall ensure that Pete's Towing does not enter contracts with the
- 9 City of Des Moines while he is a Des Moines City Councilmember.
- 10
- 11 6. Defendant's counterclaims that this action is frivolous, advanced without probable
- 12 cause and brought with knowledge that the allegations were false and unfounded are
- 13 dismissed.
- 14 7. Trial to determine the remedy for violations is set for June 23, 2003 at 9:00 a.m..
- 15 The parties will comply with the case schedule attached hereto.
- 16
- 17 8. The Preliminary Injunction entered on April 29, 2002, shall remain in effect until
- 18 further order of this Court.
- 19

20 DATED this 2 day of May, 2003.

21

22 

23 Honorable Laura Gene Middaugh

24

25

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27

28

Received

MAY 05 2003

By McKay Chadwell, PLLC.

ORIGINAL

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

CITIZENS FOR DES MOINES, Inc., and
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Plaintiff,

v.

GARY W. PETERSEN, individually and as City
of Des Moines Councilmember,

Defendant.

No. 02-2-03706-2KNT

FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE
SUMMARY JUDGMENT

This matter came before the Court on cross-motions for summary judgment by the parties on February 21, 2003 and presentation on April 9, 2003, plaintiffs were present on 2/21/03 and represented by Michael D. McKay, Peter B. Gonick, and McKay Chadwell, PLLC. The Defendant was present on 2/21/02 and represented by Scott M. Missall, Thane D. Somerville and Short Cressman & Burgess PLLC. The undersigned judge presided at the hearing. The motions for summary judgment presented at the hearing were as follows:

- 1) Plaintiffs moved for partial summary judgment and for the Court to declare that Gary W. Petersen is in violation of RCW 42.23.030, the remedy to be determined in a later proceeding.
- 2) Defendants moved for summary judgment dismissing the Plaintiffs' claim and declaring that Mr. Petersen is not in violation of RCW 42.23.030.

1 The Court considered the pleadings and records filed in this cause number and the
2 Stipulation of Facts and attached exhibits agreed to by the parties and filed with the court. The
3 Court heard oral argument from Plaintiffs and Defendant and makes the following findings of
4 fact and conclusions of law.

5 I. FINDINGS OF FACT

6
7 1. The Court hereby incorporates by reference the Stipulation of Facts dated February
8 11, 2003.

9 2. The Court further finds that as a member of the Des Moines City Council, Gary W.
10 Petersen can influence the actions of the City Council whether or not he has recused himself
11 from voting on any particular issue.

12 II. CONCLUSIONS OF LAW

13
14 1. Gary W. Petersen is a municipal officer of the City of Des Moines and is subject to the
15 provisions of RCW 42.23.

16 2. Gary W. Petersen is beneficially interested in each and every contract entered into by
17 Petersen Northwest Corporation and Pete's Towing.

18
19 3. Each time that the City of Des Moines police officers or other City of Des Moines
20 agents request towing and/or impound services from Pete's Towing and Pete's Towing agrees to
21 perform or does perform such services, a contract is formed between Pete's Towing and the City
22 of Des Moines. 4. Such contracts are supported by consideration in that the City gives Pete's
23 Towing specific authorization to tow and/or impound the vehicle, which provides Pete's Towing
24 the opportunity to receive payment from the private owner, and Pete's Towing provides the City
25 with a service—namely, removing the vehicle from City of Des Moines streets or other public
26 spaces.
27
28

1 5. Pete's Towing and the City of Des Moines do not have an implied contract that Pete's
2 Towing will be the exclusive provider of towing and/or impound services for the City of Des
3 Moines.

4 6. The City of Des Moines, through its City Council, has the authority to retain the status
5 quo with regard to such contracts on an individual basis. The City Council also has the authority
6 to change the status quo by granting an exclusive contract for towing services requested by the
7 City of Des Moines. Thus, such contracts may be made by, through or under the supervision of
8 the Des Moines City Council.
9

10 7. Each time that Pete's Towing and the City of Des Moines enter such a contract, there
11 is a violation of RCW 42.23.030.
12

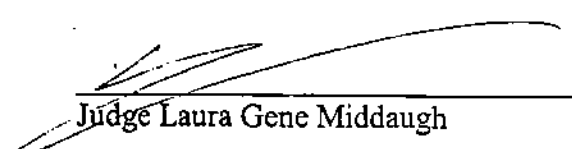
13 9. Pursuant to RCW 42.23.050, these contracts are void as to the City of Des Moines.

14 10. The written contract between Pete's Towing and the City of Des Moines Marina
15 does not constitute a violation of RCW 42.23.030 because it was entered before Gary W.
16 Petersen took office as a Des Moines City Councilmember.
17

18 11. Plaintiffs did not file this lawsuit with knowledge that the same was false, unfounded
19 and without probable cause. This lawsuit is not frivolous and not advanced without probable
20 cause.
21

22 12. This case is of significant public interest because it involves the status of an elected
23 official, the interests of the voters who elected him to serve as their representative, and the
24 community's interest in enforcing the state's conflict-of-interest statutes.

25 DATED this 24 day of April, 2003.
26
27
28


Judge Laura Gene Middaugh

THE HONORABLE RONALD KESSLER

Received

MAY 06 2002

By McKay Chadwell, PLLC.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

CITIZENS FOR DES MOINES, Inc., and
ALLAN FURNEY,

Plaintiff,

v.

GARY W. PETERSEN, individually and as City
of Des Moines Councilmember,

Defendant.

No. 02-2-03706-2KNT

PRELIMINARY INJUNCTION

THIS MATTER came on before the undersigned Judge of the above-entitled court upon the motion of plaintiffs for a temporary injunction restraining Des Moines city councilman Gary W. Petersen from violating any applicable provisions of RCW 42.23.030, and the court having considered memoranda submitted by the parties and having heard oral argument on Friday, March 29, 2002, and being otherwise fully informed in the premises, now, therefore, it is hereby

ORDERED that Gary W. Petersen be, and he hereby is, enjoined during the pendency of this case before the undersigned from taking any action as a Des Moines city councilman which would prospectively violate the provisions of RCW 42.23; specifically, as a city councilmember, he shall not be beneficially interested in, directly or indirectly, any contract which may be made by, through or under his supervision as a city councilmember, in whole or in part, or which may

1 be made for the benefit of his office, or accept, directly or indirectly, any compensation, gratuity
2 or reward in connection with such contract from any other person beneficially interested therein.

3 Additionally, Gary W. Petersen shall abstain from voting on any issue that may come
4 before the Des Moines City Council involving automotive towing. Mr. Petersen shall also be
5 restrained from speaking with other Des Moines City Councilmembers regarding automotive
6 towing issues unless he is consulted by them on the record on automotive towing matters as a
7 resource to them in the event the Des Moines City Council undertakes the drafting or
8 consideration of legislation regarding automotive towing for the city.
9

10 Further, Mr. Petersen is restrained from voting on employment matters coming before the
11 Des Moines City Council with regard to employees who would have a role in drafting any
12 contract for automotive towing or supervising any such contract for automotive towing.
13

14 This order is not a finding or determination that there has been or that there is a conflict
15 of interest on the part of Mr. Petersen that is violative of RCW chapter 42.23, and it is the intent
16 of this order to preserve the status quo and to prevent any conflict of interest during the pendency
17 of this action.
18

19 Further, this order shall not be construed to preclude Mr. Petersen from exercising the full
20 powers and authority of his office as a Des Moines city councilman, including his right to vote
21 on all matters brought before the Des Moines City Council except as set forth in this order.
22
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1 Further, this temporary injunction may be amended or dissolved by the court at any time
2 during the pendency of this case.

3 Bond set at \$250.00 *posted 4/2/02*

4 ~~Attorney Fees in the amount of _____ are awarded to Plaintiffs.~~ *RE*

6 DONE IN OPEN COURT THIS 2nd day of April, 2002.

7
8 
9
10 JUDGE RONALD KESSLER

11
12 Presented by:
13 McKAY CHADWELL, PLLC

14
15 
16 Michael D. McKay, WSBA #7040
17 Michael W. Brown, WSBA #14282
18 Attorneys for Citizens For Des Moines
and Mr. Allan Furney

19
20 Approved as to form;
21 Notice of Presentation waived:

22
23
24 Mr. Arthur Langlie, WSBA #1387
25 Attorney for Defendant Petersen

Received

MAY 05 2003

By McKay Chadwell, PLLC.

Yo

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

CITIZENS FOR DES MOINES, Inc., and
ALLAN FURNEY,

Plaintiff,

v.

GARY W. PETERSEN, individually and as City
of Des Moines Councilmember,

Defendant.

No. 02-2-03706-2KNT

ORDER GRANTING
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT

THIS MATTER came on for hearing before the undersigned Judge of the above-captioned Court on motions for summary judgment by the Plaintiffs and the Defendant. Plaintiffs appeared personally and through their counsel of record, Michael D. McKay, Peter B. Gonick and McKay Chadwell PLLC. The Defendant appeared through his counsel of record Scott M. Missall and Short Cressman Burgess PLLC. This Court has considered oral arguments of counsel, the motions and responses filed by the parties, the Stipulation of Facts filed by the parties and the documents and pleadings previously filed in this case.

This Court being fully advised in the matter, having determined that there are no genuine issues of material fact, and that Plaintiffs are entitled to summary judgment as a matter of law, hereby ORDERS:

1. The Defendant's Motion for Summary Judgment is DENIED.

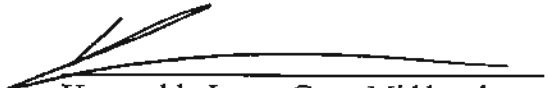
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- 15 The parties will comply with the case schedule attached hereto.
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- 17 8. The Preliminary Injunction entered on April 29, 2002, shall remain in effect until
- 18 further order of this Court.
- 19

20 DATED this 2 day of May, 2003.

21

22 

23 Honorable Laura Gene Middaugh

24

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Received

MAY 05 2003

By McKay Chadwell, PLLC.

Copy For Your
Information

ORIGINAL

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IN AND FOR THE COUNTY OF KING

CITIZENS FOR DES MOINES, Inc., and
ALLAN FURNEY,

Plaintiff,

v.

GARY W. PETERSEN, individually and as City
of Des Moines Councilmember,

Defendant.

No. 02-2-03706-2KNT

FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE
SUMMARY JUDGMENT

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- 2) Defendants moved for summary judgment dismissing the Plaintiffs' claim and declaring that Mr. Petersen is not in violation of RCW 42.23.030.

1 The Court considered the pleadings and records filed in this cause number and the
2 Stipulation of Facts and attached exhibits agreed to by the parties and filed with the court. The
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6 1. The Court hereby incorporates by reference the Stipulation of Facts dated February
7 11, 2003.

8 2. The Court further finds that as a member of the Des Moines City Council, Gary W.
9 Petersen can influence the actions of the City Council whether or not he has recused himself
10 from voting on any particular issue.
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12 II. CONCLUSIONS OF LAW

13 1. Gary W. Petersen is a municipal officer of the City of Des Moines and is subject to the
14 provisions of RCW 42.23.

15 2. Gary W. Petersen is beneficially interested in each and every contract entered into by
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18 3. Each time that the City of Des Moines police officers or other City of Des Moines
19 agents request towing and/or impound services from Pete's Towing and Pete's Towing agrees to
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23 the opportunity to receive payment from the private owner, and Pete's Towing provides the City
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25 spaces.
26
27
28

1 5. Pete's Towing and the City of Des Moines do not have an implied contract that Pete's
2 Towing will be the exclusive provider of towing and/or impound services for the City of Des
3 Moines.

4 6. The City of Des Moines, through its City Council, has the authority to retain the status
5 quo with regard to such contracts on an individual basis. The City Council also has the authority
6 to change the status quo by granting an exclusive contract for towing services requested by the
7 City of Des Moines. Thus, such contracts may be made by, through or under the supervision of
8 the Des Moines City Council.
9

10 7. Each time that Pete's Towing and the City of Des Moines enter such a contract, there
11 is a violation of RCW 42.23.030.
12

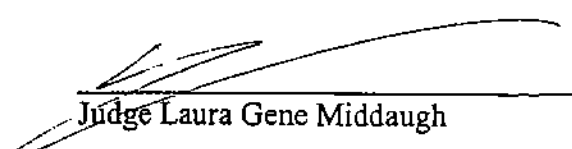
13 9. Pursuant to RCW 42.23.050, these contracts are void as to the City of Des Moines.

14 10. The written contract between Pete's Towing and the City of Des Moines Marina
15 does not constitute a violation of RCW 42.23.030 because it was entered before Gary W.
16 Petersen took office as a Des Moines City Councilmember.
17

18 11. Plaintiffs did not file this lawsuit with knowledge that the same was false, unfounded
19 and without probable cause. This lawsuit is not frivolous and not advanced without probable
20 cause.
21

22 12. This case is of significant public interest because it involves the status of an elected
23 official, the interests of the voters who elected him to serve as their representative, and the
24 community's interest in enforcing the state's conflict-of-interest statutes.

25 DATED this 24 day of April, 2003.
26
27
28


Judge Laura Gene Middaugh

THE HONORABLE RONALD KESSLER

Received

MAY 06 2002

By McKay Chadwell, PLLC.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

CITIZENS FOR DES MOINES, Inc., and
ALLAN FURNEY,

Plaintiff,

v.

GARY W. PETERSEN, individually and as City
of Des Moines Councilmember,

Defendant.

No. 02-2-03706-2KNT

PRELIMINARY INJUNCTION

THIS MATTER came on before the undersigned Judge of the above-entitled court upon the motion of plaintiffs for a temporary injunction restraining Des Moines city councilman Gary W. Petersen from violating any applicable provisions of RCW 42.23.030, and the court having considered memoranda submitted by the parties and having heard oral argument on Friday, March 29, 2002, and being otherwise fully informed in the premises, now, therefore, it is hereby

ORDERED that Gary W. Petersen be, and he hereby is, enjoined during the pendency of this case before the undersigned from taking any action as a Des Moines city councilman which would prospectively violate the provisions of RCW 42.23; specifically, as a city councilmember, he shall not be beneficially interested in, directly or indirectly, any contract which may be made by, through or under his supervision as a city councilmember, in whole or in part, or which may

1 be made for the benefit of his office, or accept, directly or indirectly, any compensation, gratuity
2 or reward in connection with such contract from any other person beneficially interested therein.

3 Additionally, Gary W. Petersen shall abstain from voting on any issue that may come
4 before the Des Moines City Council involving automotive towing. Mr. Petersen shall also be
5 restrained from speaking with other Des Moines City Councilmembers regarding automotive
6 towing issues unless he is consulted by them on the record on automotive towing matters as a
7 resource to them in the event the Des Moines City Council undertakes the drafting or
8 consideration of legislation regarding automotive towing for the city.
9

10 Further, Mr. Petersen is restrained from voting on employment matters coming before the
11 Des Moines City Council with regard to employees who would have a role in drafting any
12 contract for automotive towing or supervising any such contract for automotive towing.
13

14 This order is not a finding or determination that there has been or that there is a conflict
15 of interest on the part of Mr. Petersen that is violative of RCW chapter 42.23, and it is the intent
16 of this order to preserve the status quo and to prevent any conflict of interest during the pendency
17 of this action.
18

19 Further, this order shall not be construed to preclude Mr. Petersen from exercising the full
20 powers and authority of his office as a Des Moines city councilman, including his right to vote
21 on all matters brought before the Des Moines City Council except as set forth in this order.
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1 Further, this temporary injunction may be amended or dissolved by the court at any time
2 during the pendency of this case.

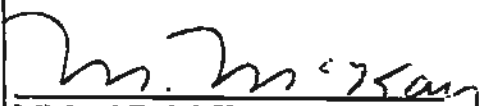
3 Bond set at \$250.00 *posted 4/12/02*

4 ~~Attorney Fees in the amount of _____ are awarded to Plaintiffs.~~ *RT*

6 DONE IN OPEN COURT THIS 29th day of April, 2002.

7
8 
9
10 JUDGE RONALD KESSLER

12 Presented by:
13 McKAY CHADWELL, PLLC

14
15 
16 Michael D. McKay, WSBA #7040
17 Michael W. Brown, WSBA #14282
18 Attorneys for Citizens For Des Moines
and Mr. Allan Furney

19
20 Approved as to form;
21 Notice of Presentation waived:
22
23

24 Mr. Arthur Langlie, WSBA #1387
25 Attorney for Defendant Petersen
26
27
28

