

CONCERN
George
Buley

ABATE LEGAL
NON-CONFORMING
USE

AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
November 21, 2002 - 7:30 p.m.

CALL TO ORDER - Mayor Wasson

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

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

BOARD & COMMITTEE REPORTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORTS

CONSENT CALENDAR*

1. Motion is to approve the minutes of October 31 and November 7, 2002.
2. Motion is to approve the Interlocal agreement with King County for Jail services and to authorize the City Manager to sign the agreement substantially in the form as submitted.
3. Draft Resolution No. 02-260 - Title: A Resolution of the City Council of the City of Des Moines, Washington, granting permission to the Greater Des Moines Chamber of Commerce to use the City's Big Catch Plaza for a holiday carousel and community activities.
MOTION is to approve Draft Resolution No. 02-260.
4. Motion is to enter into the attached agreement with the City of Kent for their participation in costs of design work for the Pacific Highway South Project and further to authorize the City Manager to sign said agreement substantially in the form as submitted.

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

PUBLIC HEARING CONTINUED

Draft Ordinance No. 02-246 Adopting 2003 Budget - 1st Reading

SUMMARY: Council opened the Public Hearing at the November 14, 2002, took public comment, and continued the Public Hearing to this meeting to allow for any additional public comments. At this meeting City Council will provide any final policy direction to staff prior to adoption.

Email ORD to
Elaine
Wasson

Robert McCauley - voted 6-1 to allow
Dan Caldwell
(Charles Martin
George Buley - grand fathered
code violation
abate legal non-
conforming use

Passed
7-0
Mayor
Removes
from
agenda
completely

1/9/03
Page 2
cont. to
public hearing

PUBLIC HEARING

Draft Ordinance No. 02-186 Dangerous Fences - 1st Reading

SUMMARY: At the July 25, 2002 Council meeting a citizen expressed concern regarding the dangers of razor wire to the safety of people, pets and wildlife. Council directed staff to prepare a draft ordinance regulating razor wire fencing. Staff determined that there is also a need for additional regulations for other types of dangerous fencing, including barbed and electric wire and discovered that there are no regulations for dangerous fences in the City's current zoning code. The draft ordinance addresses these concerns.

OLD BUSINESS

1. Budget Items - Continued Discussion

SUMMARY: The purpose of this agenda item is to present to the City Council various budget issues for discussion and direction. This report is amended to reflect additional issues not included in previous versions and Council action at the November 14, 2002 meeting.

passed as amended
4-2
27 B
28 bon
100,000
1 mill

2. Draft Ordinance No. 02-258 Marina Bonds - 2nd Reading

SUMMARY: The purpose of this action is to adopt an ordinance that will enable the City to issue bonds to finance the projects identified in Phase One of the Comprehensive Marina Master Plan that was adopted by the City Council in June 2001.

NEW BUSINESS

1. Draft Resolution No. 02-247 Adopting the 2003-2008 Capital Improvement Plan

SUMMARY: The Capital Improvement Plan provides a multi-year list of proposed major capital expenditures and associated operating costs for the City. The Plan focuses the community and Council's attention on prioritizing projects, given the competing needs for projects. The 2003-2008 Capital Improvement Plan reflects capital projects of the Municipal Capital Improvement, Arterial Streets, Surface Water Management and Marina Depreciation and Improvement Funds.

2. Draft Ordinance 01142 - Telecommunications Code Readoption - 1st Reading

SUMMARY:

NEXT MEETING DATE - REGULAR Meeting December 5, 2002

ADJOURNMENT

TABLE OF CONTENTS

Section	Page
1. Definitions	2
2. Finding, Purpose and Description of Bonds	5
3. Place, Manner and Medium of Payment	8
4. Redemption; Open Market Purchase	9
5. Debt Limit Not Exceeded	10
6. Debt Service Coverage Covenant	10
7. Pledge of Full Faith, Credit and Resources and Marina Revenue	11
8. Form of Bonds	11
9. Execution of Bonds	12
10. Authentication and Delivery of Bonds by Registrar	12
11. Registration	12
12. Mutilated, Lost, Stolen or Destroyed Bonds	14
13. Defeasance	15
14. Sale of the Bonds	15
15. Delivery of Bonds; Temporary Bonds	16
16. Call of 1968 Bonds for Redemption	16
17. Acquisition of Escrow Obligations	17
18. Verification of Sufficiency of Escrow	17
19. Escrow Agreement	18
20. <u>Establishment of Special Funds and Accounts</u>	18
21. Establishment of Bond Fund ; Application of Bond Proceeds	18
22. Tax-Exemption Covenants	—
23. Preliminary Official Statement Declaration	—
24. Undertaking to Provide Continuing Disclosure	—
25. Parity Obligations	—
26. <u>Payment of Marina Expenses</u>	—
27. <u>Excess Funds Balance</u>	—
28. <u>Maintenance of Marina</u>	—
29. <u>Repair, Replacement Reserve Account</u>	—
30. Contract; Severability	—
31. Effective Date	—

Additional sections:

Sec. 20: Establishment of Special Funds and Accounts. There are hereby created and established in the office of the City Finance Director three (3) special funds and accounts of the City, to-wit:

1. "Marina Revenue Fund Account" (hereinafter called the "Revenue Fund Account");
2. "Limited Tax General Obligation Bond Account, 2002" (hereinafter called the "Bond Fund");
3. "Marina Repair and Replacement Reserve Account" (hereinafter called the "Repair and Replacement Reserve Account")

All of such funds shall be held in the custody of the City Treasurer separate and apart from all other funds and shall be deposited in the official bank depository of the City. Moneys in such funds shall be expended and used by the City Finance Director only in the manner and order specified in this ordinance.

Old Section 20: Change title to "Application of Bond Proceeds" and remove first sentence [incorporated as #2 above]

Sec. 26. Payment of Marina Expenses. Current expenses of the Marina shall be payable, as a first charge, from the Revenue Fund account as the same become due and payable. Current expenses shall include all necessary operating expense, current maintenance charges, expenses of reasonable upkeep and repairs, properly allocated share of charges for insurance, and all other expenses incident to the operation of the Marina, but shall exclude depreciation, all general administrative expenses of the city, and the payment into the repair and replacement reserve account hereinafter provided for.

Sec. 27. Excess Funds Balance. Subject to making the foregoing maximum deposits, the City may use the balance of excess funds in the Revenue Fund Account at the close of each fiscal year to redeem outstanding Bonds on the next interest payment date, or for any expenditures, including the payment of debt service, in improving or restoring any existing Marina System facilities or providing any additional Marina facilities.

Sec. 28. Maintenance of Marina. The City covenants that it will at all times as long as the bonds are outstanding:

1. Maintain the Marina in good repair, working order and condition;
2. Operate the business in connection therewith in an efficient manner and at a reasonable cost; and
3. Establish, maintain and collect rentals, rates and charges for Marina services as may be necessary to provide for (a) the operating and maintenance expenses of the Marina and (b) the deposits into the Bond and [Interest Sinking Fund]Account and the Repair and Replacement Reserve Account.

Sec. 29 Repair, Replacement Reserve Account. There shall be deposited from the Revenue Fund Account and into the Repair Replacement Reserve Account, within thirty

(30) days after the close of each fiscal year, the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) or such portion thereof as is available for transfer annually, until the funds and/or investments in said Repair and Replacement Reserve Account shall aggregate ONE MILLION DOLLARS (\$1,000,000.00); and thereafter such sums as are available annually, but not more than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) annually, as may be required to restore and maintain a balance of ONE MILLION DOLLARS (\$1,000,000.00).

All moneys in the Repair and Replacement Reserve Account may be drawn on and used by the City for the purpose of paying the cost of unusual or extraordinary maintenance or repairs, renewals and replacements not paid as part of the ordinary and normal expense of Marina operations.

get cc of draft changes repair fund - op & maintain

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Sale and issuance of \$5,460,000 Limited Tax General Obligation Bonds, 2002, to provide funds to advance refund the City's Marina Revenue Bonds of 1968 and fund capital improvements identified in Phase one of the Comprehensive Marina Master Plan.

ATTACHMENTS:
Draft Ordinance No. 02-258

FOR AGENDA OF: November 21, 2002

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: November 15, 2002

CLEARANCES:

[] Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL: AP

Purpose and Recommendation

The purpose of this action is to adopt an ordinance that will enable the City to issue bonds to finance the projects identified in Phase One of the Comprehensive Marina Master Plan that was adopted by the City Council in June 2001.

Motion: I move to adopt Draft Ordinance No. 02-258 providing for the sale and issuance of \$5,460,000 limited tax general obligation bonds, 2002, to provide funds to advance refund the City's Marina Revenue Bonds of 1968 and fund capital improvements identified in Phase One of the Comprehensive Marina Master Plan.

Background

First reading of Draft Ordinance No. 02-258 was approved by the City Council on November 21, 2002.

Discussion

Final approval of Draft Ordinance No. 02-258 will authorize the issuance of \$5,460,000 limited tax general obligations bonds, 2002. In conjunction, therewith, City Council authorizes execution of purchase agreement with purchaser, Seattle-Northwest Securities Corporation to purchase all the bonds, and execution of Escrow Agreement with Escrow Trustee.

Changes discussed at the November 21, 2002 City Council meeting are incorporated into Draft Ordinance No. 02-258 and are included as follows: Section 1. Definitions. Maximum Annual Debt Service means the maximum amount of Annual Debt Service which shall become due in any future year on any outstanding Parity Obligations; Section 23. Undertaking to provide continuing disclosure. Items (b), (c), (d), (e), (f) added; Section 24. Parity Obligations. New Section added.

Alternatives

None.

Recommendation

Staff recommends that the City Council authorized the issuance of \$5,460,000 in Limited Tax General Obligation Bonds, 2002 by adopting Draft Ordinance No. 02-258.

Concurrence

The Municipal Facilities Committee, Finance Department, and Legal Department all concur with this action.

CITY OF DES MOINES, WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the incurrence of indebtedness; providing for the sale and issuance of \$ _____ limited tax general obligation bonds, 2002, to provide funds to advance refund the city's Marina Revenue Bonds of 1968 and to pay part of the costs necessary to carry out certain capital improvements to the city's marina, providing for the date, denominations, form, terms, registration privileges, maturities, interest rates and covenants of the bonds; providing for the annual levy of taxes to pay the principal of and the interest on such bonds; establishing a debt service account for the bonds and providing for the sale and delivery of such bonds to Seattle-Northwest Securities Corporation, Seattle, Washington.

WHEREAS, pursuant to Ordinance No. 265, the city has heretofore issued and sold the 1968 Bonds, of which \$1,037,000 in aggregate principal amount are currently outstanding; and

WHEREAS, pursuant to chapter 39.53 RCW, the city is authorized to sell and issue, without an election, limited tax general obligation bonds of the city to refund the 1968 Bonds; and

WHEREAS, the refunding of the 1968 Bonds will provide [a debt service savings to the city and] for a modification of the covenants and other terms of such bonds; and

WHEREAS, pursuant to _____ passed on _____, the city council of the city adopted the city's Marina Master Plan, which contains a capital plan recommending certain capital improvements to be made to the Marina including the Marina Improvements; and

WHEREAS, the city deems it necessary and advisable that \$ _____ in aggregate principal amount of limited tax general obligation bonds now be issued and sold to provide funds to pay the costs of the Project; and

WHEREAS, the incurrence of indebtedness by the city to carry out the Project will not cause the total indebtedness of the city to be incurred without the assent of the voters of the city to exceed the limitations set forth in chapter 39.36 RCW; and

WHEREAS, the Purchaser has offered, by way of the Purchase Agreement, to purchase such limited tax general obligation bonds upon the terms and conditions set forth below; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, DO

ORDAIN AS FOLLOWS:

Sec 1. Definitions. Unless the context otherwise requires, the terms defined in this section, for all purposes of this ordinance (including the recitals hereto) and of any ordinance supplemental hereto, shall have the meanings herein specified; words importing the singular number include the plural number and vice versa:

“Annual Debt Service” means, in any year, that year’s total of principal and interest requirements for the then-outstanding Bonds (except the principal maturity of any Bonds issued as term bonds), plus any mandatory sinking fund or mandatory bond redemption requirement for such Bonds for that year.

“Average Annual Debt Service” means, in any year, the sum of the remaining Annual Debt Service of the then-outstanding Bonds, divided by the number of years such Bonds are scheduled to remain outstanding.

“Beneficial Owner” means, with respect to any Bond, the Person named on the records of the Custodian as having the right, without a physical certificate evidencing such right, to transfer, to hypothecate and to receive the payment of the principal of, premium, if any, and interest on such Bond as the same becomes due and payable.

“Bond Fund” means the account in the Marina Revenue Fund designated as the “Limited Tax General Obligation Bond Account, 2002” created in section 20 of this ordinance.

“Bond Insurer” means _____.

“Bonds” means the City of Des Moines, Washington, Limited Tax General Obligation Bonds, 2002, dated December 1, 2002, in an original aggregate principal amount of \$_____, the sale and issuance of which are authorized by this ordinance.

“Bond Register” means the registration books on which are maintained the names and addresses of the owners or nominees of the owners of the Bonds.

“Book-Entry Termination Date” means the fifth business day following the date of receipt by the Registrar of the city’s request to terminate the book-entry system of registering the beneficial ownership of the Bonds.

“city” means the City of Des Moines, Washington, a code city, organized and existing under State law.

“city council” means the City Council of the City.

“Closing” means the date and time when the Bonds are delivered to the Purchaser in exchange for payment in full therefor.

“Code” means the Internal Revenue Code of 1986, as heretofore or hereafter amended, together with all applicable rulings and regulations heretofore or hereafter promulgated thereunder.

“Custodian” means (a) The Depository Trust Company, New York, New York, or (b) any successor thereto engaged by the city to operate a book-entry system for recording, through electronic or manual means, the beneficial ownership of the Bonds, in which system no physical certificates are issued to the Beneficial Owners of the Bonds, but in which a limited number of physical certificates are issued to and registered in the name of the Custodian or its nominee, and delivered to the Custodian; provided, that such book-entry system operated by the Custodian may include the use of subsystems of recording the beneficial ownership of Bonds which are operated by parties other than the Custodian and the use of a nominee for the Custodian; and the term “Custodian,” as used herein, includes any party operating any such subsystem.

“Escrow Agreement” means that certain agreement between the city and the Escrow Trustee, dated as of Closing.

“Escrow Trustee” means _____, acting in its fiduciary capacity as escrow trustee pursuant to the Escrow Agreement.

“Escrow Obligations” means those certain Government Obligations necessary to accomplish the Refunding Plan, as set forth on Schedule 1 to the Escrow Agreement.

“Government Obligations” means “government obligations,” as defined in Chapter 39.53 RCW, as now in existence or hereafter amended.

“Letter of Representations” means the Letter of Representations, between the city and the Custodian pertaining to the payment of the Bonds and the “book-entry” system for evidencing the beneficial ownership of the Bonds prior to the Book-Entry Termination Date.

“Marina” means the small boat harbor and marina owned and operated by the city,

“Marina Improvements” means certain capital improvements to the Marina, including but not limited to, the improvements described in the Marina Master Plan of the city, including construction of a dry stack board storage facility, upgrades to the electrical distribution system, improvements to the Redondo Boat Ramp, reconstruction of the north seawall, improvements to the south parking lot and certain preliminary work on the guest moorage expansion project. *including the Redondo facilities*

“Marina Revenue Fund” means that special fund of the city into which all Revenue of the Marina (except for earnings in any special fund for the redemption of revenue obligations of the Marina) shall be deposited.

“Maximum Annual Debt Service” means the maximum amount of Annual Debt Service which shall become due in any future year on any outstanding Bonds or any outstanding Parity Obligations.

“MSRB” means the Municipal Securities Rulemaking Board.

“Net Revenue” means the Revenue of the Marina less the Operating and Maintenance Expense.

“1968 Bonds” means the city of Des Moines Marina Revenue Bonds of 1968, in the outstanding aggregate principal amount of \$1,037,000 as of this date.

“NRMSIR” means a nationally recognized municipal securities information repository designated by the SEC.

“Operating and Maintenance Expense” means all necessary operating expenses of the Marina, current maintenance charges, expenses of reasonable upkeep and repairs, properly allocated share of charges for insurance and all other expenses incident to the operation of the Marina, but shall exclude depreciation, interest expense, all general administrative expenses of the city and the payment into the Repair and Replacement Reserve Account, established in Ordinance No. 265.

“ordinance” means this Ordinance No. _____ of the city.

“Owner” means the person named as the registered owner of a Bond on the Bond Register.

“Preliminary Official Statement” means the Preliminary Official Statement pertaining to the Bonds, dated _____, 2002.

“Project” means the following project to be financed, in whole or in part, with proceeds of the Bonds: (1) advance refunding the 1968 Bonds pursuant to the Refunding Plan, (2) paying part of the costs of the Marina Improvements, (3) paying the premium for the bond insurance policy for the Bonds, and (4) paying the costs of issuing the Bonds.

“Project Fund” means the city’s Marina Depreciation and Improvement Fund.

“Purchase Agreement” means the Bond Purchase Agreement for the Bonds by and between the city and the Purchaser, which written Purchase Agreement is on file with the city clerk and is incorporated herein by this reference.

“Purchaser” means Seattle-Northwest Securities Corporation.

“RCW” means the Revised Code of Washington, as amended.

“Refunding Plan” means the plan to advance refund all of the 1968 Bonds with a portion of the proceeds of the Bonds, all as more particularly defined and described in the Escrow Agreement.

“Registrar” means the fiscal agency of the State in New York, New York (as of the date of Closing, The Bank of New York) and the co-fiscal agent in Seattle, Washington (as of the date of Closing, Wells Fargo Bank, National Association), which Fiscal Agencies are appointed from time to time by the State Finance Committee pursuant to chapter 43.80 RCW; and “Fiscal Agencies” means both such fiscal agencies.

“Reserve Requirement” means the least of (1) 1.25 times the Average Annual Debt Service of all outstanding Bonds; (2) Maximum Annual Debt Service; or (3) 10% of the proceeds of all outstanding Bonds.

“Revenue of the Marina” means all of the earnings and revenues received by the city from the maintenance and operation of the Marina, except government grants, proceeds from the sale of property, city taxes collected by or through the Marina, principal proceeds of bonds and earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund Marina obligations (until commingled with other earnings and revenues of the Marina) or held in a special account for the purpose of paying a rebate to the United States Government under the Code.

“Rule” means SEC Rule 15c2-12.

“SEC” means the United States Securities and Exchange Commission.

“SID” means a state information depository.

“State” means the State of Washington.

Sec 2. Finding, purpose and description of Bonds. The city authorizes the sale and issuance of its “Limited Tax General Obligation Bonds, 2002,” for the purpose of providing part of the funds necessary pay part of the costs of the Project.

The Bonds shall be in the aggregate principal amount of \$_____, shall be dated December 1, 2002; shall be issued in fully registered form as to both principal and interest; shall be in the denomination of \$5,000 each or any integral multiple thereof within a single maturity; shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification; shall bear interest at the rates set forth below; and shall mature on December 1 in each of the years and in the principal amounts, as set forth below:

<u>Maturity Date</u> <u>(December 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest Rate</u> <u>Per Annum</u>
2003		
2004		
2005		
2006		
2007		
2008		
2009		
2010		
2011		
2012		
2013		
2014		
2015		
2016		
2017		
2018		
2019		
2020		

The Bonds shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) from their date or from the most recent interest payment date to which interest has been paid or duly provided for, whichever is later, payable on June 1, 2003, and semiannually thereafter on December 1 and June 1 of each year to the maturity or earlier redemption thereof. If any Bond is duly presented for payment upon maturity or earlier redemption and is not paid, then interest thereon shall continue to accrue thereafter at the rate stated therein until such Bond is paid.

The Bonds shall be negotiable instruments to the extent provided by RCW 62A.8-102 and RCW 62A.8-105.

On the date of issue of the Bonds, all Bonds maturing in the same maturity year shall be issued in the form of a single certificate, which certificate shall be registered in the name of the Custodian, or its nominee, and delivered to the Custodian. The Custodian shall hold each such

Bond certificate in fully immobilized form for the benefit of the Beneficial Owners of the Bonds pursuant to the Letter of Representations, until the earliest to occur of either (1) the date of maturity of the Bonds evidenced by such certificate, at which time the Custodian shall surrender such certificate to the Registrar for payment of the principal of and interest on such Bonds coming due on such date, and the cancellation thereof; (2) the Book-Entry Termination Date; or (3) the date the city determines to utilize a new Custodian for the Bonds, at which time the old Custodian shall (provided the city is not then in default of any payment then due on the outstanding Bonds) surrender the immobilized certificates to the Registrar for transfer to the new Custodian and cancellation as herein provided.

For so long as any outstanding Bonds are registered in the name of the Custodian or its nominee and held by the Custodian in fully immobilized form as described in this section 2, the rights of the Beneficial Owners shall be evidenced solely by an electronic and/or manual entry made from time to time on the records established and maintained by the Custodian in accordance with the Letter of Representations, and no certificates evidencing such Bonds shall be issued and registered in the name of any Beneficial Owner or such Beneficial Owner's nominee.

The city may terminate the "book-entry" system of registering ownership of the Bonds at any time (provided the city is not then in default of any payment then due on the outstanding Bonds) by delivering to the Registrar: (a) a written request that it issue and deliver Bond certificates to each Beneficial Owner or such Beneficial Owner's nominee on the Book-Entry Termination Date; (b) a list identifying the Beneficial Owners as to both name and address; and (c) a supply of Bond certificates, if necessary for such purpose. Upon surrender to the Registrar of the immobilized certificates evidencing all of the then outstanding Bonds, the Registrar shall

issue and deliver new certificates to each Beneficial Owner or such Beneficial Owner's duly appointed agent, naming such Beneficial Owner or such Beneficial Owner's nominee as the Owner thereof. Such certificates may be in any integral multiple of \$5,000 within a single maturity. Following such issuance, the Owners of such Bonds may transfer and exchange such Bonds in accordance with section 11 hereof.

Neither the city nor the Registrar shall have at any time any responsibility or liability to any Beneficial Owner of Bonds or to any other person for any error, omission, action or failure to act on the part of the Custodian with respect to payment, when due, to the Beneficial Owner of the principal and interest on the Bonds, proper recording of beneficial ownership of Bonds, proper transfers of such beneficial ownership, or any notices to Beneficial Owners or any other matter pertaining to the Bonds.

Sec 3. Place, manner and medium of payment. Both the principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Prior to the Book-Entry Termination Date, the principal of and interest on the Bonds shall be paid by the Registrar to the Custodian as the Owner thereof, for the benefit of the Beneficial Owners thereof, in accordance with the Letter of Representations. From and after the Book-Entry Termination Date, interest on the Bonds shall be paid by check or draft mailed by the Registrar (or, if approved by the city finance director, by wire transfer) on or before the interest payment date, to the Owners, at the addresses for such Owners appearing on the Bond Register on the fifteenth day of the month preceding the interest payment date. From and after the Book-Entry Termination Date, principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the Owners at the principal corporate trust office of the Registrar.

Sec 4. Redemption; open market purchase. The Bonds maturing in the years 2003 through 2012, inclusive, shall not be subject to redemption prior to maturity. The Bonds maturing on or after December 1, 2013, are subject to optional redemption beginning on December 1, 2012, in whole or in part at any time (maturities to be selected by the city and by lot within a maturity in such manner as the Registrar shall determine), at par plus accrued interest to the date fixed for redemption.

Any Bond in the principal amount of greater than \$5,000 may be partially redeemed in any integral multiple of \$5,000. In such event, upon surrender of such Bond at the principal corporate trust office of the Registrar, a new Bond or Bonds (at the option of the Owner) of the same maturity and interest rate and in the aggregate principal amount remaining unredeemed shall be authenticated and delivered to the Owner, without charge to the Owner for such partial redemption, in any denomination authorized by this ordinance and selected by the Owner.

Prior to the Book-Entry Termination Date, the Registrar shall give, or cause to be given, notice of a call for redemption of any Bonds to the Custodian, as the Owner thereof, for the benefit of the Beneficial Owners thereof, in accordance with the Letter of Representations. From and after the Book-Entry Termination Date, notice of any such intended redemption shall be given by or on behalf of the city not less than 30 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the Owner of each Bond to be redeemed at the address appearing on the Bond Register on the day the notice is mailed. The requirements of this section shall be deemed to be complied with when notice is mailed as provided in this ordinance, whether or not it is actually received by the Owner of any Bond. In addition, such redemption notice shall be mailed within the same time period, postage prepaid, to Moody's Investors Service, Inc. (at its office in New York, New York) and to the Bond Insurer, or their successors,

and to such other persons and with such additional information as the city finance director shall deem appropriate, but such additional notice shall not be a condition precedent to the redemption of such Bonds.

If such notice to the Owners shall have been given and the city shall have set aside sufficient money for the payment of all Bonds called for redemption on the date fixed for redemption, the Bonds so called shall cease to accrue interest after such redemption date, and all such Bonds shall be deemed not to be outstanding under this ordinance for any purpose, except that the Owners of such Bonds shall be entitled to receive payment of the redemption price and interest accrued on the principal of the Bonds to the redemption date from the money set aside for such purpose.

The city reserves the right to purchase any or all of the Bonds on the open market at any time and at any price.

All Bonds redeemed or purchased by the city shall be surrendered to the Registrar for cancellation.

Sec 5. Debt limit not exceeded. The city finds and covenants that the Bonds are issued within all constitutional and statutory debt limitations presently applicable to the city.

Sec 6. Debt service coverage covenant. The city covenants and agrees that it will establish, maintain, revise as necessary and collect such rental fees and charges for boat moorage and other Marina services furnished sufficient to produce Net Revenue in each calendar year, which, together with other revenue available therefor, will be at least equal to 1.25 times the Annual Debt Service on the outstanding Bonds in the year for which such debt service coverage ratio is being calculated.

Sec 7. Pledge of full faith, credit and resources and marina revenue. The Bonds are limited tax general obligations of the city. Unless the principal of and interest on the Bonds are paid from other sources, so long as any Bonds are outstanding, the city hereby irrevocably covenants to include in its budgets and to make annual levies of taxes within the constitutional and statutory tax limitations provided by law without a vote upon all property within the city subject to taxation in amounts which, together with Net Revenue of the Marina and other revenues, taxes and money of the city legally available for such purposes, shall be sufficient to pay such principal and interest as the same shall become due. The city hereby irrevocably pledges its full faith, credit and resources to the annual levy and collection of such taxes and for the prompt payment of such principal and interest.

The city hereby irrevocably covenants that the annual tax provided for herein to be levied for the payment of the principal of and interest on the Bonds shall be within and as a part of the tax levy permitted the city without a vote. The city hereby further irrevocably sets aside, pledges and appropriates to the payment of the principal of and interest on the Bonds a sufficient portion of the Net Revenue of the Marina and each annual tax levy to be levied and collected by the city prior to the full payment of the principal of and interest on the Bonds. All such Net Revenue of the Marina and revenues, taxes and other money to be used for such purposes shall be paid into the Bond Fund no later than the date such funds are required for the payment of principal of and interest on the Bonds.

Sec 8. Form of Bonds. The Bonds shall be typewritten, printed or lithographed on good bond paper in a form consistent with this ordinance and Washington law.

Sec 9. Execution of Bonds. The Bonds shall be signed on behalf of the city with the facsimile or manual signatures of the mayor and the city clerk, and shall have the seal of the city impressed or a facsimile of such seal imprinted on the Bonds.

In case either or both of the officers who shall have executed any Bond shall cease to be such officer or officers of the city before the Bond so signed shall have been authenticated or delivered by the Registrar or issued by the city, such Bond nevertheless may be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the city as though those who signed the same had continued to be such officers of the city. Any Bond also may be signed and attested on behalf of the city by such persons as at the actual date of execution of such Bond shall be the proper officers of the city although at the original date of such Bond such persons were not such officers of the city.

Sec 10. Authentication and delivery of Bonds by Registrar. The Registrar is authorized and directed, on behalf of the city, to authenticate and deliver Bonds initially issued or transferred or exchanged in accordance with the provisions of such Bonds and this ordinance.

Only such Bonds as shall bear a "Certificate of Authentication" manually executed by an authorized signatory of the Registrar shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered under and are entitled to the benefits of this ordinance.

The Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Bonds.

Sec 11. Registration. The Registrar shall keep, or cause to be kept, the Bond Register at its principal corporate trust office.

The city and the Registrar, in its discretion, may deem and treat Owner of each Bond as the absolute owner thereof for all purposes, and neither the city nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in section 3 of this ordinance, but such registration may be transferred as provided in this section 11. All such payments made as provided in section 3 of this ordinance shall be valid and shall satisfy and discharge the liability of the city upon such Bond to the extent of the amount or amounts so paid.

The registered ownership of any Bond may be transferred or exchanged. Prior to the Book-Entry Termination Date, the beneficial ownership of the Bonds may only be transferred on the records established and maintained by the Custodian. On and after the Book-Entry Termination Date, transfer of any Bond shall be valid only if it is surrendered at the principal corporate trust office of the Registrar, with the assignment form appearing on such Bond duly executed by the Owner or such Owner's duly authorized agent, in a manner satisfactory to the Registrar. Upon such surrender, the Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Owner or transferee for such transfer (other than taxes payable on account of such transfer), a new Bond or Bonds (at the option of the new Owner), of the same maturity and interest rate and for the same aggregate principal amount, in any authorized denomination, naming as Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and cancelled Bond.

On and after the Book-Entry Termination Date, any Bond may be surrendered at the principal corporate trust office of the Registrar and exchanged, without charge, for an equal aggregate principal amount of Bonds, in any authorized denomination. The Registrar shall not

be obligated to transfer or exchange any Bond during the 15 days preceding any interest payment, redemption or maturity date.

The Registrar may become the Owner of any Bond with the same rights it would have if it were not the Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Owners of the Bonds.

The city covenants that, until all Bonds shall have been surrendered and cancelled, it will maintain a system of recording the ownership of each Bond that complies with the provisions of the Code.

Sec 12. Mutilated, lost, stolen or destroyed Bonds. If any Bond becomes mutilated, lost, stolen or destroyed, the Registrar may authenticate and deliver a new Bond of the same maturity and interest rate and of like tenor and effect in substitution for such mutilated, lost, stolen or destroyed Bond, all in accordance with law. If such mutilated, lost, stolen or destroyed Bond has matured, the city at its option, may pay the same without the surrender of the original Bond. However, no such substitution or payment shall be made unless and until the applicant shall furnish (a) evidence satisfactory to the Registrar of the destruction or loss of the original Bond and of the ownership of such original Bond, and (b) such additional security, indemnity or evidence as may be required by or on behalf of the city. No substitute Bond shall be furnished unless the applicant shall reimburse the city and the Registrar for their respective expenses in the furnishing of such substitute Bond. Any such substitute Bond so furnished shall be equally and proportionately entitled to the security of this ordinance with all other Bonds issued under this ordinance.

Sec 13. Defeasance. If money and/or Government Obligations maturing at such times(s) and bearing such interest to be earned on such obligations (without any reinvestment thereof) as will provide a series of payments which shall be sufficient, together with any money initially deposited, to provide for the payment of all of the principal of and interest on all or a portion of the Bonds, when due in accordance with their terms in accordance with a refunding plan adopted by the city, are set aside in a special fund (hereinafter called the “trust account”) to effect such payment and are pledged irrevocably for the purpose of effecting such payment, then no further payments need be made into the Bond Fund for the payment of the principal of and the interest on such Bonds, the Owners thereof shall cease to be entitled to any lien, benefit or security of this ordinance except for the right to receive the money and the principal and interest proceeds on the obligations set aside in the trust account, and such Bonds shall no longer be deemed to be outstanding under this ordinance.

Sec 14. Sale of the Bonds. The Purchaser has presented the Purchase Agreement to the city pursuant to which the Purchaser has offered to purchase the Bonds, under the terms and conditions provided in the Purchase Agreement, which written Purchase Agreement is on file with the city clerk and is incorporated in this ordinance by this reference. The city council finds that entering into the Purchase Agreement is in the city’s best interest and therefore accepts the offer contained in the Purchase Agreement and authorizes the execution of the Purchase Agreement by city officials.

The Bonds will be printed at city expense and will be delivered to the Purchaser in accordance with the terms of the Purchase Agreement with the approving legal opinion of Gottlieb, Fisher & Andrews, PLLC, bond counsel, Seattle, Washington, relative to the issuance of the Bonds, printed on or attached to each Bond. Bond counsel has not been engaged to review

or express any opinion concerning the completeness or accuracy of the official statement or other disclosure documentation used in connection with the offer or sale of the Bonds by any person, and bond counsel's opinion shall so state. Bond counsel has not been retained to monitor, and shall not be responsible for monitoring, the city's compliance with any federal law or regulations to maintain the tax-exempt status of the interest on the Bonds.

Sec 15. Delivery of Bonds; temporary Bonds. The proper city officials are authorized and directed to execute and/or approve, as appropriate, all documents, including but not limited to, the final Official Statement pertaining to the Bonds and the commitment from the Bond Insurer for the issuance of an insurance policy for the Bonds, and to do everything necessary for the preparation and delivery of a transcript of proceedings pertaining to the Bonds, and the printing, execution and prompt delivery of the Bonds to the Purchaser and for the proper application and use of the proceeds of the sale thereof.

If definitive Bonds are not ready for delivery by the Closing, the city finance director, upon the approval of the Purchaser, may cause to be issued and delivered to the Purchaser one or more temporary Bonds with appropriate omissions, changes and additions. Any temporary Bond or Bonds shall be entitled and subject to the same benefits and provisions of this ordinance with respect to the payment, security and obligation of such temporary Bonds as definitive Bonds authorized by this ordinance. Such temporary Bond or Bonds shall be exchangeable without cost to the Owners for definitive Bonds when the latter are ready for delivery.

Sec 16. Call of 1968 Bonds for redemption. The city hereby calls the 1968 Bonds maturing on or after October 1, 2003 for redemption on April 1, 2003, at a redemption price of 101% of the principal amount plus accrued interest. Such call for redemption shall become irrevocable upon delivery of the Bonds at Closing.

Sec 17. Acquisition of escrow obligations. The proper city officials, including, but not limited to, the city finance director shall, at or prior to Closing, make appropriate arrangements for the payment for and delivery of any Escrow Obligations which are to be purchased in the open market pursuant to the Refunding Plan; and shall, prior to closing, deliver or cause to be delivered to the Federal Reserve Bank in Seattle, Washington, subscriptions for any Escrow Obligations which are to be acquired from the United States Bureau of Public Debt pursuant to the Refunding Plan. The maturing principal of and the interest on such Escrow Obligations, together with the Initial Cash to be provided to the Escrow Trustee pursuant to the Refunding Plan, shall be sufficient to pay all of the principal of and interest to become due on the Refunded Bonds from Closing to and including April 1, 2003, when due, and to redeem on said date, all of the outstanding 1968 Bonds at a redemption price of 101% of the principal amount of the 1968 Bonds to be redeemed and interest accrued thereon to the date of redemption.

The Escrow Trustee shall designate in any such subscriptions that all the principal of and interest on the Escrow Obligations subscribed for with the United States Bureau of Public Debt shall be payable to the Escrow Trustee. Such subscription may be amended as permitted by federal law.

Sec 18. Verification of sufficiency of escrow. The proper city officials, including, but not limited to, the city finance director are authorized and directed to obtain, prior to Closing, independent verification from a firm of independent certified public accountants that, among other things, the cash flow scheduled to be received from the Escrow Obligations, together with any uninvested initial cash, shall be sufficient to make the payments described in section 17 hereof. At Closing, if there has been any change in Escrow Obligations or cash deposited with the Escrow Trustee under this ordinance and the Escrow Agreement, the city finance director

shall cause the sufficiency of the Escrow Fund (as defined in the Escrow Agreement) to be verified in such manner as she shall deem necessary.

Sec 19. Escrow Agreement. The Escrow Agreement, in substantially the same form as the draft dated _____, 2002, on file with the city clerk, is hereby approved in order to accomplish the refunding of the 1968 Bonds. The city finance director is authorized and directed to (a) execute and to deliver said Escrow Agreement, on behalf of the city, to the Escrow Trustee on or before Closing, with such changes as the city finance director deems to be in the best interests of the city; and such execution and delivery of the Escrow Agreement shall evidence irrevocably the approval of the executed Escrow Agreement by the city; and (b) cause the Escrow Trustee to deliver notice of redemption of the 1968 Bonds in accordance with the Escrow Agreement.

Sec 20. Establishment of Bond Fund; application of Bond proceeds. There is hereby created and established in the office of the city finance director a special account in the Marina Revenue Fund to be designated as the "Limited Tax General Obligation Bond Account, 2002" (the "Bond Fund"). The Bond Fund shall consist of two subaccounts: (a) the Reserve Subaccount (the "Reserve Account"), and (b) the Principal and Interest Subaccount (the "Principal and Interest Account"). Each such subaccount shall be held separate and apart from the other.

The accrued interest on the Bonds received by the city upon the sale of the Bonds, if any, shall be deposited into the Principal and Interest Account and shall be applied to the payment of interest coming due on the Bonds. The money and investments in the Principal and Interest Account shall be used by the city, together with any other money legally available and designated therefor, to pay the principal of and interest on the Bonds, when due.

The Reserve Account is established in the Bond Fund for the purposes of securing the payment of the Bonds. The city covenants and agrees that it will set aside and pay into the Reserve Account out of Revenue of the Marina or from any other money that the city may have available for that purpose such amounts so that by no later than December 1, 2003, there shall have been accumulated in the Reserve Account for the Bonds an amount not less than the Reserve Requirement for the Bonds. The city further covenants and agrees that when the required amounts have been paid into the Reserve Account in the Bond Fund, it will maintain an amount of money and assets in the Reserve Account that will be equal to the Reserve Requirement.

In the event there shall be a deficiency in the Principal and Interest Account to meet maturing installments of either principal or interest on any Bonds, such deficiency shall be made up from the Reserve Account by the withdrawal of money therefrom. Any deficiency created in the Reserve Account by reason of any such withdrawal shall be made up from the Revenue of the Marina or any other money legally available therefor.

Income from the investments in the Principal and Interest Account shall be deposited in such account. Income from investments in the Reserve Account shall be deposited in such account until the amount therein is equal to the Reserve Requirement, and any excess shall be deposited into the Principal and Interest Account. Investments in the Reserve Account shall be valued at fair market value and marked to market at least once each year. Investments in the Reserve Account shall not have maturities extending beyond five years. If the value of the money and investments in the Reserve Account exceeds the Reserve Requirement, the excess shall be transferred to the Principal and Interest Account.

Proceeds of the Bonds in the amount of \$ _____ shall be paid by the city to the Escrow Trustee at Closing to be applied as set forth in the Escrow Agreement.

The remaining proceeds of the sale of the Bonds, less the underwriter's discount and the bond insurance premium to be paid by the Purchaser on behalf of the city and plus/less the net original premium/discount shall be deposited, upon receipt, in the city's "Marina Depreciation and Improvement Fund" (the "Project Fund"), and shall be applied solely to pay part of the costs of the Project.

Except as provided by the Code and section 21 of this ordinance, the interest and profits derived from the investment of Bond proceeds deposited into the Project Fund shall be deposited in the Project Fund and applied as described in the preceding paragraphs.

Except as provided by the Code and section 21 of this ordinance, if any money allocable to the Bond proceeds in the Project Fund remains in such fund after payment of all the costs of the Project or after termination of the Project by the city, such money shall be transferred to the Bond Fund and applied to the payment of the principal of and interest on the Bonds.

Pending application as described in this section 20 and subject to the requirements of the Code and section 21 of this ordinance, money allocable to the Bond proceeds in the Project Fund may be temporarily deposited with such institutions or invested in such investments as may be lawful for the investment of city funds.

Sec 21. Tax-exemption covenants. The city covenants that it will not take or permit to be taken on its behalf any action that would adversely affect the exclusion of the interest on the Bonds from gross income for purposes of federal income taxation, and will take or require to be taken such acts as may be permitted by Washington law and as may from time to time be required under applicable law to continue the exclusion of the interest on the Bonds from gross

income for purposes of federal income taxation. Without limiting the generality of the foregoing, the city will not invest or make or permit any use of the proceeds of the Bonds or of its other money at any time during the term of the Bonds which would cause the Bonds to be “arbitrage bonds” within the meaning of section 148 of the Code.

The city further covenants that it will calculate or cause to be calculated, and shall rebate to the United States, all earnings from the investment of Bond proceeds that are in excess of the amount that would have been earned had the yield on such investments been equal to the yield on the Bonds, plus income derived from such excess earnings, to the extent and in the manner required by section 148 of the Code.

The city has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the city is a bond issuer the arbitrage certifications of which may not be relied upon.

The city will take no actions and will make no use of the proceeds of the Bonds or any other funds held under this ordinance which would cause any Bond to be treated as a “private activity bond” (as defined in section 141(b) of the Code) subject to treatment under said section 141(b) as an obligation not described in section 103(a) of the Code, unless the tax exemption thereof is not affected.

The city covenants that it will not issue more than \$10,000,000 of “qualified tax-exempt obligations,” as defined in section 265 of the Code (relating to the partial interest expense deduction authorized for banks, thrift institutions and certain other financial institutions) during calendar year 2002. The city hereby designates the Bonds as “qualified tax-exempt obligations” for such purposes and authorizes and directs the proper city officials to execute and deliver all documents necessary to evidence such designation to any and all interested parties.

Sec 22. Preliminary official statement declaration. The city has been provided with copies of the Preliminary Official Statement. For the sole purpose of the Purchaser's compliance with SEC Rule 15c2-12(b)(1), the city "deems final" the Preliminary Official Statement, as of its date, except for the omission of information on offering prices, interest rates, selling compensation, delivery dates, ratings, and other terms of the Bonds dependent on such matters.

Sec 23. Undertaking to provide continuing disclosure. This section constitutes the city's written undertaking for the benefit of the Owners and Beneficial Owners of the Bonds required by subsection (b)(5)(i) of Rule 15c2-12.

The city hereby agrees to provide or cause to be provided to each then existing NRMSIR, to the SID, if one is created, and to the Bond Insurer the following annual financial information and operating data (collectively, the "Annual Financial Information") for each prior fiscal year, commencing with the fiscal year ending December 31, 2002, on or before the last day of the seventh month following the end of such prior fiscal year:

(a) Annual financial statements prepared in accordance with the generally accepted accounting principles applicable to governmental units, as such principles may be changed from time to time and as permitted by state law; which statements will not be audited, except that if and when audited financial statements are otherwise prepared and available to the city, they will be provided (the "Annual Financial Statements");

(b) Principal amount of bonds outstanding (to which the Net Revenue of the Marina have been pledged for repayment ("outstanding bonds")) and the coverage calculation showing the ratio of Net Revenue to Annual Debt Service with respect to outstanding bondsThe assessed valuation of taxable property in the city;

(c) Historical operating information of the type shown in the tables in the Preliminary Official Statement entitled “City of Des Moines Moorage Rates”, “City of Des Moines Guest Moorage Rates”, “City of Des Moines Public Launching Rates,” and “Current Length Distribution of Waiting List Vessels.”~~Ad valorem taxes due and the percentages of taxes collected;~~

(d) Historical financial information of the type shown in the table in the Preliminary Official Statement entitled “Historical Assessed Valuation and Property Tax Collection Record”~~Property tax levy rates per \$1,000 assessed valuation;~~

(e) Historical financial information of the type shown in the Preliminary Official Statement under the headings “Debt Capacity Computation”, “Direct and Overlapping Debt—Direct Debt” and “Bonded Debt Ratios (excluding overlapping debt)”~~; A statement of authorized, issued and outstanding indebtedness of the city~~

(f) Any change in the Auditing, Budgetary Process or Investment Policy of the city~~The debt service coverage ratio calculated pursuant to section 6 of this ordinance; and~~

(g) A narrative explanation of the reasons for any amendments to this section 23 made during the previous fiscal year and the impact of such amendments on the Annual Financial Information being provided.

In its provision of such financial information and operating data, the city may cross-reference to any “final official statement” (as defined in the Rule) available from the MSRB or any other documents theretofore provided to each then existing NRMSIR or the SID, if one is created.

If not submitted as part of the Annual Financial Information, then when and if available, the city shall provide its Annual Financial Statements, which shall have been audited

by such auditor as shall be then required or permitted by the State law, to each then existing NRMSIR, to the SID, if one is created, and to the Bond Insurer.

The city further agrees to provide or cause to be provided, in a timely manner, to the SID, if one is created, and to either the MSRB or each then existing NRMSIR and to the Bond Insurer, notice of any of the following events with respect to the Bonds, if material:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions or events affecting the tax-exempt status of the Bonds;
7. Modifications to rights of the Owners of the Bonds;
8. Optional redemptions of the Bonds;
9. Defeasances of the Bonds;
10. Release, substitution or sale of property securing repayment of the Bonds; and
11. Rating changes.

The city also agrees to provide or cause to be provided, in a timely manner, to the SID, if one is created, and to either the MSRB or each then existing NRMSIR, notice of its failure to provide the Annual Financial Information for the prior fiscal year on or before the last day of the seventh month following the end of such prior fiscal year.

After the issuance of the Bonds, so long as the interests of the Owners and Beneficial Owners of the Bonds will not be materially impaired thereby, as determined by a party unaffiliated with the city (including, without limitation, a trustee for the Owners or Beneficial

Owners, nationally recognized bond counsel or other counsel familiar with the federal securities law), or pursuant to a favorable “no-action letter” issued by the SEC, this section 23 may only be amended in connection with any change in legal requirements, change in law, or change in the identity, nature or status of the obligated person, or type of business conducted, and only in such a manner that the undertaking of the city, as so amended, would have complied with the requirements of the Rule at the time of the primary offering, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances.

The city’s obligations to provide Annual Financial Information and notices of certain events shall terminate without amendment upon the defeasance, prior redemption or payment in full of all of the then outstanding Bonds. This section 23 or any provision hereof, shall be null and void if the city (i) obtains an opinion of nationally recognized bond counsel or other counsel familiar with the federal securities laws to the effect that those portions of the Rule which require this section 23 or any such provision are invalid, have been repealed retroactively or otherwise do not apply to the Bonds; and (ii) notifies and provides the SID, if any, and either the MSRB or each then existing NRMSIR with copies of such opinion.

The right of each Owner and Beneficial Owner of Bonds to enforce the provisions of this section 23 shall be limited to the right to obtain specific enforcement of the city’s obligations under this section 23, and any failure by the city to comply with the provisions of this undertaking shall not be a default with respect to the Bonds under this ordinance.

The city finance director is authorized and directed to take such further action on behalf of the city as may be necessary, appropriate or convenient to carry out the requirements of this section 23.

Sec 24. Parity Obligations. The city may issue revenue bonds or other revenue obligations (the "Parity Obligations") for Marina purposes if the following conditions are met and complied with at the time of the issuance of such bonds:

(a) There shall be no deficiency in the Bond Fund and the Reserve Account shall have money and investments equal to the Reserve Requirement; and

(b) Either:

(i) The city delivers a Certificate signed by an authorized officer of the city that the Net Revenue of the Marina, based upon the financial statements of the city for any 12 consecutive calendar months out of the immediately preceding 24 calendar months and without any adjustment, was such that the debt service coverage requirement for the Bonds, described in Section 6 herein, which computation shall include in Annual Debt Service the Average Annual Debt Service for such proposed Parity Obligations, was fulfilled in those 12 months; or

(ii) There shall be on file from an independent certified public accountant or other professional consultant with expertise in marina management a Certificate which shows that, in the opinion of such accountant or consultant, the Net Revenue of the Marina for any 12 consecutive calendar months out of the immediately preceding 24 calendar months shall be equal to the debt service coverage requirement for the Bonds, described in Section 6 herein, allowing adjustments as described below.

(A) In making calculations necessary for the certificate, the person making the Certificate shall adjust the Annual Debt Service to reflect the addition of the Maximum Annual Debt Service of the proposed Parity Obligations.

(B) Such Net Revenue of the Marina may also be adjusted to reflect:

(I) The additional Net Revenue of the Marina that would have been received if any change in rates and charges adopted prior to the date of such certificate and subsequent to the beginning of such 24-month period had been in force during the full 12-month period;

(II) The additional Net Revenue of the Marina which would have been received if any facility of the Marina that became fully operational after the beginning of such 12-month period had been so operating for the entire period;

(III) The additional Net Revenue of the Marina estimated by such Consultant to be received as a result of any additions, betterments and improvements to and extensions of any facilities of the Marina that are

(1) under construction at the time of such Certificate, or (2) will be constructed from the proceeds of the Parity Obligations to be issued.

Nothing contained in this section shall prevent the city from issuing or incurring obligations having a lien subordinate to the lien of the Bonds on the Net Revenue of the Marina.

Sec 2425. Contract; severability. The covenants contained in this ordinance shall constitute a contract between the city and the Owners of each and every Bond. The city unconditionally covenants that it will keep and perform all of the covenants of the Bonds and this ordinance. If any one or more of the provisions of this ordinance shall be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining provisions of this ordinance or the Bonds, and this ordinance and the Bonds shall be construed and enforced as if such unconstitutional or invalid provision had not been contained in this ordinance.

Sec 2526. Effective date. This ordinance shall take effect and be in full force five days following its passage, approval and publication according to law.

PASSED BY the city council of the city of Des Moines this
__ day of ____, 2002, and signed in authentication thereof this __ day of ____, 2002.

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY

ATTEST:

CITY CLERK

Published: ____, 2002

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO. _____, Adopted _____, 2002.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance relates to the incurrence of indebtedness; providing for the sale and issuance of \$ _____ limited tax general obligation bonds, 2002, to provide funds to advance refund the city's Marina Revenue Bonds of 1968 and to pay part of the costs necessary to carry out certain capital improvements to the city's marina, providing for the date, denominations, form, terms, registration privileges, maturities, interest rates and covenants of the bonds; providing for the annual levy of taxes to pay the principal of and the interest on such bonds; establishing a debt service fund for the bonds and providing for the sale and delivery of such bonds to Seattle-Northwest Securities Corporation, Seattle, Washington.

The full text of the ordinance will be mailed without cost upon request.

Denis Staab
City Clerk

Published: _____, 2002
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City of Des Moines

Bond Financing Update

October 22, 2002

SEATTLE-NORTHWEST
SECURITIES CORPORATION

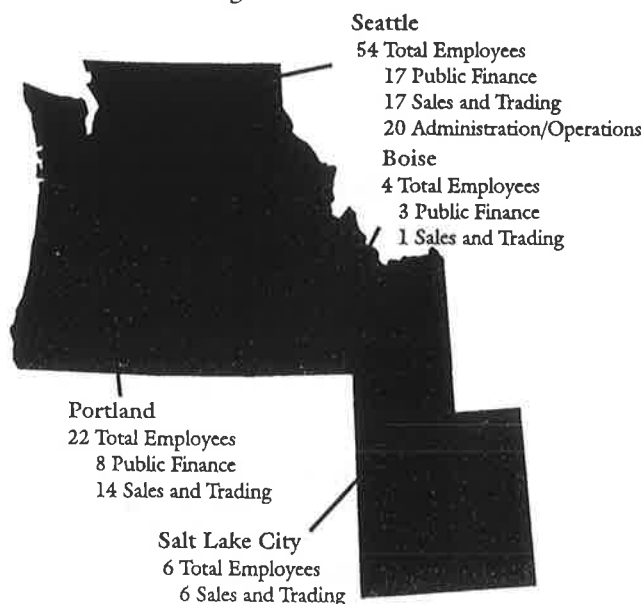
Lindsay A. Sovde
Assistant Vice President
(206) 628-2875
1420 Fifth Avenue, Suite 4300
Seattle, Washington 98101
www.seattlenorthwest.com

Introduction to Seattle-Northwest

Feature	Benefit
Seattle-Northwest is the leading underwriter in the Pacific Northwest	The City of Des Moines gains the firm with the most underwriting experience which translates into a smooth transaction for the City.
Seattle-Northwest is the only firm whose primary focus is municipal finance.	Our full attention will be on serving the City and selling the City's bonds. We are not distracted by other business lines.
Headquartered in the Northwest, with offices located in Portland, Seattle, Boise, and Salt Lake City.	Our full resources are immediately and quickly available to serve the City.
Over 80 total employees, the largest public finance staff in the Northwest.	Depth and size of staff will keep the City's issue on track and on time.
Local underwriting.	Most familiarity with Northwest bonds.

Seattle-Northwest Securities

Regional Focus



Underwriter Rankings

2001 Regional Underwriter Rankings Washington, Oregon, Idaho   			
Ranking	Underwriter	Amount (Mil)	Issues
1	Seattle-Northwest	\$ 1,658.0	145
2	Banc of America Securities	1,275.4	85
3	Lehman Brothers	1,969.7	44
4	Salomon Smith Barney	2,067.6	44
5	U.S. Bancorp Piper Jaffray Inc.	603.1	35
6	UBS PaineWebber Inc.	946.6	31
7	Sutro & Co. Incorporated	39.5	27
8	Martin Nelson & Co., Inc.	44.2	19
9	McDonald Investments Inc.	140.5	18
10	Newman & Associates, Inc.	94.9	16

Source: Securities Data Co. & Seattle-Northwest Securities Corp.

2001 Financial Advisor Rankings Washington, Oregon, Idaho   			
Ranking	Underwriter	Amount (Mil)	Issues
1	Seattle-Northwest	\$ 3,220.7	33
2	Public Financial Mgmt Inc.	1,866.3	15
3	Montague DeRose & Associates	1,623.0	8
4	Capital Advisors, Inc.	1,412.2	24
5	Hattori & Associates	1,150.1	7
6	U.S. Bancorp Piper Jaffray Inc.	584.5	8
7	Western Financial Group LLC	581.9	25
8	Regional Financial Advisors	545.9	23
9	A. Dashen & Associates	478.1	17
10	Caine Mitter	336.1	20

Source: Securities Data Co.

Outstanding Bond Debt Summary

As of October 22, 2002

Limited Tax General Obligation Bonds

1993 LTGO Refunding	\$	650,000
1997 LTGO		1,520,000
1998 LTGO		720,000
Total Limited Tax General Obligation Bonds	\$	<u>2,890,000</u>

Unlimited Tax General Obligation Bonds

1995 UTGO	\$	<u>2,885,000</u>
Total Unlimited Tax General Obligation Bonds	\$	<u>2,885,000</u>

Revenue Bonds

1968 Revenue	\$	<u>1,037,000</u>
Total Revenue Bonds	\$	<u>1,037,000</u>

Debt Capacity

City of Des Moines

General Obligation Debt Capacity

(As of 10/22/02)

2002 Bond Assessed Value	\$ 1,797,535,145
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Limited Tax General Obligation Capacity

1.5% of Assessed Value	\$ 26,963,027
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Less: Outstanding Limited Tax G.O. Debt	(\$2,890,000)
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Remaining Limited Tax G.O. Capacity	<u>\$ 24,073,027</u>
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Unlimited and Limited Tax General Obligation Capacity

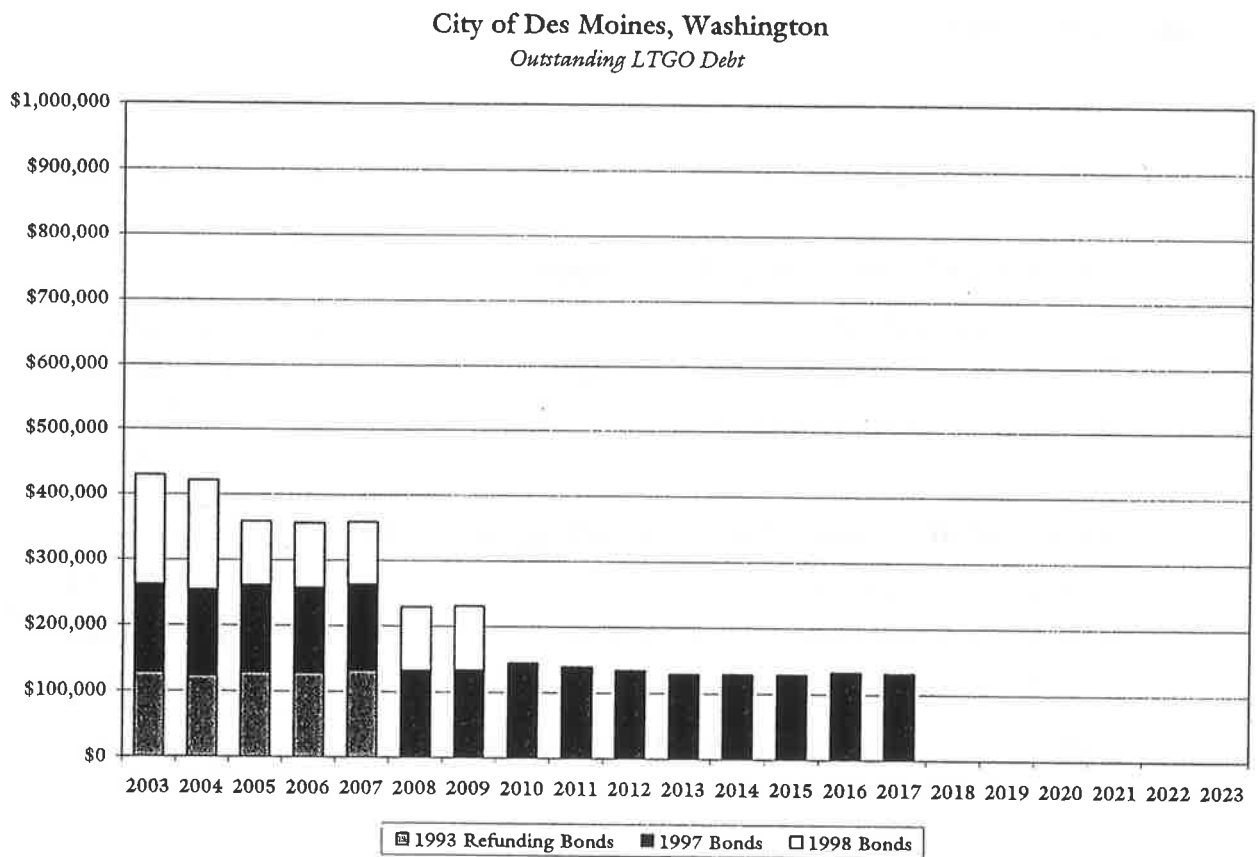
2.5% of Assessed Value	\$ 44,938,378
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Less: Outstanding Limited Tax G.O. Debt	(\$2,890,000)
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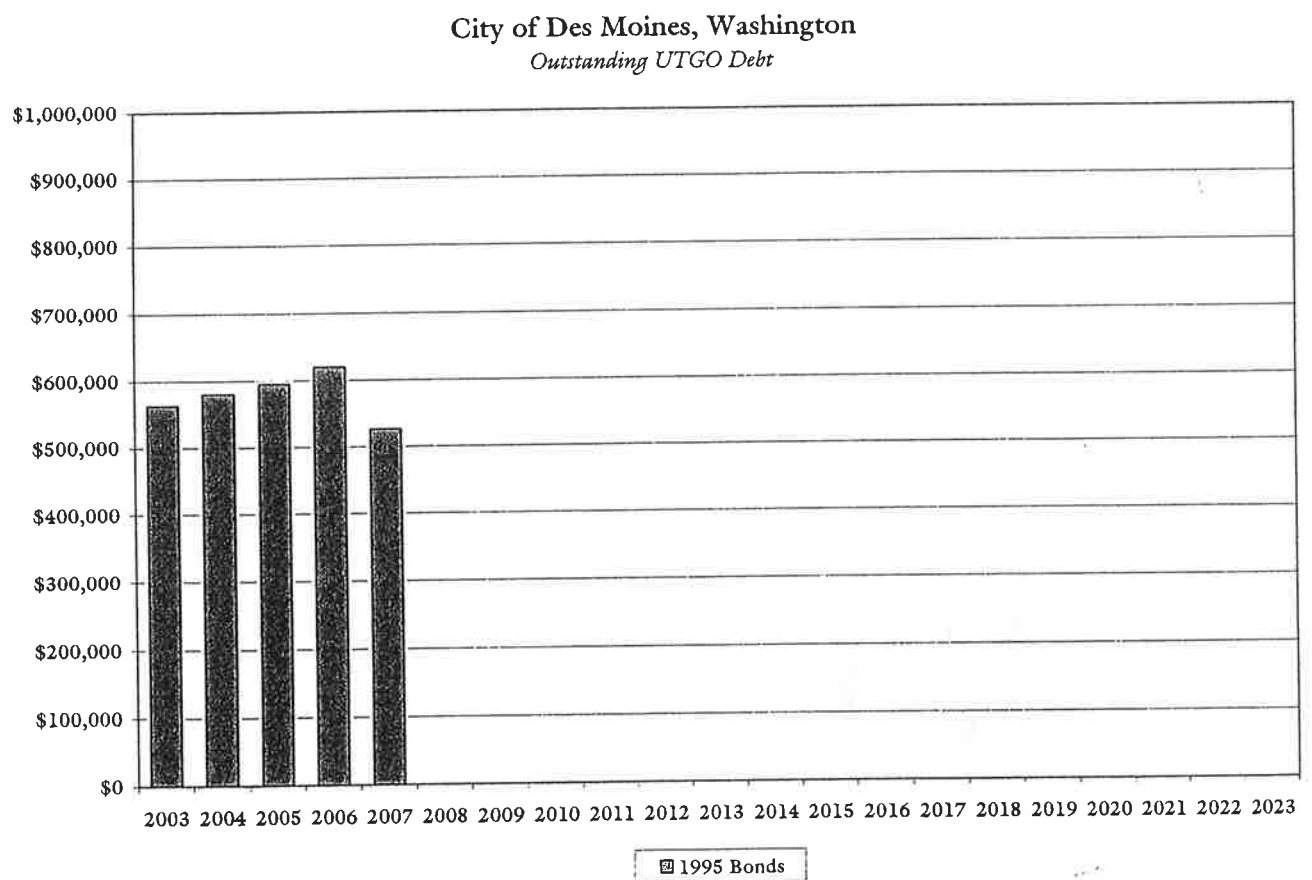
Less: Outstanding Unlimited Tax G.O. Debt	(\$2,885,000)
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Remaining Limited and Unlimited Tax G.O. Capacity	<u>\$ 39,163,378</u>
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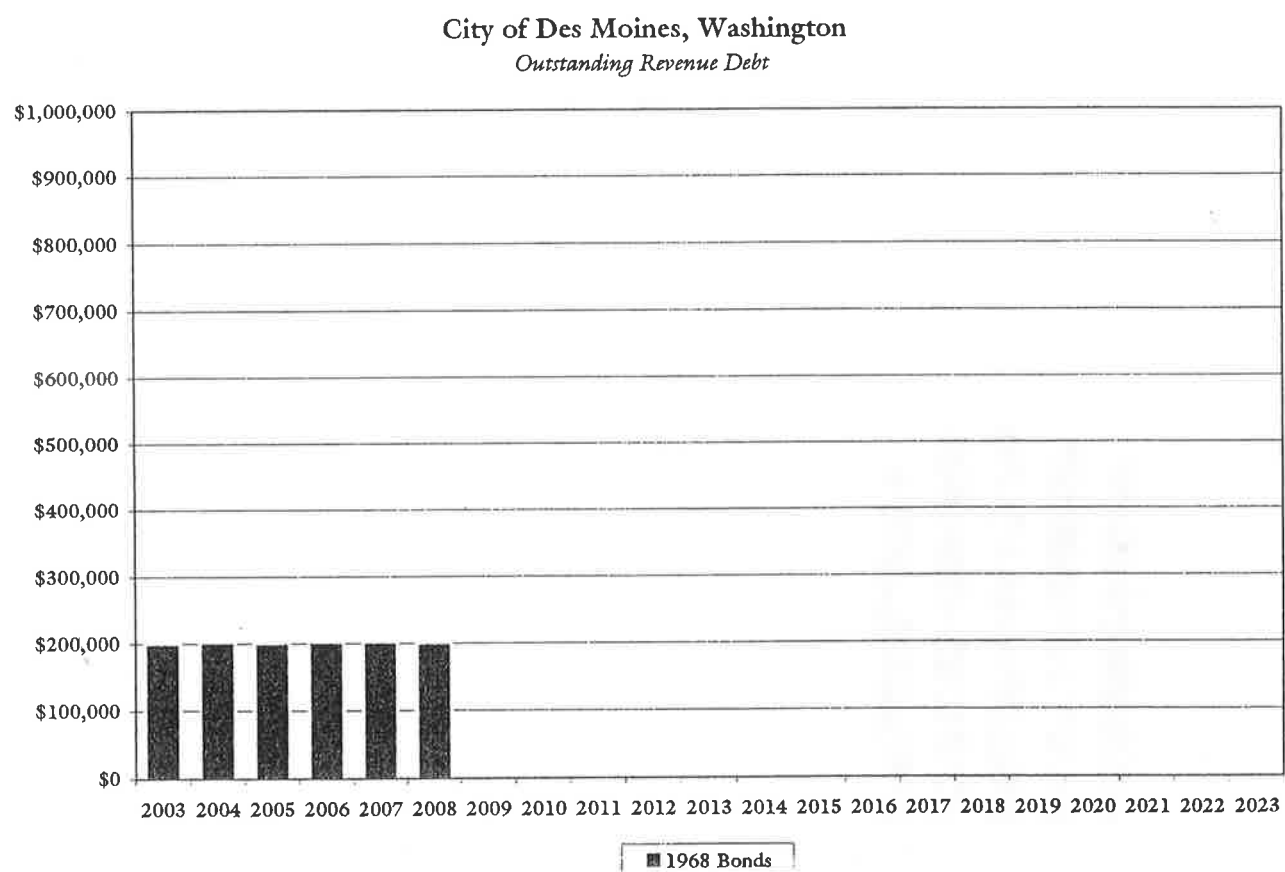
Outstanding Debt Graph



Outstanding Debt Graph



Outstanding Debt Graph



Security

General Obligation

- √ Can be repaid from any revenue stream the City chooses
- √ Secured by taxing authority
- √ Debt capacity (statutory)
 - 1.50% of Assessed Value for LTGO
 - 2.50% of Assessed Value for UTGO
- √ Practically, look for the tax levy to exceed GO debt service
- √ Minimum debt service coverage can be 1.00x

Marina Revenue

- √ Can be repaid from Marina revenue stream
- √ Specifically excludes a pledge of property taxes
- √ Look for minimum of 1.50x debt service coverage; covenanted coverage may be lower

Marina Debt Structuring Options

Issues:

- √ City has had a negative credit outlook since 1999. LTGO bonds might be difficult and expensive to sell.
- √ Revenue bonds are expensive due to:
 - debt service coverage requirement
 - debt service reserve fund
 - higher interest rates
 - less security than GO bonds
- √ 1968 Marina revenue bonds have onerous covenants
- √ City has not complied with continuing disclosure requirements

Strategy:

- √ Invited Moody's to the City to discuss financial operations and Marina capital plan
- √ Sought input from Moody's about how to structure bonds
- √ Talked with bond insurers about best structure
- √ Discussed structure with our underwriter
- √ Reviewed possibility of refunding 1968 Marina revenue bonds to remove covenants
- √ Bond Counsel is working on documents to comply with continuing disclosure requirements

Results:

- √ Moody's was impressed with City's plan to improve finances and indicated they will remove the negative credit outlook
 - √ LTGO bonds became much more attractive
 - √ General Fund can not support Marina in the event of difficulties paying debt service
 - √ Operating covenants will give LTGO additional strength
 - 1.25x debt service coverage
 - fully funded debt service reserve fund (money already set aside for this)
-

Recommended Structure:

- √ LTGO
- √ A3 credit rating
- √ Bond insurance
- √ Operating covenants for Marina to enhance credit



SEATTLE-NORTHWEST
SECURITIES CORPORATION

1420 Fifth Avenue
Suite 4300
Seattle, Washington 98101
(206) 628-2882

City of Des Moines, Washington

Limited Tax General Obligation and Refunding Bonds, 2002

Preliminary Schedule of Events (As of October 22, 2002)

October 2002	November 2002	December 2002
S M T W T F S	S M T W T F S	S M T W T F S
1 2 3 4 5	1 2	1 2 3 4 5 6 7
6 7 8 9 10 11 12	3 4 5 6 7 8 9	8 9 10 11 12 13 14
13 14 15 16 17 18 19	10 11 12 13 14 15 16	15 16 17 18 19 20 21
20 21 22 23 24 25 26	17 18 19 20 21 22 23	22 23 24 25 26 27 28
27 28 29 30 31	24 25 26 27 28 29 30	29 30 31

Staff: City Staff
Board: City Council (meets first four Thursdays at 7:30 p.m.)
BC: Gottlieb Fisher & Andrews (Bond Counsel)
UC: Preston Gates Ellis (Underwriter's Counsel)
County: King County Treasurer's Office

<u>Date</u>	<u>Event</u>	<u>Participants</u>
Completed	Review financing plan	SNW, Board
October 23	Data requirements to City	SNW
October 30	Data requirements due to Preston Gates Ellis	Staff
November 6	Complete draft Preliminary Official Statement ("POS") and bond purchase contract	SNW
November 6	Complete draft bond ordinance and legal opinion	BC
November 11	Review and comment on draft bond resolution, purchase contract and POS	Staff, BC, County
November 12	Mail information to insurers and rating agency	SNW
November 14	Mail POS to potential investors	SNW
November 20	Review market conditions	SNW, Staff
November 21	Bond pricing	SNW, Staff
November 21	Approve bond ordinance and purchase contract (regular meeting)	Board, SNW
December 5	Bond closing	Staff, SNW, BC, County

Option 1:

New Money; Level Debt Svc through 2022; Debt Svc Reserve Funded with Bond Proceeds

Option 2:

New Money & Refund 1968 Issue; New Money = Level Debt Svc through 2022; Refunding Issue = Uniform Level Debt Svc through 2008; Swap 1968 Bond Debt Svc Reserve

	Original Proposed Borrowing			Option 1		Option 2	
	New Money	Refunding	Total	New Money	New Money	Refunding	Total
Total Interest over Life of Bonds	2,300,782.50	123,225.00	2,424,007.50	2,454,225.00	2,263,150.00	105,985.00	2,369,135.00
1968 Bond Remaining Interest Expense	149,920.00	0.00	149,920.00	149,920.00	0.00	0.00	0.00
Debt Service Coverage Ratio Requirement	1.25	1.25	1.25	1.50	1.25	1.25	1.25
Average Life of Bonds (Years)	10.1	3.6	10.1	11.7	10.1	3.6	10.1
Average Interest Coupon	4.621%	3.160%		4.418%	4.297%	2.704%	4.297%
Bond Proceeds	4,100,000.00	1,090,000.00	5,190,000.00	4,735,000.00	4,365,000.00	1,095,000.00	5,460,000.00
Plus: Debt Svc Swap	376,000.00	100,000.00	476,000.00	0.00	391,187.89	98,133.05	489,320.94
Less:							
Debt Service Reserve Requirement	(375,932.45)	(99,943.02)	(475,875.47)	(362,312.50)	(391,187.89)	(98,133.05)	(489,320.94)
Payment to Escrow Refunding Trustee	0.00	(1,062,405.45)	(1,062,405.45)	0.00	0.00	(1,063,949.07)	(1,063,949.07)
Issuance Costs	(86,899.09)	(27,651.53)	(114,550.62)	(102,687.50)	(95,000.00)	(31,050.93)	(126,050.93)
Net Funds Available for Capital Projects	4,013,168.46	0.00	4,013,168.46	4,270,000.00	4,270,000.00	(0.00)	4,270,000.00

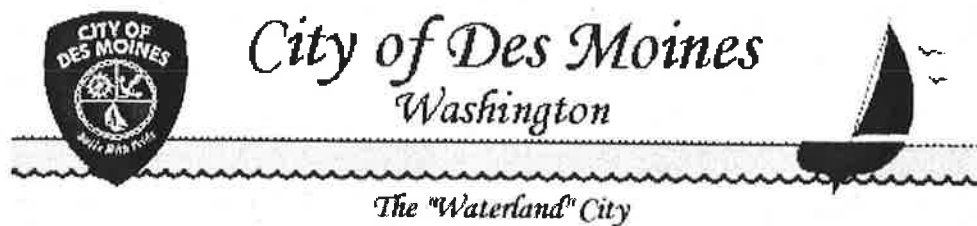
Refunding Analysis:

PV of Savings from Cash Flow	(14,466.78)	(3,861.90)
Less: Prior Funds on Hand	(100,000.00)	(98,133.05)
Plus: Refunding Funds on Hand	104,492.11	102,438.98
Net PV Savings (Loss)	<u>(9,974.67)</u>	<u>444.03</u>

Recommendation is for Option 2:

Justification:

- Option 2's refunding issue has net PV savings of \$444.03
- Option 2's debt service coverage ratio is reduced to 1.25 in comparison to Option 1
- Option 1 requires a sinking fund of \$495,300 be maintained that includes the debt service reserve of \$396,560 for the 1968 Bond issue
- Option 1 requires a repair & replacement fund of \$300,000 be maintained for the 1968 Bond issue
- Option 1 requires reserves of \$1,157,612.50 versus Option 2 reserves of \$391,187.89, a net additional amount of \$766,424.61
- Option 2's debt service will not be funded by bond proceeds
- Option 2 saves \$191,075 in interest costs over the life of the bonds in comparison to Option 1
- Current interest yield environment not favorable for investment earnings on proceeds to fund debt service reserves - Federal Funds rate = 1.25%
- Option 2's bond interest coupon rates range from 1.75% for 2003 maturities to 5.05% for 2022 maturities



Bond Pricing Results

November 21, 2002

SEATTLE-NORTHWEST
SECURITIES CORPORATION

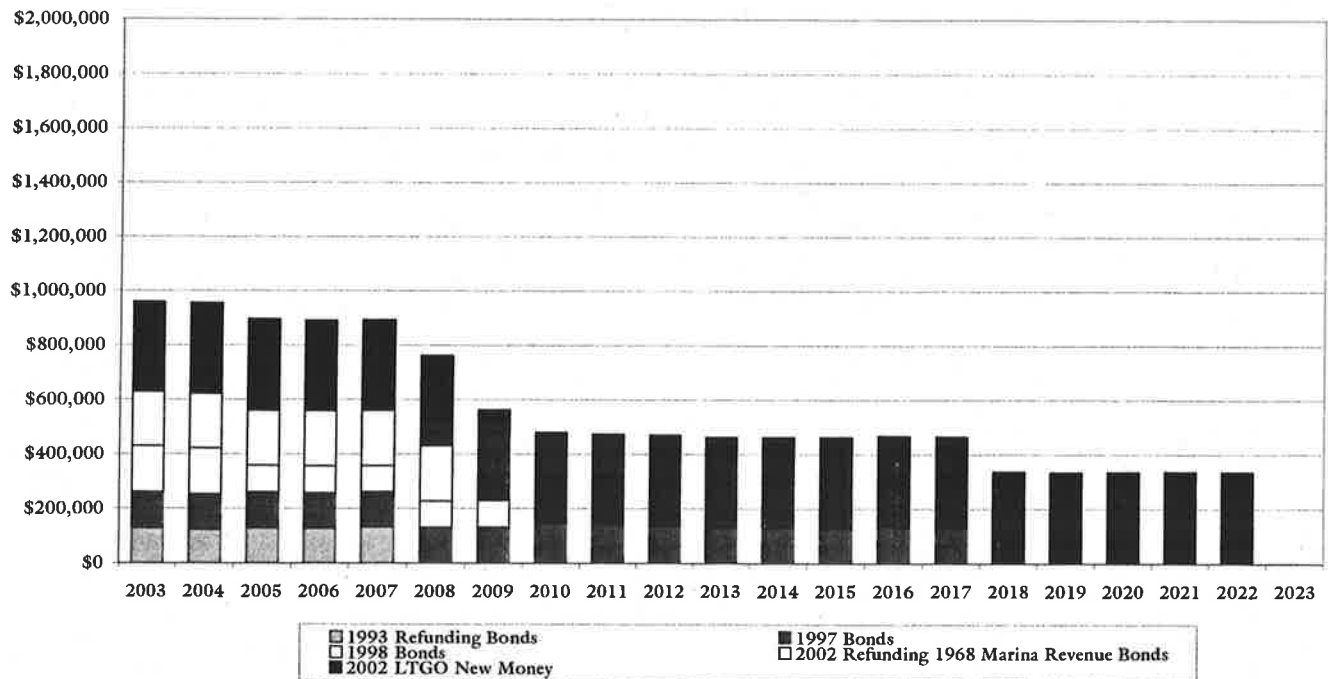
Lindsay A. Sovde
Assistant Vice President
(206) 628-2875
lsovde@snwsc.com

Financing Goals

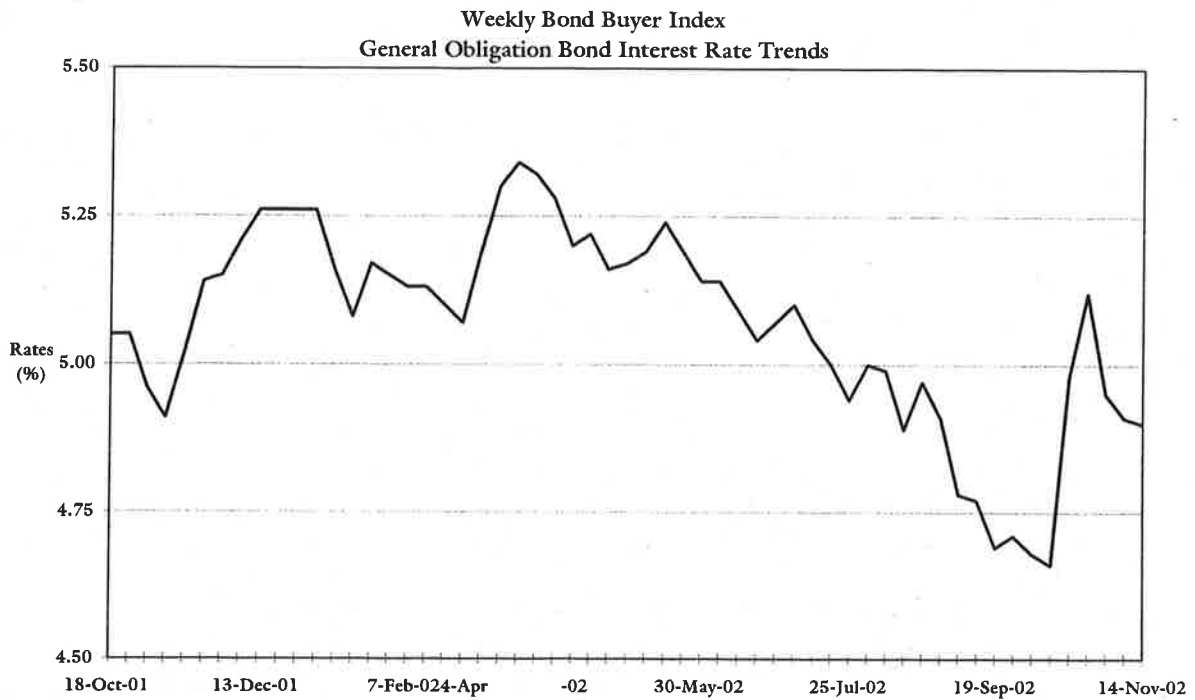
- 1) Issue \$5,420,000 LTGO bonds to:
 - Fund capital improvements at the Marina
 - Refund the 1968 Marina revenue bonds
- 2) Results of Refunding
 - Removes 1.50 x debt service coverage covenant
 - Other reserve fund requirements still exist
 - Present value savings: \$5,981 or 0.58%
- 3) Security
 - Pledge of Marina net revenues
 - 1.25 debt service coverage
 - Fully funded debt service reserve fund
 - Full faith and credit of the city
- 4) Repayment Pattern
 - Level debt service
 - Final maturity in 2022
- 5) Key Dates
 - Price bonds: November 21, 2002
 - Adopt Sale Resolution: November 21, 2002
 - First Interest: June 1, 2003
 - First Principal: December 1, 2003
 - Last Principal: December 1, 2022
 - Close Issue: December 5, 2002
- 6) Call Feature
 - Standard ten year call
- 7) Apply for and analyze the benefit of bond insurance
 - FSA – 46 basis points
 - Ambac – 32 basis points
 - **MBIA – 27.5 basis points**
 - Expected benefit of bond insurance \$145,000 present value
- 8) Credit Rating
 - Moody's Investors Service assigned an A3 and removed the "negative outlook"
- 9) Interest Rates
 - Expected true interest cost 4.30%
 - Actual true interest cost 4.32%

Debt Service

City of Des Moines, Washington
Outstanding LTGO Debt



Market Conditions



Comparable Investor Yields

Date:	Final 11/21/20021	1/21/2002	11/21/2002
Issuer:	City of Des Moines	State of Washington	Judson ISD, TX
Amount:	\$5,420,000	\$70,420,000	\$56,545,000
Security:	LTGO	UTGO	UTGO
BQ:	Yes	No	No
Rating	Aaa/NR Insured	Aaa/AAA/AAA	Aaa/AAA
Underlying Rating:	A3	AA1/AA/AA	A1/A+
2003	1.52		
2004	1.85	1.85	
2005	2.20	2.18	
2006	2.55		
2007	2.89	2.89	2.78
2008	3.19	3.19	3.08
2009	3.40	3.40	3.36
2010	3.64	3.64	3.59
2011	-	3.82	3.77
2012	-	3.92	3.87
2013	-	4.06	4.06
2014	4.12*	4.22	4.18
2015	-	4.34	4.29
2016	-	4.46	4.39
2017	4.35*	4.56	4.50
2018	-	4.66	4.60
2019	-	4.75	4.68
2020	4.70*		4.78
2021	-		4.87
2022	4.78*		4.95

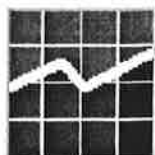
*Term bond

	 DATA-LINE® MENU	 Historical "AAA" Spots	 HISTORICAL PAGE	
	 PREVIOUS PAGE	 "AAA" % Treas	NEXT PAGE 	

"AAA" Municipal Yields Data-Line page 4

["AAA" Municipal Yields as of 11/21/2002]

Year	Yield	Basis Change	Price Change	Year	Yield	Basis Change	Price Change
1)... 2003	1.330	-	0.00	16)... 2018	4.490	8	-9.11
2)... 2004	1.680	3	-0.59	17)... 2019	4.580	8	-9.43
3)... 2005	2.020	4	-1.16	18)... 2020	4.670	7	-8.51
4)... 2006	2.380	5	-1.90	19)... 2021	4.760	6	-7.48
5)... 2007	2.700	6	-2.79	20)... 2022	4.840	6	-7.67
6)... 2008	3.020	8	-4.37	21)... 2023	4.890	6	-7.86
7)... 2009	3.260	11	-6.86	22)... 2024	4.910	6	-8.06
8)... 2010	3.500	11	-7.65	23)... 2025	4.930	7	-9.63
9)... 2011	3.680	11	-8.40	24)... 2026	4.950	7	-9.83
10)... 2012	3.780	11	-9.14	25)... 2027	4.960	6	-8.59
11)... 2013	3.920	11	-9.81	26)... 2028	4.970	6	-8.76
12)... 2014	4.070	10	-9.47	27)... 2029	4.980	6	-8.91
13)... 2015	4.190	10	-10.01	28)... 2030	4.990	6	-9.06
14)... 2016	4.300	9	-9.45	29)... 2031	5.000	6	-9.20
15)... 2017	4.400	9	-9.87	30)... 2032	5.000	6	-9.34



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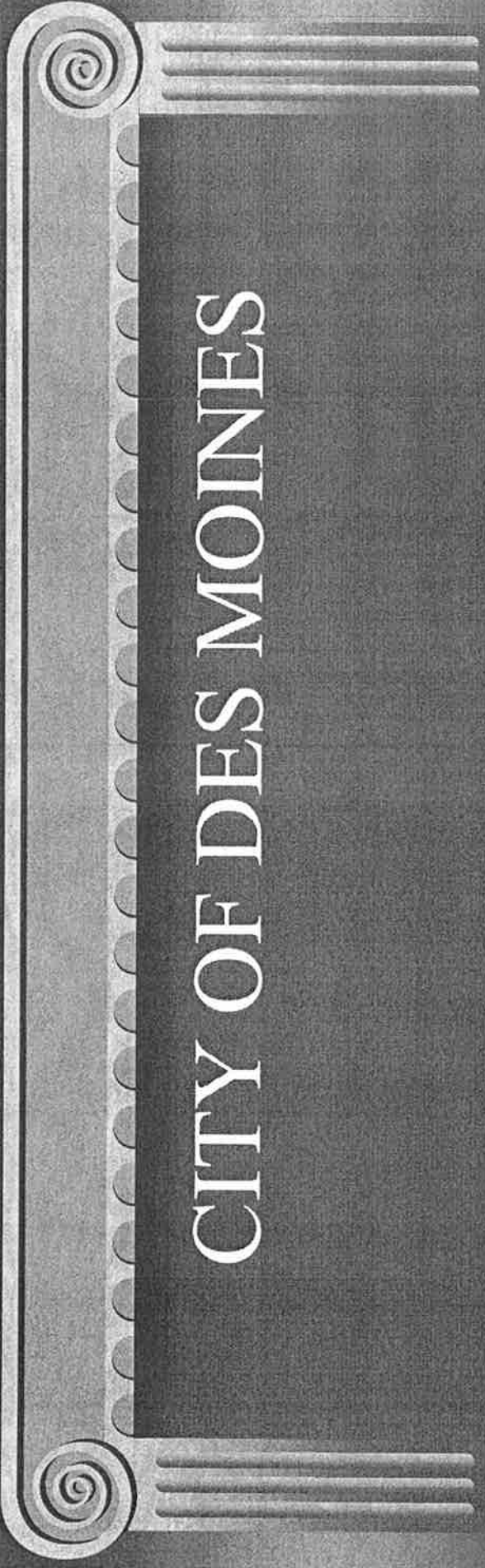


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Last Update: Thu Nov 21 15:17:37 EST 2002

2003 – 2008
CAPITAL IMPROVEMENT PLAN



CITY OF DES MOINES

Municipal Capital Improvements Fund

	2003	2004	2005	2006	2007	2008
PARKS AND RECREATION PROJECTS						
Des Moines Beach Park Repairs	\$14,500		\$1,400,000			
Field House Renovation CDBG & WA Heritage	\$160,090					
Steven J Underwood Memorial Park Phase I - IB	\$233,300	\$160,512				
Parks & Recreation Master Plan	\$20,000					
Woodmont Park Land Acquisition		\$350,000		\$233,840		
Community Center						\$6,643,440
Steven J Underwood Memorial Park Phase II			\$858,720	\$360,000		
Des Moines Creek Trail-Phase II			\$27,750	\$251,250		
Play Equipment Replacement		\$78,410	\$161,930	\$145,016	\$72,420	\$60,440
TOTAL PARKS AND RECREATION PROJECTS	\$427,890	\$588,922	\$2,448,400	\$990,106	\$72,420	\$6,703,880
GENERAL GOVERNMENTAL PROJECTS						
Orthophotography						\$40,000
Accounting Software Upgrade	\$137,339					
City Hall North Wing Remodel	\$80,000					
City Hall Parking Lot			\$46,500			
TOTAL GOVERNMENTAL PROJECTS	\$217,339	\$0	\$46,500	\$0	\$0	\$40,000
TOTAL PROJECT EXPENDITURES	\$645,229	\$588,922	\$2,494,900	\$990,106	\$72,420	\$6,743,880

Arterial Street Fund

	2003	2004	2005	2006	2007	2008
REOCCURRING PROJECTS						
Arterial Maintenance Program	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000	\$350,000
Neighborhood Traffic Control Program	\$16,000					
PROJECTS CONTINUED FROM PRIOR YEARS						
Pacific Highway South, S. 216th to KDM (1998-2002)	\$7,075,831	\$7,834,758				
16th Ave South Improvements (Phase 1)	\$350,089	\$4,714,166				
KDM Road/16th Ave. to 24th Ave.	\$96,356					\$200,000
NEW PROJECTS						
Marine View Dr Pedestrian Improvement	\$108,500	\$397,500				
10th Avenue S Culvert Replacement	\$142,550					
Pacific Ridge Sidewalks			\$133,154			
Wesley Homes Pedestrian Signal	\$73,000					
S 216th St and 24th Ave S Signal	\$436,900					
North Twin Bridge Project				\$116,438	\$1,047,938	
TOTAL PROJECT EXPENSES	\$8,649,225	\$13,296,424	\$483,154	\$466,437	\$1,397,937	\$550,000

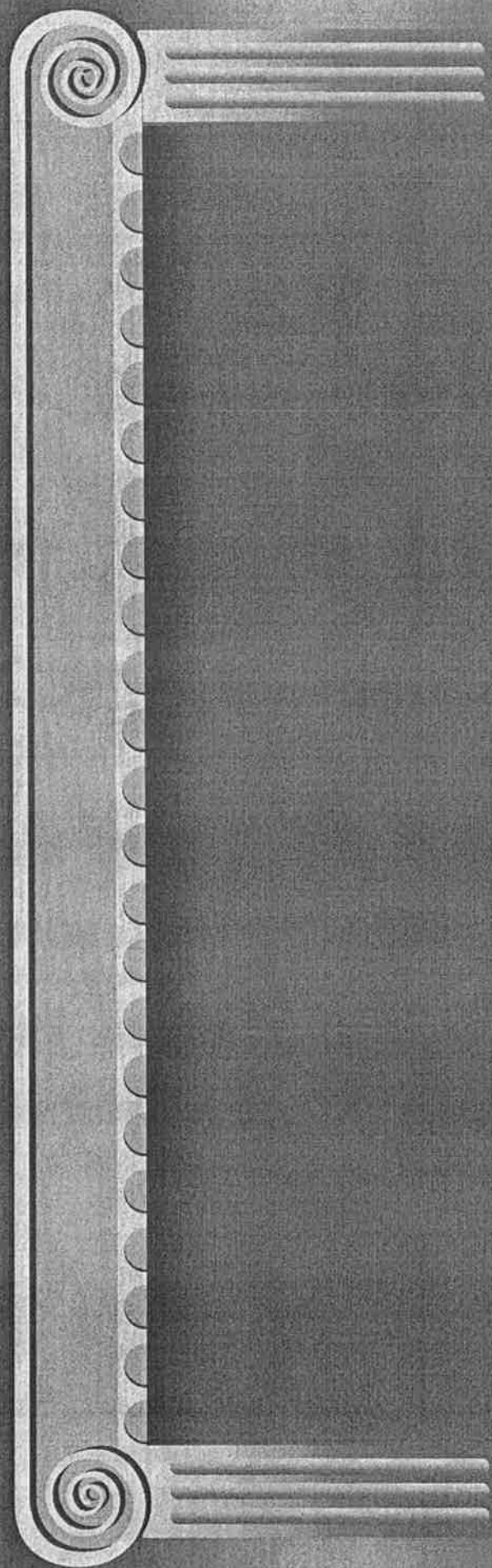
Marina Depreciation & Improvement Fund

	2003	2004	2005	2006	2007	2008
PROJECT EXPENSES						
Dry Stack Storage	\$953,820			\$130,300		
Electrical Upgrades M & N Docks	\$225,000	\$275,000				
Redondo Improvements	\$1,238,000					
Expanded Guest Moorage Phase I	\$342,500	\$342,500				
North Seawall and Sidewalk			\$985,000			
Electrical Upgrades K & L Docks	\$250,000					
South Parking Lot Improvements		\$200,000				
Expanded Guest Moorage Phase II				\$2,200,000	\$2,200,000	
Commercial Building				\$250,000	\$1,610,000	\$1,400,000
Seawall Replacement Project, N to I Dock						
Seawall Replacement Project, H to A Dock						
South Marina Restroom Upgrade		\$25,000				
South Marina Restroom Replacement				\$250,000		
Floating Dock Replacement and Reconfiguration Phase I					\$450,000	
Building Repairs-Restaurant and Boat Yard		100,000				
TOTAL PROJECT EXPENSES	\$3,009,320	\$942,500	\$985,000	\$2,830,300	\$4,260,000	\$1,400,000

Surface Water Capital Fund

	2003	2004	2005	2006	2007	2008
PROJECT EXPENSES						
Marine View Drive Bridge	\$2,680,900	\$3,043,400				
Des Moines Creek Basin Projects	\$507,700	\$1,081,500	\$154,800	\$87,300		
Woodmont Culvert/Overflow	\$97,000					
McSorley Creek Basin Plan			\$100,000			
10th Avenue Culvert Replacement	\$823,000					
Barnes Creek Detention Facility/Culvert		\$960,050	\$315,000			
Barnes Creek/KDM Rd. Culvert Repl.			\$39,500	\$279,600		
199th N Hill Trunk Line					\$280,170	
Lower Massey Creek Channel					\$100,000	\$603,100
TOTAL PROJECT EXPENSES	\$4,108,600	\$5,084,950	\$609,300	\$366,900	\$380,170	\$603,100

THE END



CITY ATTORNEY'S FIRST DRAFT 11/13/02
CITY ATTORNEY'S SECOND DRAFT 11/21/02

DRAFT ORDINANCE NO. 01-142
(Reenacting Title 20)

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to use of the public rights-of-way by telecommunications providers; establishing requirements and standards for the granting and renewal of telecommunications franchises; providing for the regulation of use of public ways providing for insurance, bonding and construction standards for telecommunications facilities located in public ways; establishing procedures for appeals of administrative decisions regarding franchises for the use of the rights-of-way by telecommunications facilities; providing for enforcement of this ordinance; establishing the conditions, requirements, obligations, duties of construction, maintenance and operation of cable franchises within the City and the granting of the right, privilege and authority to cable franchisees to construct, operate, maintain and use poles, conduits, cables, wires and other incidental equipment in, upon, under, over, along and across streets, avenues, boulevards, alleys and other public places of the City of Des Moines; establishing requirements for antennas and personal wireless telecommunication facilities, including a purpose statement, definitions, exemptions, site selection criteria, priority of locations, priority on City property, co-location and design criteria, permit inspection requirements and landscaping requirements, non-use and abandonment provisions, third party review and remedies; adding definitions relating to provision of cable television services and establishing the conditions, requirements, obligations, franchises within the City and the granting of the right, maintain and use poles, conduits, cables, wires and other incidental equipment in, upon, under, over, along and across streets, avenues, boulevards, alleys and other public places of the City of Des Moines; reenacting Title 20 of the Des Moines Municipal Code (DMMC); and repealing the previously codified provisions of Title 20 DMMC and underlying ordinances

WHEREAS, in 1997 the City Council of the City of Des Moines adopted Ordinance No. 1200 regulating telecommunications in the City of Des Moines, and

WHEREAS, in 1999, the City Council of the City of Des Moines adopted Ordinance No. 1275, regulating cable franchises in the City of Des Moines, and

WHEREAS, in July 2001, in the case of *Auburn v. Quest*, 247 F.3d 966 (9th Cir. 2001), the Federal Court of Appeals for

the Ninth Circuit held that the Des Moines' telecommunications ordinance was preempted by the federal Telecommunications Act of 1996, 47 U.S.C. §253, and

WHEREAS, the City Council of the City of Des Moines now wishes to reenact all of the substantive provisions of its previously enacted Telecommunications Code, changing only the procedural requirements that were declared to have been preempted by federal law, and

WHEREAS, pursuant to RCW 35A.47.040, RCW 80.35.040, RCW 35.99.010 et seq., and other lawful authority, the City of Des Moines has the authority to manage the use of its rights-of-way and regulate the use of municipal property, and

WHEREAS, the City Council finds that an increasing number of telecommunication carriers and providers have requested access to and the use of public ways and public property, and

WHEREAS, RCW 35A.11.020 grants cities broad authority to regulate the use of the public rights-of way, and

WHEREAS, RCW 35A.47.040 grants cities broad authority to grant non-exclusive franchise agreements, and

WHEREAS, RCW 35A.82.020 authorizes code cities to impose business licensing requirements and excises upon business transacted within such a City to the extent permitted by the general laws, and

WHEREAS, Congress has adopted the Telecommunications Act of 1996 (hereinafter the "Act") in order to encourage the development of high-technology communications systems through increased competition among communications companies, and

WHEREAS, the Act provides for the removal of regulatory barriers, rate deregulation and relaxation of certain anti-trust provisions in an attempt to achieve this goal, and

WHEREAS, the Act is anticipated to have a significant effect on the range and type of services that telecommunications carriers will be delivering via cable and wireless technologies, and

WHEREAS, the Act contains numerous provisions which directly affect local taxation, zoning, franchise authority and public ways management, and

WHEREAS, the Act will likely place additional demands on the use of the City's public ways and public property, and

WHEREAS, section 704 of the federal Telecommunications Act of 1996, 47 USC Sec. 332(c)(7), provides that local governments may, pursuant to their inherent zoning authority, regulate the placement, construction, and modification of personal wireless telecommunications service facilities, provided that the local governments do not unreasonably discriminate among providers of functionally equivalent services, or prohibit or have the effect of prohibiting the provision of personal wireless services, and

WHEREAS, the City Council finds that personal wireless service facilities often require large structures or towers, whose height and footprint may not be compatible, as a matter of sound urban planning, with adjoining residential uses, and

WHEREAS, the City Council further finds that the public interest is best served by enacting specific siting regulations which will provide for placement of personal wireless facilities in areas least likely to negatively affect residential property, and

WHEREAS, the City is in the process of and will continue to identify potential sites which will allow for the placement of personal wireless telecommunications facilities subject to the criteria enumerated herein and elsewhere in City ordinances, and

WHEREAS, the City of Des Moines is also authorized to grant franchises to construct, operate, maintain and reconstruct cable television systems within the City limits, and

WHEREAS, the City Council finds that because of the complex and rapidly changing technology associated with cable television, the public convenience, safety and general welfare can best be served by establishing the terms and conditions under which such authority shall be exercised, and

WHEREAS, it is the intent of this ordinance to incorporate into Title 20 of the Des Moines Municipal Code the specific rules and regulations providing for and specify the means to attain the best possible cable television service to the public, and

WHEREAS, the changes proposed by this ordinance have been processed in accordance with the requirements of the State Environmental Policy Act (SEPA), and the responsible official has

determined that this ordinance relates solely to governmental procedures and contains no substantive standards respecting use or modification of the environment, and is accordingly exempt from threshold determination and EIS requirements under WAC 197-11-800(20), and

WHEREAS, the Director of Community Development has determined that no public hearing is required under chapter 18.56 DMCC in order to reenact the Telecommunications Code, and

WHEREAS, the City currently has regulations which do not take into account the provisions of the Act, and

WHEREAS, the City Council finds that the provisions contained in this ordinance are appropriate and necessary for the preservation of the public health, safety, and welfare, and

WHEREAS, to ensure reasonable access to the rights-of-way and public property for telecommunications carriers and providers while protecting the public health, safety and welfare, the City Council determines that it needs to include regulations and standards for the use of such areas; now therefore,

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

TITLE 20
Telecommunications

Chapter 20.01. - Purpose and General Provisions

Sec. 1. ReenactmentAdoption of Title 20, Telecommunications. The City Council hereby reenacts Title 20, Telecommunications, to the Des Moines Municipal Code, as modified herein.

Sec. 2. Purpose. The purpose of this chapter is to:

(1) Establish a local policy concerning |
((telecommunications providers and services)) use of the public rights-of-way;

(2) Establish clear and nondiscriminatory local guidelines, standards and time frames for the exercise of local authority with respect to the management of the public rights-of-way;

(3) Promote competition in telecommunications;

(4) Minimize unnecessary local regulation of telecommunications providers and services;

(5) Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the City;

(6) Permit and manage reasonable access to the public ways of the City for telecommunications purposes on a competitively neutral basis;

(7) Conserve the limited physical capacity of the public ways held in public trust by the City;

(8) Assure that the City's current and ongoing administrative costs of granting and regulating private access to and managing the use of the public ways are fully paid by the persons seeking such access and causing such costs;

(9) Secure fair and reasonable compensation to the City and the residents of the City, in a non-discriminatory manner, for permitting private use of the public ways;

(10) Assure that all telecommunications carriers providing facilities or services within the City comply with the ordinances, rules, and regulations of the City with respect to management of the public rights-of-way;

(11) Assure that the City can continue to fairly and responsibly protect the public health, safety, and welfare;

(12) Enable the City to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.

Sec 3. Definitions.

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

(2) "Abandonment" means: (1) to cease operation for a period of sixty (60) or more consecutive days; (2) to reduce the effective radiated power of an antenna by seventy-five percent (75%) for sixty (60) or more consecutive days; (3) to relocate an antenna at a point less than eighty percent (80%) of the height of an antenna support structure; or (4) to reduce the number of

transmissions from an antenna by seventy-five percent (75%) for sixty (60) or more consecutive days.

(3) "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

(4) "Antenna" means any exterior apparatus designed for telephonic, radio, data, Internet, or television communications through the sending and/or receiving of electromagnetic waves, and includes equipment attached to a tower or building for the purpose of providing personal wireless services, including unlicensed wireless telecommunications services, wireless telecommunications services utilizing frequencies authorized by the Federal Communications Commission for "cellular", "enhanced specialized mobile radio" and "personal communications services", telecommunications services, and its attendant base station.

(5) "Antenna height" means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the parcel. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

(6) "Antenna support structure" means any pole, telescoping mast, tower, tripod, or other structure which supports a device used in the transmitting or receiving of radio frequency signals.

(7) "Applicant" means any provider or any person, partnership, or company who files an application for any permit necessary to install, maintain, or remove a personal wireless service facility within the City.

(8) "Basic cable service" means any service tier that includes the retransmission of local television broadcast signals.

(9) "Cable Acts" means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, as amended by portions of The Telecommunications Act of 1996, and as hereafter amended.

(10) "Cable operator" means a telecommunications carrier providing or offering to provide "cable service" within the City as that term is defined in the cable acts.

(11) "Cable television service" ~~((shall have the same meaning as defined in the cable acts.))~~ means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

(12) "Camouflaged" means a personal wireless service facility that is disguised, hidden, or integrated with an existing structure that is not a monopole or tower, or a personal wireless service facility that is placed within an existing or proposed structure or, new structure, tower, or mount within trees so as to be significantly screened from view.

(13) "Cell site" or "site" means a tract or parcel of land that contains personal wireless service facilities including any antenna, support structure, accessory buildings, and parking, and may include other uses associated with and ancillary to personal wireless services.

(14) "Channel" means a single path or section of the spectrum which carries a television signal.

(15) "Character generator" means a device used to generate alphanumeric programming to be cablecast on a cable channel.

(16) "City property" means all real property owned by the City whether in fee ownership or other interest.

(17) "City" means the City of Des Moines.

(18) "Co-location" or "collocation" means the use of a personal wireless service facility or cell site by more than one personal wireless service provider or the siting of a facility on an existing structure.

(19) "Collocation permit" means an administrative process exercised and approved by the City Manager or designee to encourage collocation of facilities as provided in this ordinance.

(20) "Commercial zones" or "commercial district" means and includes each of the following zoning classifications as defined in DMMC 18.06.020: B-N, Neighborhood Business; B-C,

Community Business; C-C, Community Commercial; D-C, Downtown Commercial; C-G, General Commercial; B-P, Business Park; and H-C, Highway Commercial.

(21) "Conditional use permit" or "CUP" means a process and approval as described in City of Des Moines Ordinance No. 770 and in the Zoning Code, chapter 18.94.

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

(23) "COW" means "cell on wheels".

(24) "Data communication" means (1) the transmission of encoded information or (2) the transmission of data from one point to another.

(25) "Design" means the appearance of personal wireless service facilities, including such features as their materials, colors, and shape.

(26) "Dwelling units" means residential living facilities as distinguished from temporary lodging facilities such as hotel and motel rooms and dormitories, and includes single family residential units and individual apartments, condominium units, mobile homes within mobile home parks, and other multiple family residential units.

(27) "EIA" means the Electronics Industry Association.

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

(29) "Equipment enclosure" means a structure, shelter, cabinet, or vault used to house and protect the electronic equipment necessary for processing wireless communication signals. Associated equipment may include air conditioning, backup power supplies and emergency generators.

(30) "Excess capacity" means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other utility facility within the right-of-way that is or will be available for use for additional telecommunications facilities.

(31) "FAA" means the Federal Aviation Administration.

(32) "FCC" or "Federal Communications Commission" means the Federal administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

(33) "Facilities" means all of the plant, equipment, fixtures, appurtenances, antennas, and other facilities necessary to furnish and deliver telecommunications services and cable television services, including but not limited to poles with crossarms, poles without crossarms, wires, lines, conduits, cables, communications and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to the distribution and use of telecommunications services and cable television services.

(34) "Fiber optics" means the technology of guiding and projecting light for use as a permanent communications medium.

(35) "Franchise" means the initial authorization, or renewal thereof, approved by an ordinance of the City, which authorizes the franchisee to construct, install, operate, or maintain telecommunications facilities in, under, over, or across public ways of the City and to also provide telecommunications service to persons or areas in the City.

(36) "Franchisee" means the person, firm or corporation to whom or which a franchise is granted, as defined in this section, is granted by the council under this ordinance and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in this ordinance.

(37) "Governing authority" means the City Council of the City of Des Moines.

(38) "Grantee" means both licensees and franchisees granted certain rights and obligations as more fully described herein.

(39) "Gross revenues" means any and all revenues derived from the operation of the cable television system to provide Cable Services in the City by a Franchisee, other than transactions related to real property receipts by a Franchisee, bad debt and any taxes on services furnished by a Franchisee, imposed on a Franchisee or any Subscriber or used by any governmental unit, agency or instrumentality and collected by a Franchisee for such entity. However, Gross Revenues shall

include franchise fee revenue and revenues obtained from local and national advertising, home shopping channels, and similar sources. When the revenue of the Franchisee includes gross revenues from sources outside of the City, a Franchisee shall prorate the gross revenues among its sources by multiplying such gross revenues by a fraction the numerator of which is the number of Franchisee's Subscribers in the City and the denominator of which is the total number of all a Franchisee's Subscribers.

(40) "Headend" means the electronic equipment located at the start of a cable television system, usually including antennas, preamplifiers, frequency converters, demodulators and related equipment.

(41) "Hearing examiner" means the duly appointed hearing examiner of the City.

(42) "Installation" means the connection of the cable television system by means of a cable drop from feeder cable to Subscribers' terminals.

(43) "Institutional Network (I-Net)" means a communication network for non-commercial governmental use by governmental agencies transported on fiber optic cable owned by the Franchisee.

(44) "Interactive Services" means services provided to Subscribers where the Subscriber either (i) both receives information consisting of either television or other signals and transmits signals generated by the Subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the Subscriber or for any other purpose; or (ii) transmits signals to any other location for any purpose.

(45) "Internet" means an international telecommunications network providing point to point communication through modem accessibility.

(46) "Modification" means the changing of any portion of a personal wireless service facility from its description in a previously approved permit. Examples include, but are not limited to, changes in design.

(47) "Mount" means the structure or surface upon which personal wireless service facilities are mounted. There are three types of mounts: (i) Building mounted, a personal wireless service facility mount fixed to the roof or side of a building; (ii) ground mounted, a personal wireless service facility mount fixed to the ground, such as a tower; and, (iii) structure

mounted, a personal wireless service facility fixed to a structure other than a building, such as light standards, utility poles, and bridges.

(48) "Node" is a sub headend containing electronic equipment located within a local area designed to provide service to a limited number of homes.

(49) "Operator" means the telecommunication carrier firm or corporation to whom a franchise is granted pursuant to the provisions of this ordinance.

(50) "Overhead facilities" means utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

(51) "Person" means corporations, companies, associations, joint stock companies, firms, partnerships, limited liability companies, other entities and individuals.

(52) "Personal wireless service," "personal communications system," "personal wireless service facilities," and "facilities" used in this ordinance, shall be defined in the same manner as in chapter 47, United States Code, section 332(c)(7)(C), as they may be amended now or in the future and includes facilities for the transmission and reception of radio or microwave signals used for communication, cellular phone, personal communications services, enhanced specialized mobile radio, and any other wireless services licensed by the FCC and unlicensed wireless services.

(53) "Proposal" means the response, by an individual or organization, to a request by the City regarding the provision of Cable Services or Telecommunication services; or an unsolicited plan submitted by an individual or organization seeking to provide Cable Services or other Telecommunication services in the City.

(54) "Provider" means every corporation, company, association, joint stock company, firm, partnership, limited liability company, other entity and individual which provides personal wireless service over personal wireless service facilities.

(55) "Public, Education and Government (PEG) Access Channels" means: Channel capacity designated for public, educational, government use.

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

(57) "Residential zone" or "residential district" means and includes each of the following zoning classifications as defined in DMMC 18.06.020: RS-15,000, 9,600, 8,400 and 7,200; RA-3,600; RM 2,400; RM-1,800; RM-900; RM-900A; RM-900B; S-E; and S-R.

(58) "Secondary use" means a use subordinate to the principle use of the property, such as commercial, residential, utilities, etc.

(59) "Security barrier" means a wall, fence, or berm that has the purpose of sealing a personal wireless service facility from unauthorized entry or trespass.

(60) "State" means the state of Washington.

(61) "Subscriber" means a person or user of the cable television system who lawfully receives cable services or other service therefrom with Franchisee's express permission.

(62) "Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Washington Utilities and Transportation Commission, to allow its use by a telecommunications carrier for a pole attachment.

(63) "Telecommunications carrier" includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the City, used or to be used for the purpose of offering telecommunications service.

(64) "Telecommunications facilities" means the plant, equipment and property within City used to transmit, receive, distribute, provide or offer telecommunications service.

(65) "Telecommunications provider" includes every person who provides telecommunications service over telecommunications facilities.

(66) "Telecommunications service" means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

(67) "Tower" means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term encompasses personal wireless service facilities including radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers or personal communications services towers, alternative tower structures, and the like.

(68) "Underground facilities" means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.

(69) "Unlicensed wireless services" means commercial mobile services that operate on public frequencies and do not need a FCC license.

(70) "Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Washington Utilities and Transportation Commission.

(71) "Utility facilities means the plant, equipment and property including, but not limited to, the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within public ways and used or to be used for the purpose of providing utility or telecommunications services.

(72) "Washington Utilities and Transportation Commission" or "WUTC" means the state administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers in the state of Washington to the extent prescribed by law.

Additional terms and phrases are likely to be relevant to this title. ~~telecommunications facilities and services subject to regulation by the city.~~ When possible, the City shall turn to

existing FCC regulations and/or existing federal statutes for clarification purposes.

Sec. 4. Registration and fees. Except as otherwise provided herein, all telecommunications carriers or providers engaged in the business of transmitting, supplying or furnishing of telecommunications service originating, terminating or existing within the City shall register with the City pursuant to this ordinance and pay all the fees as provided herein.

Sec. 5. License and fees. Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in public ways for the purpose of providing telecommunications service to persons and areas outside the City shall first obtain a license granting the use of such public ways from the City pursuant to this ordinance and pay all the fees as provided herein.

Sec. 6. Franchise and fees. Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in public ways and to also provide telecommunications service to persons or areas in the City, shall first obtain a franchise granting the use of such from the City pursuant to this ordinance and pay all the fees as provided herein.

Sec. 7. Cable franchise and fees. Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or locate telecommunications facilities in public ways for the purpose of providing cable services shall first obtain a cable franchise from the City pursuant to DMMC ~~((5.52 (Cable Communications and Distribution System Franchise Requirements)~~20.05 ~~(Cable Franchise)~~ and pay all the fees as provided in such cable franchise.

Sec. 8. Application to existing franchise agreements. Except as provided in chapter 20.07, this ordinance shall have no effect on any existing franchise agreement until:

(1) The expiration of said franchise agreement; or

(2) An amendment to an unexpired franchise agreement, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

Sec. 9. Penalties.

(1) A violation or failure to comply with this ordinance is a Class I civil infraction, subject to a fine of up to one thousand dollars (\$1,000.00).

~~_____ (2) In addition to the cityCity's civil enforcement powers, any person found violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this ordinance shall be guilty of a misdemeanor. Upon conviction any person violating any provision of this ordinance shall be subject to a fine of up to one thousand dollars (\$1,000) or by imprisonment for a period of up to ninety (90) days, or by both such fine and imprisonment.~~

~~_____ (3) Any person found to have committed a willful, intentional, or bad faith violation of any provision of this ordinance shall be guilty of a gross misdemeanor, and, upon conviction, shall be subject to a fine of up to five thousand (\$5,000.00) or by imprisonment for a period of up to one year, or by both such fine and imprisonment.~~

(42) A separate and distinct violation shall be deemed committed each day on which a violation occurs or continues.

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

~~_____ Sec. 10. Most favored community. In the event that a grantee, franchisee, or lessee enters into any agreement, franchise or other understanding with any other city, town or county in the State of Washington under facts and circumstances that are substantially similar to those found in the city of Des Moines, and which provides terms or conditions more favorable to the city, town or county than those provided in its agreement with the city of Des Moines, such as, but not limited to, free or reduced fee hookups, access or service, the city shall be entitled to request at the city's option, and the grantee, franchisee, or lessee in question shall be required to execute, an amendment to its agreement which incorporates the more favorable terms and conditions.~~

Sec. 1((1))0. Further rules and regulations. The City Manager or designee is authorized to establish further rules, regulations and procedures to implement, administer and enforce this ordinance.

Chapter 20.02 - Registration

Sec. 121. Registration required. All telecommunications carriers having telecommunications facilities within the corporate limits of the City, or all telecommunications carriers or providers that offer or provide telecommunications service within the City, shall register with the City hereunder on forms provided by the City manager or designee which shall include the following:

(1) The identity and legal status of the registrant, ~~including any affiliates.~~

(2) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.

(3) A description of registrant's existing or proposed telecommunications facilities within the City public rights-of-way.

(4) A description of the telecommunications service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the City.

(5) Information sufficient for the City to determine whether the registrant is subject to public way permitting or franchising under this ordinance.

(6) Information sufficient for the City to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any municipal tax, or permit, license or franchise fee.

~~_____ (7) Copies of the applicant's registration filed with the Washington Utilities and Transportation Commission pursuant to WAC 480 121, and any tariff or price list or other authorization or related filings as may be required by the WUTC to provide telecommunications services. Alternatively, applicant shall submit a statement detailing the reasons that registration and related filings with the WUTC are not required.~~

(8) (7) Information sufficient for the City to determine that the applicant has applied for and received authorization to conduct business in the City and in the State of Washington. ~~any permit, operating license or other right or approvals required by~~

~~the Federal Communications Commission to provide telecommunications services or facilities.~~

~~(9) Such other information as the city may require.~~

Sec. 132. Business registration fee. Each initial and subsequent annual application for a telecommunications business registration shall be accompanied by a nonrefundable application fee of \$100.00 for the purpose of reimbursing the City for administrative expenses associated with processing the application. The fee shall be subject to modification by the City Manager as provided in section 120 of this ordinance.

Sec. 143. Purpose of registration. The purpose of registration is to:

(1) Provide the City with accurate and current information concerning the telecommunications carriers and providers who offer or provide telecommunications services within the City, or that own or operate telecommunication facilities within the City;

(2) Assist the City in enforcement of this ordinance;

(3) Assist the City in the collection and enforcement of any municipal taxes, franchise fees, license fees or charges that may be due the City; and

(4) Assist the City in monitoring compliance with local, state and federal laws.

Sec. 154. Exception to registration. A person which provides telecommunications services solely to itself, its affiliates or members between points in the same building, or between closely located buildings under common ownership or control, provided that such company or person does not use or occupy any public way of the City or other ways within the City is excepted from the registration requirement pursuant to this ordinance.

Chapter 20.03 - License

Sec. 165. License. A license shall be required of any telecommunications carrier who desires to occupy any public way ~~with any telecommunications facilities~~ for the purpose of providing telecommunications services to persons or areas outside the City.

Sec. 176. License application. Any person that desires a license hereunder shall file an application provided by the City Manager or designee.

Sec. 187. Determination by the City. Within 120 days after receiving a complete application hereunder, the City Manager or designee shall make a determination on behalf of the City granting or denying the application in whole or in part. If the application is denied, the determination shall include the reasons for denial. The following standards shall apply when determining to grant or deny the application:

(1) ~~The~~ Financial assurances by the applicant sufficient and technical ability of the applicant to cover costs or damage to the rights-of-way. Such assurances are to be submitted in a form approved by the City, including but not limited to bonds and insurance sufficient to cover any risk of damage caused by or in connection with installation and maintenance of facilities on the rights of way, as detailed in Sections 62-67.

(2) The legal ~~ability~~ qualification of the applicant to do business in Washington.

(3) The capacity of the public way to accommodate the applicant's facilities at the sites proposed by the applicant.

(4) ~~The capacity of the public way to accommodate additional utility and telecommunications facilities if the application is granted.~~

(45) The applicant's agreement to mitigate and/or repair the damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the application is granted. Giving consideration to an applicant's willingness and ability to mitigate and/or repair same.

~~(6) The public interest in minimizing the cost and disruption of construction within the rights of way.~~

~~(7) The service that applicant will provide to the region.~~

(58) The applicant's agreement to mitigate the effect, if any, on general public health, safety and welfare in the city's sole opinion if the application is granted.

(69) The availability of alternate routes or locations for the proposed facilities.

(107) Applicable federal, state and local laws, regulations, rules and policies.

~~_____ (11) Such other factors as may demonstrate that the grant to use the public ways will serve the community interest.~~

Sec. 198. Agreement. No license granted hereunder shall be effective until the applicant and the City have executed a written agreement setting forth the particular items and provision terms under which the license to occupy and use public ways will be granted and said agreement is properly recorded pursuant to Washington law. All licenses granted pursuant to this ordinance shall contain substantially similar terms which, taken as a whole and considering relevant characteristics of applicants, do not provide more or less favorable terms and conditions than those required of other licensees or public way permit holders.

Sec. 2019. Nonexclusive grant. No license granted hereunder shall confer any exclusive right, privilege or license to occupy or use the public way for delivery of telecommunications services or any other purposes.

Sec. 210. Rights granted.

(1) No license granted hereunder shall convey any right, claim or interest in public ways but shall be deemed a license only to use and occupy the public way for the limited purposes and term stated in the grant.

(2) No license granted hereunder shall authorize or excuse a licensee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use public ways .

(3) No license granted hereunder shall be construed as any warranty of title.

Sec. 212. Term of grant. Unless otherwise specified in a license agreement, a license granted hereunder shall be in effect for a term of not more than five (5) years.

Sec. 223. License route. A license granted hereunder shall be limited to a grant of specific public ways and defined portions thereof, as may be indicated in the license agreement.

Sec. 243. Construction permits. All licensees are required to obtain construction permits, such as those required by Title 14 DMMC, and pay all fees as required by the City, provided, however, that nothing in this ordinance shall prohibit the City and a licensee from agreeing to alternative plan review, permit and construction procedures in a license agreement, provided such alternative procedures provide substantially equivalent safeguards for reasonable construction practices.

Sec. 245. Compensation to City. Each ~~(franchise)~~ license granted hereunder is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable fee ~~as compensation to be paid for use of property pursuant, including but not limited to fair and proportionate compensation for any increased deterioration or decrease in the useful life of any city public way or property used pursuant to the license and reimbursement for the City's administrative costs in connection with reviewing, inspecting and supervising the use and occupancy of the telecommunication structure rights-of-way on behalf of the public and existing or future users, provided nothing in this ordinance shall prohibit the City and a licensee from agreeing upon the compensation to be paid.~~

All grantees shall, within thirty (30) days after written demand, reimburse the City for all direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal or transfer of the authorization or any authorization agreement. In addition, all grantees shall, within thirty (30) days after written demand, reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving the grantee's telecommunications facilities. All grantees shall, within thirty (30) days after written demand, reimburse this City for the grantee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing or altering any City facility as a result of the construction or the presence in the public ways of the grantee's telecommunications facilities.

~~**Sec. 26. Service to city users.** A licensee may be permitted to offer or provide telecommunications services to persons or areas within the city upon receiving a franchise pursuant to this ordinance.~~

Sec. 275. Amendment of licensegrant.

(1) A new license application and ~~grant~~ shall be required of any telecommunications carrier that desires to extend

or locate its telecommunications facilities in public ways which are not included in a license previously granted hereunder.

(2) If ordered by the City to locate or relocate its telecommunications facilities in public ways not included in a previously granted license, the City shall grant a license amendment without further application.

~~____ (3) A new license application and grant shall be required of any telecommunications provider that desires to add to or modify the telecommunications services provided pursuant to a license previously granted.~~

Sec. 286. Renewal applications. A licensee that desires to renew its license hereunder shall, not more than 180 days nor less than 90 days before expiration of the current license, file an application with the City for renewal of its license which shall include the following information:

~~____ (1) The applicable information required pursuant to the license application.~~

~~____ (2) Any other information required by city.~~

Sec. 279. Renewal determinations. Within ninety (90) days after receiving a complete application hereunder, the City Manager or designee shall make a determination on behalf of the City granting or denying the renewal application in whole or in part. If the renewal application is denied, the determination shall include the reasons for non-renewal. The standards enumerated in section 3318 shall apply when determining to grant or deny the application, plus a determination of the applicant's compliance with the requirements of this ordinance and the license agreement.

Sec. 3028. Obligation to cure as a condition of renewal. No license shall be renewed until any ongoing violations or defaults in the licensee's performance of the license agreement, of the requirements of this ordinance, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the licensee has been approved by the City Manager or designee.

Sec. 3129. Franchise. A franchise shall be required of any telecommunications carrier who desires to occupy public ways and to provide Telecommunications services to any person or area in the City.

Sec. 3230. Franchise application. Any person that desires a franchise hereunder shall file an application provided by the City Manager or designee.

Sec. 331. Determination by the City. Within 120 days after receiving a complete application hereunder, the City shall grant or deny the franchise application. The City Manager shall make an initial recommendation to the City Council to grant or deny the application in whole or in part. The City Council will consider the franchise application following receipt of the City Manager's recommendation. If the application is denied, the determination shall include the reasons for denial. The standards enumerated in section 18 of this ordinance shall apply when determining to grant or deny the application.

Sec. 324. Agreement. No franchise shall be granted hereunder unless the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the franchise to occupy and use public ways will be granted and said agreement has been recorded pursuant to Washington law. All franchises granted pursuant to this ordinance shall contain substantially similar terms and conditions which, taken as a whole and considering relevant characteristics of the applicants, do not provide more or less favorable terms and conditions than those required of other franchisees.

Sec. 353. Nonexclusive grant. No franchise granted hereunder shall confer any exclusive right, privilege or franchise to occupy or use the public ways for delivery of Telecommunications services or any other purposes.

Sec. 364. Rights granted.

(1) No franchise granted hereunder shall convey any right, title or interest in the public ways but shall be deemed a franchise only to use and occupy the public ways for the limited purposes and term stated in the grant.

(2) No franchise granted hereunder shall authorize or excuse a franchisee from securing such further easements, leases, permits or other approvals as may be required by private parties

or other governmental entities to lawfully occupy and use public ways.

(3) No franchise granted hereunder shall be construed as any warranty of title.

Sec. 357. Term of grant. Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be valid for a term of not more than ten (10) years.

Sec. 386. Franchise territory. A telecommunications franchise granted hereunder shall be limited to the specific geographic area of the City to be served by the franchisee, and the specific public ways and portions thereof, as may be identified in the franchise agreement.

Sec. 379. Construction permits. All franchisees are required to obtain permits and pay all fees for telecommunications facilities as required by Title 14 DMMC, provided, however, that nothing in this ordinance shall prohibit the City and a franchisee from agreeing to alternative plan review, permit and construction procedures in a franchise agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

Sec. 4038. Compensation to City. Each franchise granted hereunder is subject to the City's right, which is expressly reserved, to annually fix a fair and reasonable fee as reimbursement for the City's administrative costs in connection with managing the rights-of-way; compensation to be paid for use of property pursuant to a franchise, provided; provided nothing in this ordinance shall prohibit the City and a franchisee from agreeing upon the compensation to be paid.

~~**Sec. 41. Nondiscrimination.** A franchisee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for franchisee's services, provided, however, that nothing in this ordinance shall prohibit a franchisee from making any reasonable and lawful classifications among differently situated customers, including classifications based on credit or payment history.~~

~~**Sec. 42. Service to the city.** A franchisee shall make its telecommunications services available to the city at its most favorable rate for similarly situated users, provided,~~

~~however, the city may negotiate more favorable rates or free service in lieu of other obligations of franchisee.~~

Sec. 4339. Amendment of franchise grant.

(1) A new franchise application and ~~grant~~ shall be required of any telecommunications carrier that desires to extend its franchise territory or to locate its telecommunications facilities in public ways which are not included in a franchise previously granted hereunder.

(2) If ordered by the City to locate or relocate its telecommunications facilities in public ways not included in a previously granted franchise, the City shall grant a franchise amendment without further application.

~~_____ (3) A franchise application and grant shall be required of any telecommunications provider that desires to add to or modify the telecommunications services provided pursuant to a franchise previously granted.~~

Sec. 440. Renewal applications. A franchisee that desires to renew its franchise hereunder shall, not more than one hundred eighty (180) days nor less than ninety (90) days before expiration of the current franchise, file an application with the City for renewal of its franchise. ~~_____ which~~ Such renewal application shall include the following information:

~~_____ (1) The applicable the information required pursuant to the franchise application as detailed in Section 18.~~

~~_____ (2) Any other information required by the city.~~

Sec. 451. Renewal determinations. Within sixty (60) days after receiving a complete application hereunder, the City Manager or designee shall make a recommendation to the CityCity Council to grant or deny the renewal application in whole or in part. If the renewal application is denied by the City Council, the determination shall include the reasons for non-renewal. The standards enumerated in section 18 of this ordinance shall apply when determining to grant or deny the application, plus a determination of the applicant's compliance with the requirements of this ordinance and the franchise agreement.

Sec. 462. Obligation to cure as a condition of renewal. No franchise shall be renewed until any ongoing violations or defaults in the franchisee's obligations under the franchise agreement, of the requirements of this ordinance, and

all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved by the City.

Chapter 20.05 - Cable Franchise

NEW SECTION. **Sec. 437.** A new chapter 20.05 is added to Title 20 to read as follows:

(1) Terms of franchise.

(a) Authority to grant franchises for cable television systems and other video systems: It shall be unlawful to engage in or commence construction, operation, or maintenance of a cable television system or other video systems without a franchise. The Council may, by Ordinance, award non-exclusive Franchises to construct, operate and maintain cable television systems and other video systems which comply with the terms and conditions of DMMC Title 20

Any franchise granted pursuant to DMMC 20.04. shall be non-exclusive and shall not preclude the City from granting other or further franchises or permits or preclude the City from using any public rights-of-way, streets, or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the City to make such changes, as the City shall deem necessary, including the dedication, establishment, maintenance, and improvement of all new Public Rights-of-Way and other public properties.

(b) Incorporation by reference. The provisions of DMMC Title 20 shall be incorporated by reference in any franchise ordinance approved hereunder. The provisions of any proposal submitted and accepted by the City shall be incorporated by reference in the applicable franchise. However, in the event of any conflict between the proposal, DMMC Title 20 and the franchise, the franchise shall be the prevailing document.

(c) Nature and extent of the franchise. Any franchise granted hereunder by the City shall authorize a Franchisee, subject to the provisions herein contained, to:

(i) engage in the business of operating and providing Cable Services or other video services and the distribution and sale of such services to Subscribers within the City;

(ii) erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any Street, such amplifiers and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appurtenant to the cable television system or other video system; and provide similar cable facilities, or properties rented or leased from other Persons, firms or corporations, including but not limited to any public utility or other Franchisee Franchised or permitted to do business in the City. No privilege or exemption shall be granted or conferred upon a Franchisee by any franchise except those specifically prescribed therein, and any use of any Street shall be consistent with any prior lawful occupancy of the Street or any subsequent improvement or installation therein.

(d) Length of the franchise. The City shall have the right to grant Franchises for a period of time appropriate to the circumstances of the particular grant.

(2) **Application.** An Applicant for an initial franchise to construct, operate, and maintain a cable television system or other video system within the City shall file an application in a form prescribed by the City, accompanied by a non-refundable filing fee pursuant to DMMC 20.09.

(3) **Franchise issuance.** Prior to the granting of a franchise or renewal of a franchise, the City Council shall conduct a public hearing to determine the following:

(a) Initial franchise.

(i) Whether the public will be benefited by the granting of a franchise to the Applicant;

(ii) Whether the Applicant has the requisite financial and technical resources and capabilities to build, operate and maintain a cable television system or other video system in the area;

(iii) Whether the Applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the City;

(iv) Whether the Applicant will comply with all terms and conditions placed upon a Franchisee by this Ordinance;

(v) Whether the Applicant is capable of complying with all relevant federal, state, and local regulations, codes and standards pertaining to the construction, operation and maintenance of the cable television system or other video system facilities incorporated in its application for a franchise;

(vi) Whether the Public Rights-of-Way have the capacity to accommodate the cable television system or other video system;

(vii) Whether the proposed franchise is consistent with the City's present and future use of the Public Rights-of-Way to be used by the cable television system or other video system;

(viii) Whether the benefit to the public from the cable television system or other video system outweighs the potential disruption to existing users of the Public Rights-of-Way to be used by the cable television system or other video system, and the resultant inconvenience which may occur to the public; and

(ix) Whether all other conditions resulting from the grant of the franchise have been considered by the City and that the City determines that the grant is still in the public's best interest.

(x) Whether the quality of the Franchisee's previous service in other communities has been reasonable in light of community needs.

(xi) Whether the Franchisee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

(b) Renewal franchise.

(i) Whether the Franchisee has substantially complied with the material terms of the existing franchise.

(ii) Whether the quality of the Franchisee's previous service has been reasonable in light of community needs.

(iii) Whether the Franchisee's proposal is reasonable to meet the future cable-related community needs and

interests, taking into account the cost of meeting such needs and interests.

(iv) Whether the Franchisee has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in a Franchisee's proposal.

(v) Whether such renewal is consistent with applicable federal law.

(4) **Acceptance.** Within sixty (60) days after the effective date of the Ordinance awarding a franchise, or within such extended period of time as the Council in its discretion may authorize, a Franchisee shall file with the City Clerk its unconditional written acceptance of the franchise and all of its terms and conditions, in a form satisfactory to the City Attorney, together with the bond and evidence of insurance as required by Section 20.05.340: Insurance and Section 20.05.350: Performance Bond herein.

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

(6) **Undergrounding and landscaping.** In those areas and portions of the City where the transmission or distribution facilities of the public utility providing telephone service and those of the facility providing electric service are underground or hereafter may be placed underground, then a Franchisee shall likewise construct, operate and maintain all of its transmission and distribution facilities in the same area underground upon City approval. Such activities shall be made

in concurrence and cooperation with the other affected utilities. Amplifiers and associated equipment in a Franchisee's transmission and distribution lines may be in appropriate housing upon the surface of the ground, accompanied by landscaping and screening acceptable to the City.

(7) Construction in right-of-way.

(a) Right-of-way permit. A Franchisee shall submit an application for, pay the permit fee, and obtain a right-of-way permit to perform work in any Public Rights-of-Way. No work, other than Emergency repairs or standard Installations, shall commence without such a permit. Emergency repairs may be made immediately with notification given to the City no later than the next business day.

(b) Placement. In accordance with the permit issued, all transmission lines, equipment, and structures shall be located and placed so as to cause minimum interference with the rights and reasonable convenience of property owners, and at all times shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of the public. Any poles or other fixtures placed in any street by a Franchisee shall be placed in such manner as not to interfere with the usual travel on such public way.

(c) Interference with use of streets. When installing, locating, laying, or maintaining facilities, apparatus, or improvements, a Franchisee shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface of any such street in as good condition as it was prior to performance by Franchisee of such work. Any facility, apparatus, or improvement under this Ordinance shall be laid, installed, located, or maintained in conformance with City rules, regulations, ordinances, standards and policies. In any event, a Franchisee shall, at its own expense, and to the satisfaction of the City in accordance with the terms of the right-of-way permit, restore to City standards and specifications any damage or disturbance caused to Streets as a result of Franchisee's construction or operations.

(d) Relocation/Removal. Upon receipt of thirty (30) days prior written notice, a Franchisee, at its own expense, and within the time period prescribed by the City, shall protect, support, temporarily disconnect, relocate, or remove any of its facilities or property within the public rights-of-way when, in the judgment of the City, the same is required by reason of

traffic conditions, public safety or improvements by governmental agencies of that portion of the right-of-way. In the event such relocation is required due to emergency repairs, as deemed necessary by the City, such relocation or moving shall be accomplished within twenty four (24) hours. Nothing herein shall be deemed a taking of the property of a Franchisee, and Franchisee shall be entitled to no surcharge by reason of this section.

(e) City's performance of work. After receipt of thirty (30) days prior written notice, and upon the failure of a Franchisee to commence, pursue, or complete any work required by the provisions of this Ordinance or failure to comply with any applicable federal, state or City laws, ordinances, rules, regulations or standards to be performed on any street, within the reasonable time prescribed and to the satisfaction of the City, the City may, at its option, cause such work to be done, and a Franchisee shall pay to the City the reasonable cost thereof, which costs may include the City's reasonable overhead and administrative expense, within thirty (30) days after receipt of demand.

(8) **Rates.** Within thirty (30) days after the grant of an initial franchise hereunder, a Franchisee shall file with the City a complete schedule of all present rates charged to all Subscribers. Prior to implementation of any change in rates or charges for any service or equipment provided by a Franchisee, a Franchisee shall provide the City and all Subscribers a minimum of thirty (30) days prior written notice of such change.

Subject to the Act and resultant FCC regulations, the City may regulate the rates or charges for providing Basic Cable Service and equipment and may establish rate regulation review procedures as permitted by federal law.

(9) **Cable availability.** Cable service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the local area in which such group resides.

(10) **Franchise fee.** A Franchisee shall pay to the City monthly, on or before the fifteenth (15) day after the end of each calendar month a percentage of gross revenues as defined herein for the preceding calendar month. Such remittances shall be accompanied by forms furnished by the City to report detailed information as to the sources of such revenues.

(11) **External franchising costs.** Prior to incurring any expense for any franchise related requirements that would be

treated as an external cost passed through to subscribers under applicable federal law, the Franchisee shall notify the City of its intent to exercise its right and the amount to be passed through to Subscribers. The City may waive the franchise related requirement if, in the City's opinion, the increase in rates would be a burden on Subscribers.

(12) **Cable television system evaluation.** The City may require annual franchise compliance evaluations during the term of a franchise. The City may also require periodic meetings in addition to the annual franchise compliance evaluations. The City shall provide a Franchisee thirty (30) days prior written notice of the franchise compliance evaluation or meeting date and topic of discussion.

(13) **Records required and City's right to inspect.**

(a) A Franchisee shall at all times maintain at its office, a full and complete set of maps showing the location of the cable television system or other video system installed or in use in the City, exclusive of subscriber drops and equipment provided in Subscriber's homes, and a summary of service calls, identifying the number, general nature and disposition of such calls. Subject to reasonable notification this information will be available for review by the City. Furthermore, a summary of such service calls shall be submitted to the City, within thirty (30) days of a written request from the City, in a form reasonably acceptable to the City.

(b) Upon forty-eight (48) hours written notice, and during normal business hours, Franchisee shall permit examination by a duly authorized representative of the City, of all Franchisee property and facilities, together with any appurtenant property and facilities of Franchisee situated within the City, and all records relating to the franchise or this Ordinance, provided they are necessary to enable the City to carry out its regulatory responsibilities under local, state and federal law: Such records include, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records of request for service, and other like materials of Franchisee. Franchisee shall have the right to be present at any such examination.

(c) The City agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent a Franchisee makes the City aware of such confidentiality. A Franchisee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains

confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under state or federal law. If the City believes it must release any such confidential books and records in the course of enforcing a franchise or this Ordinance, or for any other reason, it shall advise a Franchisee in advance so that a Franchisee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by a Franchisee as confidential, the City shall, so far as consistent with applicable law, advise a Franchisee and provide a Franchisee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by state and federal law, it shall deny access to any of a Franchisee's books and records marked confidential as set forth above to any Person.

(d) Copies of all petitions, applications, communications and reports submitted by a Franchisee, or on behalf of or relating to a Franchisee, to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction with respect to any matters affecting a cable television system or other video system authorized pursuant to this Ordinance and a franchise shall be made available to the City upon request. Copies of responses from the regulatory agencies to a Franchisee shall likewise be furnished to the City upon request.

(14) **Annual reports.**

(a) A Franchisee shall submit a written end of the year report to the City containing at the minimum, the following information:

(i) A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the cable television system or other video system, including but not limited to, services begun or discontinued during the reporting year.

(ii) A list of Franchisee's officers, members of its board of directors. and other principals of Franchisee.

(iii) A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in Franchisee.

(iv) Information as to the number of Subscribers by tier or level of service as well as other information specified in the franchise agreement as it pertains to the operation within the City of Des Moines.

(b) All reports and records required under this Ordinance shall be furnished at the sole expense of a Franchisee, except as otherwise provided in this Ordinance or the franchise agreement.

(15) **Public, educational and government access.** The City may require, as a condition of a franchise granted pursuant to this Ordinance, provisions for Public, Educational and Government ("PEG") Access.

(16) **City-wide PEG access interconnection.** In the case of multiple cable television systems and other video systems operating in the City, the City may request a Franchisee to begin negotiations with the other Franchisees to interconnect PEG access channels delivered to Subscribers by each of the Franchisees in the City. Interconnection of PEG access channels may be accomplished by direct cable connection, microwave link, or other technically feasible method.

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

(17) **Institutional networks (I-Nets).** The City may require a Franchisee to construct an I-Net in accordance with applicable law.

(18) **PEG access equipment.** A Franchisee may be required to provide PEG Access support in accordance with applicable law.

(19) **Office location.** A Franchisee shall, at a minimum, establish an agency within the City limits of Des Moines whose function will be to accept payments and to return converters.

(20) **Non-discrimination.** In connection with rates, charges, cable facilities, rules, regulations and in all Franchisee's services, programs or activities, and all Franchisee's hiring and employment made possible by or resulting from this franchise, there shall be no discrimination by Franchisee or by Franchisee's employees, agents, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, creed, national

origin, sexual orientation, marital status or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Franchisee shall not violate any applicable federal, state or local law or regulation regarding non-discrimination.

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

(21) **Parental control devices.** Upon request by a Subscriber, a Franchisee shall make available and may charge the Subscriber a fee not to exceed the Franchisee's actual cost including applicable handling fees, a device by which the Subscriber can prohibit viewing and audio reception of a particular Cable Service or video programming service.

(22) **Devices for the hearing impaired.** A Franchisee shall comply with FCC closed captioning requirements, 47 CFR 76.606, or any successor rules and regulations thereto.

(23) **Continuity of service.** It shall be the right of all Subscribers to continue receiving cable service or other video services so long as their financial and other obligations to a Franchisee are fulfilled. In this regard a Franchisee shall act, so far as it is within its control, to ensure that all Subscribers receive continuous uninterrupted service during the term of the franchise.

In the event a Franchisee fails to operate a cable television system or other video system for seventy-two (72) continuous and consecutive hours without prior notification to and approval of the City Council or without just cause such as an impossibility to operate the cable television system or other

video system because of the occurrence of an emergency or other circumstances reasonably beyond a Franchisee's control, the City may, after notice and an opportunity for a Franchisee to commence operations at its option, operate the cable television system or other video system or designate someone to operate the cable television system or other video system until such time as a Franchisee restores cable service or other video service or a replacement Franchisee is selected. If the City is required to fulfill this obligation for a Franchisee, a Franchisee shall reimburse the City for all reasonable costs in excess of revenues from the cable television system received by the City that are the result of a Franchisee's failure to perform.

(24) **Franchise non-transferable.**

(a) Franchisee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, the franchise and/or cable television system or any of the rights or privileges granted by the franchise, without the prior consent of the City Council which consent shall not be unreasonably denied or delayed and shall be denied only upon a good faith finding by the City that the proposed transferee lacks the legal, technical or financial qualifications to perform its obligations under the franchise agreement or such other ground as may be permitted. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise and/or cable television system without the consent of the Council shall by federal law, result in an immediate termination of the franchise. This provision shall not apply to sales of property or equipment in the normal course of business. No consent from the City shall be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership or other entity controlling, controlled by or under common control with Franchisee.

(b) The following events shall be deemed to be a sale, assignment or other transfer of the franchise and/or cable television system requiring compliance with this section:

(i) the sale, assignment or other transfer of 50% or more of Franchisee's assets;

(ii) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in Franchisee by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in Franchisee;

(iii) the issuance of additional capital stock or partnership, membership or other equity interest by Franchisee so as to create a new controlling interest in Franchisee; and

(iv) the entry by the Franchisee into an agreement with respect to the management or operation of the Franchisee and/or the cable television system. The term "Controlling Interest" as used herein means majority equity ownership of the Franchisee.

(c) Except as provided below, no Franchisee may sell or otherwise transfer ownership in a franchise and/or cable television system within a thirty-six (36) month period following either the acquisition or initial construction of said cable television system by Franchisee. In the case of a sale of multiple cable television systems, if the terms of the sale require the buyer to subsequently transfer ownership of one or more such cable television systems to one or more third parties, such transfer shall be considered a part of the initial transaction. The above-described thirty-six (36) month holding period shall not apply to:

(i) any transfer of ownership interest in any franchise and/or cable television system which is not subject to federal income tax liability;

(ii) any sale required by operation of any law or any act of any agency, any state or political subdivision or the City; or

(iii) any sale, assignment, or transfer, to one or more purchasers, assignees, or transferees controlled by, controlling, or under common control with, the seller, assignor, or transferor.

(d) In the case of any sale or transfer of ownership of any franchise and/or cable television system after the thirty-six (36) month period following acquisition of such cable television system, and in accordance with Federal Law the City shall have one hundred twenty (120) days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Federal Communications Commission regulations, the requirements of this Ordinance or a franchise, and such other reasonable information as the City, in its sole discretion, may request. If the City fails to render a final decision on the request within one hundred twenty (120) days from receipt by the City of all

required information, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(e) Franchisee shall notify City in writing of any foreclosure or any other judicial sale of all or a substantial part of the franchise property of the Franchisee or upon the termination of any lease or interest covering all or a substantial part of said franchise property. Such notification shall be considered by City as notice that a change in control of ownership of the franchise has taken place and the provisions under this Section governing the consent of City to such change in control of ownership shall apply.

(f) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, City may inquire into the qualifications of the prospective transferee or controlling party, and Franchisee shall assist City in any such inquiry. In seeking City's consent to any change of ownership or control, Franchisee shall have the responsibility of insuring that the transferee completes an application in form and substance reasonably satisfactory to City, which application shall include the information required under state and federal law. An application, acceptable to the City, shall be submitted to City no more than one hundred twenty (120) days nor less than ninety (90) days prior to the date of transfer. The transferee shall be required to establish that it possesses the legal, technical and financial qualifications to operate and maintain the cable television system and comply with all franchise requirements for the remainder of the term of the franchise. If, after considering the legal, financial, character and technical qualities of the applicant and determining that they are satisfactory, the City finds that such transfer is acceptable, the City shall transfer and assign the rights and obligations of such franchise. The consent of the City to such transfer shall not be unreasonably denied.

(g) Any financial institution having a pledge of the Franchisee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the City that it or its designee satisfactory to the City shall take control of and operate the cable television system, in the event of a Franchisee default in its financial obligations. Further, said financial institution shall also submit a plan for such operation within thirty (30) days of assuming such control that will insure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the cable television system. The financial institution shall not exercise control over the cable television system for a period exceeding one (1) year

unless extended by the City in its discretion and during said period of time it shall have the right to petition the City to transfer the franchise to another Franchisee.

(h) The City shall be reimbursed for its out-of-pocket costs associated with its review of a Franchisee's request. Such costs will not exceed in constant dollars those incurred during the original franchising or refranchising process.

(i) A Cable System or other video system shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity, without the prior written consent of the City, which consent shall not be unreasonably withheld.

(ii) A Franchisee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of a Franchisee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of a majority of the shares or the general partnership interest in the Franchisee. Every change, transfer or acquisition of control of a Franchisee shall make a franchise subject to cancellation unless and until the City shall have consented thereto.

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

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

(v) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, a Franchisee shall file with the City a copy of a written instrument evidencing such sale or transfer of ownership or control,

certified and sworn to as correct by a Franchisee and the transferee.

(vi) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and the Franchisee shall assist the City in so inquiring.

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

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

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

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

Additional Franchisees shall provide all PEG Access Channel(s) currently available to the Subscribers of existing Franchisees. In order to provide these Access Channels, additional Franchisees shall interconnect, at their cost, with existing Franchisees, subject to any reasonable terms and conditions that the existing Franchisee providing the interconnection may require. These interconnection agreements shall be made directly between the Franchisees. The City |

Council, in such cases of dispute of award, may be called upon to arbitrate regarding these arrangements. Any cost associated with the process shall be equally distributed by both Franchisees.

(26) **Inconsistency.** If any portion of this Ordinance should be inconsistent or conflict with any rule or regulation now or hereafter adopted by the FCC or other federal or state law, then to the extent of the inconsistency or conflict, the rule or regulation of the FCC or other federal law shall control for so long, but only for so long, as such rule, regulation, or law shall remain in effect; provided the remaining provisions of this Ordinance shall not be effected thereby.

(27) **Severability.** If any section, sentence, paragraph, term, subsection, clause or phrase of this Ordinance should be held to be illegal, invalid or unconstitutional by a court of competent jurisdiction, or by any state or federal regulatory authority having jurisdiction thereof, such illegality, invalidity or unconstitutionality shall not affect the legality, validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

(28) **Effect of change in law.** In the event that state or federal laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time required by law. In the event such state or federal law, rule or regulation is subsequently repealed, rescinded, amended, voided or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of either party.

Chapter 20.06 - Conditions of Grant of License, Franchise or Cable Franchise

Sec. 48. General duties.

(1) All grantees, before commencing any construction in public ways shall comply with all requirements of the Des Moines Municipal Code or other ordinances of the City.

(2) All grantees shall provide written confirmation sufficient for customary land survey and land title insurance purposes concerning the location of its facilities in public ways

and disclaiming any interest in public ways where it has no license or franchise to construct or operate its facilities.

Sec. 49. Interference with the public ways. No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public ways by the City, by the general public or other persons authorized to use or be present in or upon the public ways. All such facilities shall be moved by and at the expense of the grantee, temporarily or permanently, as determined by the City.

Sec. 50. Damage to property. No grantee or any person acting on a grantee's behalf shall take any action or permit any action to be done which may impair or damage any public ways, or other property located in, on or adjacent thereto except in accordance with section 58.

Sec. 51. Notice of work. Unless otherwise provided in a license or franchise agreement, no grantee, or any person acting on the grantee's behalf, shall commence any non-emergency work involving undergrounding, excavation or obstructing in or about the public ways without five (5) working days advance written notice to the City. Any private property owner whose property will be affected by a grantee's work shall be afforded the same notice.

Sec. 52. Repair and emergency work. In the event of an unexpected repair or emergency, a grantee may commence such repair and emergency response work as required under the circumstances, provided the grantee shall notify the City Manager as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

Sec. 53. Maintenance of facilities. Each grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

Sec. 54. Relocation or removal of facilities. Within thirty (30) days following written notice from the City, a grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public ways whenever the City Manager or designee shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

(1) The construction, repair, maintenance or installation of any City or other public improvement in or upon the public ways.

(2) The operations of the City or other governmental entity in or upon the public ways.

(3) The vacation of a public street or the release of a utility easement.

Sec. 55. Removal of unauthorized facilities. Within thirty (30) days following written notice from the City, any grantee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the public ways shall, at its own expense, remove such facilities or appurtenances from the public ways. If such grantee fails to remove such facilities or appurtenances, the City may cause the removal and charge the grantee for the costs incurred. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

(1) Upon expiration or termination of the grantee's license or franchise.

(2) Upon abandonment of a facility within the public ways.

(3) If the system or facility was constructed or installed without the prior grant of a license or franchise.

(4) If the system or facility was constructed or installed without the prior issuance of a required construction permit.

(5) If the system or facility was constructed or installed at a location not permitted by the grantee's license or franchise. Provided, however, that the City may, in its sole discretion, allow a grantee, franchisee, or other such persons who may own, control, or maintain cable or telecommunications facilities within the public ways of the City to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the City. Any plan for abandonment or removal of a grantee or franchisee's facilities must be first approved by the public works director, and all necessary permits must be obtained prior to such work. Upon permanent abandonment of the property of such persons in place, the property shall become that of the City, and such persons shall submit to the City an instrument in writing, to be

approved by the City attorney, transferring to the City the ownership of such property. The provisions of this section shall survive the expiration, revocation, or termination of an authorization or franchise granted under this ordinance.

(6) Any such other reasonable circumstances affecting public health, safety and welfare deemed necessary by the City Manager or designee.

Sec. 56. Failure to relocate. If a grantee is required to relocate, change or alter the telecommunications facilities hereunder and fails to do so, the City may cause such to occur and charge the grantee for the costs incurred.

Sec. 57. Emergency removal or relocation of facilities. The City retains the right and privilege to cut or move any telecommunications facilities located within the public ways as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall not be liable to any cable operator, telecommunications carrier or provider, or any other party for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this section.

Sec. 58. Damage to grantee's facilities. Unless directly and proximately caused by the willful, intentional or malicious acts of the City, the City shall not be liable for any damage to or loss of any telecommunications facility within the public ways as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public ways by or on behalf of the City.

Sec. 59. Restoration of public ways. Restoration shall comply with the following:

(1) When a grantee, or any person acting on its behalf, does any work in or affecting any public way, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to the same condition which existed before the work was undertaken. As used in this section, "promptly" shall mean as required by the City's public works director in the reasonable exercise of the director's discretion.

(2) If weather or other conditions do not permit the complete restoration required hereunder, the grantee shall temporarily restore the affected ways or property. Such

temporary restoration shall be at the grantee's sole expense and the grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(3) A grantee or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such public way.

(4) The public works director shall be responsible for inspection and final approval of the condition of the public ways following any construction and restoration activities therein. Further, the provisions of this section shall survive the expiration, revocation, or termination of an authorization, franchise, lease, or other agreement granted pursuant to this ordinance.

Sec. 60. Facilities maps. Each grantee shall provide the City with an accurate ~~as-built map~~ or maps certifying the location of all telecommunications facilities within public ways. Each grantee shall provide updated ~~as-built maps~~ annually or upon request of the City.

Sec. 61. Duty to provide information. Within ten (10) days of a written request from the City Manager or designee, each grantee shall furnish the City Manager or designee with information sufficient to demonstrate:

(1) That grantee has complied with all requirements of this ordinance.

(2) That all taxes and fees due the City in connection with the telecommunications services and facilities provided by the grantee have been properly collected and paid by the grantee:

(3) That all books, records, maps and other documents maintained by the grantee with respect to its facilities within the public ways shall be made available for inspection by the City Manager or designee at reasonable times and intervals.

Sec. 62. Leased capacity. Subject to the provisions of section 69 of this ordinance, a grantee shall have the right to offer or provide capacity or bandwidth to another telecommunications provider, ~~with prior city approval,~~ provided that:

(1) Grantee shall furnish the City in advance with a copy of any such proposed lease or agreement.

(2) The proposed lessee or person shall comply with all of the requirements of this ordinance.

Sec. 63. Grantee insurance. Unless otherwise provided by franchise or license, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the City, and its elected and appointed officers, officials, agents, representatives and employees as additional insureds:

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

(a) Five Million Dollars (\$5,000,000) for bodily injury or death to each person;

(b) Five Million Dollars (\$5,000,000) for property damage resulting from any one accident; and

(c) Five Million Dollars (\$5,000,000) for all other types of liability.

(2) Automobile liability for owned, non-owned and hired vehicles with a limit of Three Million Dollars (\$3,000,000) for each person and Three Million Dollars (\$3,000,000) for each accident.

(3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).

(4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000).

(5) The liability insurance policies required by this section shall be maintained at all times by the grantee. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until sixty (60) days after receipt by the City, by registered mail, of a written notice addressed to the City Manager of such intent to cancel or not to renew."

(6) Within thirty (30) days after receipt by the City of said notice, and in no event later than fifteen (15) days prior to said cancellation, the grantee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this ordinance.

Sec. 64. General indemnification. In addition to and distinct from the insurance requirements of this ordinance, each grantee hereby agrees to defend, indemnify and hold the City and its officers, officials, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorneys' fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the acts, omissions, failure to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this ordinance or by a grant agreement made or entered into pursuant to this ordinance.

Sec. 65. Performance and financial guarantees. Before a license or franchise granted pursuant to this ordinance is effective, and as necessary thereafter, the grantee shall provide and deposit such monies, bonds, letters of credit or other instruments in form and substance acceptable to the City as may be required by this ordinance, or by an applicable license or franchise agreement or other applicable code, ordinance or rules and regulations of the City.

Sec. 66. Security fund. Each grantee shall establish a permanent security fund with the City by depositing the amount of up to \$50,000 with the City in cash, an unconditional letter of credit, or other instrument acceptable to the City, which fund shall be maintained at the sole expense of grantee so long as any of grantee's telecommunications facilities are located within the public ways. This security fund shall be separate and distinct from any other bond or deposit required.

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

(2) Before any sums are withdrawn from the security fund, the City Manager or designee shall give written notice to the grantee:

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

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

(c) Providing a reasonable opportunity for the grantee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable;

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

(3) Grantee shall replenish the security fund within fourteen (14) days after written notice from the City Manager or designee that there is a deficiency in the amount of the fund.

Sec. 67. Construction and completion bond. Unless otherwise provided in a license or franchise agreement, a bond written by a surety acceptable to the City equal to at least 100% of the estimated cost of constructing the grantee's telecommunications facilities within the public ways shall be deposited before a construction permit is issued.

(1) The construction bond shall remain in force until sixty (60) days after substantial completion of the work, as determined by the City Manager or designee, including restoration of public ways and other property affected by the construction.

(2) The construction bond shall guarantee, to the satisfaction of the City:

(a) Timely completion of construction;

(b) Construction in compliance with applicable plans, permits, technical codes and standards;

(c) Proper location of the facilities as specified by the City;

(d) Restoration of the public ways and other property affected by the construction;

(e) The submission of "as-built" drawings after completion of the work as required by this ordinance;

(f) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

Sec. 68. Acts at grantee's expense. Any act that a grantee is or may be required to perform under this ordinance, a license, franchise, or cable franchise or applicable law shall be performed at the grantee's expense.

Sec. 69. Coordination of construction activities. All grantees are required to cooperate with the City and with each other as follows:

(1) By February 1 of each year, grantee shall provide the City Manager or designee with a non-binding schedule of their proposed construction activities which may affect the public ways for that year. Grantees shall promptly file modified schedules with the City as their construction plans change.

(2) Each grantee shall meet with the City, other grantees and users of the public ways annually or as determined by the City to schedule and coordinate construction.

(3) All construction locations, activities and schedules shall be coordinated, as ordered by the City Manager or designee, to minimize public inconvenience, disruption or damages.

Sec. 70. Assignments or transfers of grant.

(1) Ownership or control of a telecommunications system, license or franchise ~~or any part of transmission capacity~~ may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without prior written notice to the City ~~nor may there be a transfer of working control (which includes not only actual control, but also the ability to affect or influence decisions) without the prior written consent of the city, which consent shall not be unreasonably withheld or delayed, as expressed by ordinance and then on such conditions as may be prescribed therein and:~~

~~(1) No grant shall be assigned or transferred in any manner within twelve (12) months after the initial grant of the license or franchise unless otherwise provided by law.~~

~~(2) Absent extraordinary and unforeseeable circumstances, no grant, system or integral part of a system shall be assigned or transferred before construction of the telecommunications system has been completed.~~

~~(3) The grantee and the proposed assignee or transferee of the grant or system shall provide and certify the following information to the City Manager or designee:~~

~~(a) Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;~~

~~(b) All information required of a license or franchise applicant pursuant to this ordinance with respect to the proposed transferee or assignee;~~

~~(c) All information required by federal, state and local law or regulation [i.e., FCC 394's];~~

~~(d) Any other information reasonably required by the city manager or designee.~~

~~(4) No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other qualifications in city's sole discretion to own, hold and operate the telecommunications system pursuant to this ordinance.~~

(52) The grantee shall reimburse the City for all direct and indirect fees, costs and administrative expenses incurred by the City in considering processing a request to transfer ownership in or assign a license or franchise.

~~(6) Any transfer of ownership in or assignment of a grant, system or integral part of a system without prior approval of the city under this chapter shall be void and is cause for revocation of the grant.~~

(73) Upon receipt of all information required herein, and any other information required by the city, the City shall have one hundred and twenty (120) days to review and approve or deny the requested assignment or transfer, unless such period is extended by agreement of the City and grantee.

Sec. 71. Transactions affecting control of grant.
Any transaction which results in any change of the ownership or in any manner the working control of the grantee, of the ownership or working control of a license or franchise, of the

ownership or working control of affiliated entities having ownership or working control of the grantee or of a telecommunications system, or of control of the capacity or bandwidth or any part of the transmission capacity of the grantee's telecommunications system, Facilities or any parts thereof, all defined as 5% or more ownership or control, shall be considered an assignment or transfer requiring notice to the City ~~approval hereunder~~. Transactions between affiliated entities are not exempt from this notice requirement. ~~city approval.~~

Sec. 72. Revocation or termination of grant. A license or franchise granted by the City to use or occupy public ways may only be revoked for ~~any~~ one or more of the following reasons:

(1) Construction or operation at an unauthorized location.

~~_____ (2) Unauthorized transfer of control of the grantee.~~

~~_____ (3) Unauthorized assignment of a license or franchise.~~

~~_____ (4) Unauthorized sale, assignment or transfer of the grantee's franchise or license assets or an interest therein.~~

(52) Misrepresentation of a material fact ~~or lack of candor~~ by or on behalf of a grantee in any franchise or license application to the City.

(63) Abandonment of telecommunications facilities in public ways.

(74) Failure to relocate or remove facilities as required in this ordinance.

(85) Failure to pay taxes, compensation, fees or costs when and as due the City.

(9) Insolvency or bankruptcy of the grantee.

(10) Violation of a material provision of this ordinance.

(11) Violation of a material term of a license or franchise.

Sec. 73. Notice and duty to cure. In the event that the City Manager or designee believes that grounds exist for revocation of a license or franchise, the grantee shall be given

written notice of the apparent violation or noncompliance, be provided a short and concise statement of the nature and general facts of the violation or noncompliance, and be given a reasonable period of time not exceeding thirty (30) days to furnish evidence:

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

(2) That rebuts the alleged violation or noncompliance.

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

Sec. 74. Hearing. In the event that a grantee fails to provide evidence reasonably satisfactory to the City Manager or designee as provided hereunder, the City Manager or designee shall refer the apparent violation or noncompliance to the City's hearing examiner. The City shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

Sec. 75. Standards for revocation or lesser sanctions. If persuaded that the grantee has violated or failed to comply with a material provision of this ordinance or of a franchise or license or applicable codes, ordinance, statutes, or rules and regulations, the hearing examiner shall determine whether to revoke the license or franchise, and issue a written decision relating thereto, or to establish some monetary damages, penalty, lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

(1) Whether the misconduct was egregious.

(2) Whether substantial harm resulted.

(3) Whether the violation was intentional.

(4) Whether there is a history of prior violations of the same or other requirements.

(5) Whether there is a history of overall compliance.

(6) Whether the violation was voluntarily disclosed, admitted or cured.

Sec. 76. Ownership and removal of improvements. In the event that the City requires removal of such |

~~improvements~~ facilities from the rights-of-way, such removal shall be accomplished at the sole expense of the grantee and completed within 30 days after receiving notice from the City requiring removal ~~of the improvements~~. In the event that telecommunications facilities or other equipment are left upon City property after expiration or termination of the lease, they shall become the property of the City if not removed by the grantee upon 30 days written notice from the City. No grant shall be issued under this ordinance unless it contains a provision which states that all buildings, landscaping, and all other improvements, except telecommunications equipment, shall become the property of the City upon expiration or termination of the grant.

Sec. 77. Incorporation by reference. The provisions of this ordinance shall be incorporated by reference in any authorization, grant, franchise, or license issued hereunder. The provisions of any proposal submitted and accepted by the City shall be incorporated by reference in the applicable authorization, grant, franchise, or license. However, in the event of any conflict between the proposal, this ordinance, and the authorization, grant, franchise, or license, the authorization, grant, franchise, or license shall be the prevailing document.

Chapter 20.07 - Antennas and Wireless Telecommunication Facilities

Sec. 78. Purpose.

(1) The standards set forth in this section are designed to protect the public health, safety, and welfare, to protect property values and minimize visual impact while furthering the development of enhanced telecommunication services in the City and these standards were designed to comply with the Telecommunications Act of 1996. The provisions of this ordinance are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This ordinance shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services.

(2) To the extent that any provision of this ordinance is inconsistent or conflicts with any other City ordinance this ordinance shall control. Otherwise, this ordinance shall be construed consistently with the other provisions and regulations of the City.

(3) In reviewing any application to provide personal wireless service or to install personal wireless service facilities, the City shall act within a reasonable period of time, taking into account the nature and scope of the application. Any decision to deny an application shall be in writing, supported by substantial evidence contained in a written record. The City shall approve, approve with condition, or deny the application in accordance with the time frames and exceptions set forth in this ordinance, Ordinance No. 1174 and in accordance with other applicable ordinances.

Sec. 79. Exemptions. The following are exempt from the provisions of this ordinance and shall be permitted in all zones:

(1) Industrial processing equipment and scientific or medical equipment using frequencies regulated by the FCC.

(2) Antennas and related equipment no more than three feet in height that are being stored, shipped, or displayed for sale.

(3) Radar systems for military and civilian communication and navigation.

(4) Wireless radio utilized for temporary emergency communications in the event of a disaster.

(5) Licensed amateur (ham) radio stations.

(6) Satellite dish antennas less than two meters in diameter, including direct to home satellite services, when used as a secondary use of the property.

(7) Routine maintenance or repair of a personal wireless service facility and related equipment, (excluding structural work or changes in height or dimensions of antennas; towers, or buildings) provided that compliance with the standards of this ordinance are maintained

(8) Subject to compliance with all other applicable standards of this ordinance, a building permit application need not be filed for emergency repair or maintenance of a personal wireless service facility until thirty (30) days after the completion of such emergency activity.

(9) A cell on wheels or other temporary personal wireless telecommunications facility shall be permitted at a time and manner as determined by the City.

Sec. 80. Recognition of industry site selection criteria. In establishing a new site, the industry requires a location that is technically compatible with the established network. A general area is to be identified based upon engineering constraints and the desired area of service. Specific locations within that general area will be evaluated using the following criteria which are not listed in order of priority:

(1) Topography as it relates to line of sight transmissions for optimum efficiency in telephone service.

(2) Availability of road access.

(3) Availability of electric power.

(4) Availability of land based telephone lines or microwave link capability.

(5) Lands leasable at fair market value, and landlords who want facilities to be located on their properties consistent with zoning regulations.

(6) Screening potential of existing vegetation, structures and topographic features.

(7) Zoning that will allow low power mobile radio service facilities.

(8) Compatibility with adjacent land uses.

(9) The least number of sites to cover the desired area.

(10) The greatest amount of coverage, consistent with physical requirements.

(11) Opportunities to mitigate possible visual impact.

(12) Availability of suitable existing structures for antenna mounting.

Sec. 81. Site selection criteria.

(1) Any applicant proposing to construct an antenna support structure, or mount an antenna on an existing structure, shall demonstrate by engineering evidence that the antenna must

be located at the site to satisfy its function in the applicant's local grid system. Further, the applicant must demonstrate by engineering evidence that the height requested is the minimum height necessary to fulfill the site's function within the grid system.

(2) Applications for necessary permits will only be processed when the applicant demonstrates either that it is an FCC-licensed telecommunications provider or that it has agreements with an FCC-licensed telecommunications provider for use or lease of the support structure.

(3) Low power mobile radio service facilities shall be located and designed to minimize and mitigate any significant adverse impact on residential property values. Facilities shall be placed in locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening.

(4) In all zones, location and design of facilities shall consider the impact of the facility on the surrounding neighborhood and the visual impact within the zone district. In all zones, towers shall be significantly screened or designed according to standards to be established by the community development director.

Sec. 82. Priority of locations. The order of priorities for locating new personal wireless service facilities shall be as follows:

(1) Place antennas and towers on City property if practical.

(2) Place antennas on appropriate public ways and existing structures, such as buildings, towers, water towers and smokestacks.

(3) Place antennas and towers in districts zoned Commercial.

(4) Place antennas and towers on other non-residential property.

(5) Place antennas on multi-family residential structures exceeding thirty feet (30') in height.

(6) Place antennas and towers in Residential zones
a) only if appropriate locations are not available in non-residential zones; or b) when co-location on an existing

structure can be accomplished in a manner consistent with the design and aesthetic considerations provided under this ordinance.

Sec. 83. Conditional use permit required for antennas and personal wireless facilities in a residential zone.

(1) Except for items exempt from the provisions of this ordinance as provided in section 78, a conditional use permit is required for all antennas, towers, and personal wireless facilities located in a residential zone. Any terms and conditions imposed on such use shall contain substantially similar terms and conditions which, taken as a whole and considering relevant characteristics of the facility and situation at hand, do not provide more or less favorable terms and conditions than those required of licensees or franchisees under this ordinance.

(2) An applicant that wishes to locate a new antenna support structure in a residential zone shall demonstrate that a diligent effort has been made to locate the proposed communications facilities on a government facility, a private institutional structure, or other appropriate existing structures within a non-residential zone, and that due to valid considerations including physical constraints, and economic or technological feasibility, no appropriate location is available.

(3) Applicants are required to demonstrate: (a) that they have contacted the owners of structures in excess of thirty feet (30') within a one-quarter (1/4) mile radius of the site proposed and which from a location standpoint could provide part of a network for transmission of signals, and (b) have asked for permission to install the antenna on those structures at fair market value.

(4) The information submitted by the applicant shall include: (a) a map of the area to be served by the tower or antenna, (b) its relationship to other cell sites in the applicant's network, and (c) an evaluation of existing buildings taller than thirty feet (30'), within one-quarter (1/4) mile of the proposed tower or antenna which from a location standpoint could provide part of a network to provide transmission of signals.

Sec. 84. Siting priority on public property. Where public property is sought to be utilized by an applicant, priority for the use of City-owned land for wireless antennas and towers will be given to the following entities in descending order:

(1) City of Des Moines;

(2) Public safety agencies, including law enforcement, fire and ambulance services, which are not part of the City of Des Moines and private entities with a public safety agreement with the City of Des Moines;

(3) Other governmental agencies, for uses which are not related to public safety; and

(4) Entities providing licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), data, Internet, paging, and similar services that are marketed to the general public.

(a) Minimum requirements. The placement of personal wireless service facilities on City-owned property must comply with the following requirements:

(i) The facilities will not interfere with the purpose for which the City-owned property is intended;

(ii) Probable, significant adverse impacts on surrounding private property can be appropriately mitigated;

(iii) The applicant is willing to obtain adequate liability insurance and commit to a lease agreement which includes equitable compensation for the use of public land and other necessary provisions and safeguards. The City shall establish fees after considering comparable rates in other cities, potential expenses, risks to the City, and other appropriate factors;

(iv) The applicant will submit a letter of credit, performance bond, or other security acceptable to the City to cover the costs of removing the facilities;

(v) The antennas or tower will not interfere with other users who have a higher priority as discussed in section 83;

(vi) The lease shall provide that, the applicant must agree that in the case of a declared emergency or documented threat to public health, safety or welfare and following reasonable notice, the City may require the applicant to remove the facilities at the applicant's expense;

(vii) The applicant must reimburse the City for any related costs which the City incurs because of the presence of the applicant's facilities;

(viii) The applicant must obtain all necessary land use approvals; and

(ix) The applicant must cooperate with the City's objective to encourage co-locations and thus limit the number of cell sites requested, or camouflage the site.

(b) Special requirements for parks. The use of City-owned parks for personal wireless service facilities brings with it special concerns due to the unique nature of these sites. The placement of personal wireless service facilities in a park will be allowed only when the following additional requirements are met:

(i) The City Manager or designee has reviewed and made a recommendation regarding proposed personal wireless service facilities to be located in the park and this recommendation must be forwarded to the CityCity Council for consideration;

(ii) In no case shall personal wireless service facilities be allowed in designated critical areas unless they are co-located on existing facilities.

(iii) Before personal wireless service facilities may be located in public parks, consideration shall be given to visual impacts and disruption of normal public use;

(iv) Personal wireless service facilities may be located in public parks that are adjacent to an existing commercial or industrial zone;

(v) Personal wireless service facilities may be located in park maintenance facilities.

(vi) Personal wireless facilities may only be located in public parks if the applicant presents evidence sufficient to satisfy the City Manager that such facilities will be appropriately designed, sited, and constructed to protect the health, safety and welfare of park users.

(c) Required submittals. Application for conditional use permits, building permits, and other related

requests may include any combination of site plans, surveys, maps, technical reports, or written narratives necessary to convey the following information in addition to the requirements of other applicable ordinances:

(i) Photosimulations of the proposed facility from affected residential properties and public ways at varying distances;

(ii) A site elevation and landscaping plan indicating the specific placement of the facility on the site, the location of existing structures, trees, and other significant site features, the type and location of plant materials used to screen the facility, and the proposed color(s) of the facility;

(iii) A signed statement indicating that (i) the applicant and landowner agree they will diligently negotiate in good faith to facilitate co-location of additional personal wireless service facilities by other providers on the applicant's structure or within the same site location and (ii) the applicant and/or landlord agree to remove the facility within sixty (60) days after abandonment;

(iv) Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by FCC Para. 1.1307, or, in the event that an FCC environmental assessment is not required, a statement that describes the specific factors that obviate the requirement for an environmental assessment;

(v) A site plan clearly indicating the location, type and height of the proposed tower and antenna, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower, and any other proposed structures;

(vi) A current map and aerial showing the location of the proposed tower, a map showing the locations and service areas of other personal wireless service facilities operated by the applicant and those proposed by the applicant that are close enough to impact service within the City;

(vii) Legal description of the parcel, if applicable;

(viii) The approximate distance between the proposed tower and the nearest residential unit, platted

residentially zoned properties, and unplatted residentially zoned properties;

(ix) A landscape plan showing specific landscape materials;

(x) Method of fencing, and finished color and, if applicable, the method of camouflage and illumination;

(xi) A letter signed by the applicant stating the tower will comply with all FAA regulations and EIA Standards and all other applicable federal, state and local laws and regulations;

(xii) A statement by the applicant as to whether construction of the tower will accommodate co-location of additional antennas for future users;

(xiii) Certification that the antenna usage will not interfere with other adjacent or neighboring transmission or reception functions;

(xiv) The telecommunications company must demonstrate that it is licensed by the FCC if required to be licensed under FCC regulations;

(xv) The applicant, if not the telecommunications service provider, shall submit proof of lease agreements with an FCC licensed telecommunications provider if such telecommunications provider is required to be licensed by the FCC;

(xvi) A full site plan shall be required for all sites, showing the tower, antenna, antenna support structure, building, fencing, buffering, access, and all other items required in this ordinance. The site plan shall not be required if the antenna is to be mounted on an existing structure; and

(xvii) At the time of site selection, the applicant should demonstrate how the proposed site fits into its overall network within the City.

Sec. 85. Co-location.

(1) To minimize adverse visual impacts associated with the proliferation of towers, co-location of personal wireless service facilities on existing or new towers is encouraged as follows:

(a) Proposed facilities may, and are encouraged to, co-locate onto existing towers. Such co-location is permitted by right and new or additional conditional use permit approval is not required, except that any other permit, license, lease, or franchise requirements must be satisfied, and the co-location must be accomplished in a manner consistent with the policy, site criteria, and landscape/screening provisions contained in this ordinance.

(b) The conditional use permit requirement for a facility may be waived in all zones if the applicant locates the antenna on an existing structure or an existing tower. The applicant must submit detailed plans to the community development department for a co-location permit to determine if the conditional use permit process and public hearing can be waived. No building permit will be issued until approval is granted by a co-location permit or conditional use permit.

(c) The City may deny an application to construct new facilities if the applicant has not shown by substantial evidence that it has made a diligent effort to mount the facilities on an existing structure or tower.

(d) To reduce the number of antenna support structures needed in the City in the future, new proposed support structures shall be designed to accommodate antennas for more than one user, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons.

(e) Unless co-location is not feasible: (i) an applicant's site plan shall reserve an area for other providers' equipment and/or probable expansion or modification of the applicant's proposed facility near the base of the applicant's tower. A first right-of-refusal (which is either executed or maintained while the providers personal wireless facilities and services are in use) to lease the area at the base of the tower or mount for other providers will meet the reservation requirement. To provide further incentive for co-location, an existing tower may be modified through a collocation permit which may be issued by the City Manager or designee when an applicant can demonstrate the ability to collocate an additional antenna of the same type as that on the existing tower and that the height of the existing tower will not be increased.

(f) While co-location and the requirements herein are encouraged, co-location shall not take precedence over the construction of shorter towers with appropriate screening.

(2) Providers with existing facilities capable of accommodating co-location within the City of Des Moines are hereby required to negotiate in good faith with any applicant seeking to co-locate telecommunications equipment on their facilities.

If an applicant is unable to reach a co-location agreement with a provider owning or controlling an existing facility within the City as the result of terms and conditions which are believed to be in bad faith and anti-competitive, the aggrieved applicant may, upon payment of a filing fee to be established by the City Manager, petition the community development director to make a determination as to whether such terms and conditions should be deemed in bad faith and anti-competitive. If the City attorney concludes that the challenged terms and conditions of any co-location agreement are in bad faith and anti-competitive, the City attorney may institute proceedings before the hearing examiner seeking revocation of any or all land use or other authorizations granted by the City with respect to the existence or operation of such facility; however, the City may, at its sole discretion, withdraw or refrain from initiating a revocation proceeding until such time as the aggrieved applicant makes payment or reaches and complies with an agreement with the City setting a schedule for payment of all reasonably anticipated costs to be incurred by the City in a revocation proceeding before the hearing examiner.

Upon receipt of a revocation recommendation from the City attorney, the hearing examiner shall conduct all necessary proceedings and reach a determination as to whether the terms and conditions of the challenged co-location agreement are in bad faith and anti-competitive. The hearing examiner shall have authority to revoke any and all land use permits or other authorizations granted by the City with respect to the existence and operation of telecommunications facilities owned or controlled by any provider found to be in violation of this section or impose lesser sanctions as provided in section 74. Upon a determination by the hearing examiner to revoke permits or authorizations enabling the existence or operation of any facility(ies) or improvement(s) located within the City, the affected provider shall remove such facility(ies) in the time and manner provided in section 75 of this ordinance.

Notwithstanding provisions found elsewhere in City codes, appeals of any hearing examiner decision issued under this section shall be before the King County Superior Court, and must be filed and served within twenty-one days of the issuance of such decision as provided in RCW 36.70C.040(3).

Sec. 86. Design criteria.

(1) As provided above, new facilities shall be designed to accommodate co-location, unless the applicant demonstrates why such design is not feasible for economic, technical, or physical reasons.

(2) Facilities shall be architecturally compatible with the surrounding buildings and land uses in the zoning district and screened or otherwise integrated, through location and design, to blend in with the existing characteristics of the site.

(a) Setback. A tower's setback shall be measured from the base of the tower to the property line of the parcel on which it is located. In residential districts and residential land use areas, where permitted, towers shall be set back from all property lines a distance equal to 100% of tower height as measured from ground level, except for unusual geographic limitations or other public policy considerations, as determined in the City's sole discretion. All other towers shall comply with the minimum setback requirements of the area in which they are located in all other zoning districts, unless there are unusual geographical limitations or other public policy considerations as determined in the sole and absolute discretion of the City.

Such considerations shall include by way of illustration and not limitation, but are not limited to:

- (i) Impact on adjacent properties;
- (ii) Alternative sites for personal wireless facilities; and
- (iii) The extent to which screening and camouflaging will mitigate the affects of the personal wireless facilities.

(b) Public way setback exception. The setback requirement may be waived if the antenna and antenna support structure are located in the City public way.

(c) View corridors. Due consideration shall be given so that placement of towers, antenna, and personal wireless service facilities do not obstruct or significantly diminish views of Mt. Rainier, Puget Sound or the Olympic Mountains.

(d) Color, marking, lights, signals and signs. Towers shall have a color generally matching the surroundings or background that minimizes their visibility, unless a different color is required by the FCC or FAA.

No signals, lights, or signs shall be permitted on towers unless required by the FCC or the FAA. Should marking be required, in cases where there are residents located within a distance which is 300% of the height of the tower, then dual mode lighting shall be requested from the FAA and the residents located within said distance shall be notified.

(e) Equipment and structures. Ground level equipment, buildings, and the tower base shall be screened from public view. The standards for the equipment buildings are as follows:

(i) The maximum floor area is 300 square feet and the maximum height is limited to the height of a one-story building which design is consistent with the neighborhood. Except in unusual circumstances or for other public policy considerations the equipment building may be located no more than fifty feet (50') from the tower or antenna, with any additional distance to be left to the discretion of the community development director. Depending upon the aesthetics and other related issues, the City, in its sole discretion, may approve multiple equipment structures or one or more larger structures.

(ii) Ground level buildings shall be screened from view by landscape plantings, fencing, or other appropriate means to satisfy City standards for Type I landscaping.

(iii) Equipment buildings mounted on a roof shall have a finish similar to the exterior building walls. Equipment for roof-mounted antenna may also be located within the building on which the antenna is mounted.

(iv) In instances where equipment buildings are located in residential zones, equipment buildings shall comply with setback requirements and shall be designed so as to conform in appearance with nearby residential structures.

(v) Equipment buildings, antenna, and related equipment shall occupy no more than twenty-five percent (25%) of the total roof area of the building the facility is mounted on, which may vary in the City's sole discretion if co-location and an adequate screening structure is used.

(vi) Noise from antennae equipment should be reduced where possible to 30Db. Continual low frequency sounds such as hums, clicks, buzzes and the like should be avoided.

The use must be approved on a site plan or final development plan, as applicable.

(f) Federal requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If those standards and regulations are changed, then personal wireless service providers governed by this ordinance shall bring their towers and antennas into compliance with the revised standards and regulations within three (3) months of their effective date or the timelines provided by the revised standards and regulations, whichever time period is longer. The revised standards and regulations are not retroactively applicable to existing providers, unless otherwise provided or permitted by federal law. Failure to bring towers and antennas into compliance with the revised standards and regulations shall constitute grounds for the City to remove a provider's facilities at the provider's expense.

(g) Building codes; safety standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable City building codes and the applicable standards for towers that are published by the Electronic Industries Association ("EIA"), as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring the tower into compliance with such standards. If the owner fails to bring its tower into compliance within thirty (30) days, the City may remove the tower at the owner's expense.

(h) Structural design. Towers shall be constructed to the EIA Standards, which may be amended from time to time, and to all applicable construction/building codes. Further, any improvements or additions to existing towers shall require submission of site plans stamped by a professional engineer which demonstrate compliance with the EIA Standards and all other good industry practices. The plans shall be submitted and reviewed at the time building permits are requested.

(i) Fencing. A well-constructed wall, or wooden fence not less than six feet in height from the finished grade

shall be provided around each personal wireless service facility. Fencing should be colored or should be of a design which blends into the character of the existing environment. Access to the facility shall be through a locked gate. The use of chain link, plastic, vinyl, or wire fencing is prohibited unless it is fully screened from public view through the use of either climbing evergreen shrubs on the fence or evergreen shrubs equal to the height of the fence and consistent with the City's Type I landscaping standards.

(j) Tower and antenna height.

(i) All applicants for approvals and/or permits required by the City for towers or antennas must demonstrate through engineering evidence that the height of the proposed tower and/or antenna is the minimum height necessary to satisfactorily fulfill the facility's intended function.

(ii) No tower or antenna that is taller than the minimum height required, based on engineering evidence, shall be approved or otherwise permitted. Engineering evidence reviewed and considered by the City may include information obtained through the third party review process set forth in section 90.

(iii) No tower or mount shall exceed 80 feet; provided that:

(A) A conditional use permit may be issued by the hearing examiner to allow a tower or mount up to but not exceeding one hundred twenty feet (120') if the applicant can show by clear and convincing evidence that the additional height is necessary to allow for collocation of one or more additional facilities on the proposed tower; and

(B) The applicant presents a binding agreement with another provider ready, willing and able to collocate its facility on the proposed tower at or within a reasonable time of its completion, but not more than ninety (90) days following completion, except for conditions or circumstances outside the control of the parties wishing to effectuate the collocation agreement related to the tower at issue; or, the applicant presents a construction plan calling for collocation of more than one facility belonging to the applicant on the proposed tower at or within a reasonable time of its completion, but not more than ninety (90) days following completion, except for conditions or circumstances outside the control of the applicant; and

(C) In the event that collocation of an additional facility has not occurred on any tower granted approval for a height exceeding eighty (80) feet within the time period set forth above, the City may order removal or modification of the facility at the owner's expense as provided in this ordinance; and,

(D) In considering the application for a conditional use permit under this section, the hearing examiner shall evaluate the matter and impose conditions consistent with subsections 85(2)(j)(i) and (ii) and other relevant provisions of this ordinance.

(k) Antenna support structure safety. The applicant shall demonstrate that the proposed antenna and support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice, or other debris or interference. All support structures shall be fitted with anti-climbing devices, as approved by the manufacturers.

(l) Required parking. If the cell site is fully automated, the location for one parking space for maintenance visits shall be designated on the site plan. If the site is not automated, adequate parking shall be reserved on the site plan for on-site employees.

(m) Tower separation. In no case shall towers be located closer than five hundred feet (500') from another tower whether it is owned or utilized by applicant or another provider, unless the City Manager designates areas where multiple towers can be located in closer proximity following a third party review initiated upon receipt of an application warranting such study.

(n) Antenna criteria. Antenna on or above a structure shall be subject to the following:

(i) The antenna shall be architecturally compatible with the building and wall on which it is mounted, and shall be designed and located so as to minimize any adverse aesthetic impact.

(ii) The antenna shall be mounted on a wall of an existing building in a configuration as flush to the wall as technically possible and shall not project above the wall on which it is mounted unless it must be for technical reasons. In no event shall an antenna project more than sixteen feet (16') above the roof line including parapets.

(iii) The antenna shall be constructed, painted, or fully screened to match as closely as possible the color and texture of the building and wall on which it is mounted.

(iv) The antenna may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building, but may not project any higher than the enclosure.

(v) If an accessory equipment shelter is present, it must blend with the surrounding buildings in architectural character and color.

(vi) The structure must be architecturally and visually (color, size, bulk) compatible with surrounding existing buildings, structures, vegetation, and uses. Such facilities will be considered architecturally and visually compatible if they are camouflaged to disguise the facility.

(vii) Site location and development shall preserve the pre-existing character of the site as much as possible. Existing vegetation should be preserved or improved, and disturbance of the existing topography of the site should be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area. The effectiveness of visual mitigation techniques must be evaluated by the City, in the City's sole discretion.

(viii) For installations or buildings greater than thirty feet (30') in height, see other applicable provisions of this ordinance. In addition to the other requirements of this ordinance, on buildings thirty feet (30') or less in height, the antenna may be mounted on the roof if the following additional criteria are satisfied:

(A) The City finds that it is not technically possible or aesthetically desirable to mount the antenna on a wall.

(B) No portion of the antenna or base station causes the height of the building to exceed the limitations set forth herein.

(C) The antenna or antennas and related base stations cover no more than an aggregate total of twenty-five percent (25%) of the roof area of a building,

which may vary in the City's sole discretion, if co-locating and an adequate screening structure are used.

(D) Roof mounted antenna and related base stations are completely screened from view by materials that are consistent and compatible with the design, color, and materials of the building.

(E) No portion of the antenna may exceed sixteen feet (16') above the height of the existing building.

(ix) If a proposed antenna is located on a building or a lot subject to a site review, approval is required prior to the issuance of a building permit.

(x) No antenna shall be permitted on property designated as an individual landmark or as a part of a historic district, unless such antenna has been approved in accordance with City ordinances.

(xi) No personal wireless service provider or lessee or agent thereof shall fail to cooperate in good faith to accommodate co-location with competitors. If a dispute arises about the feasibility of co-locating, the City Manager may require a third party technical study, at the expense of either or both parties, to resolve the dispute.

(xii) No personal wireless service provider or lessee shall fail to assure that its antenna complies at all times with the current applicable FCC standards. After installation, but prior to putting the antenna in service, each provider shall submit a certification by an independent professional engineer to that effect. In the event that an antenna is co-located with another antenna, the certification must provide assurances that FCC approved levels of electromagnetic radiation will not be exceeded by the co-location.

(xiii) No antenna shall cause localized interference with the reception of any other communications signals including, but not limited to, public safety, television, and radio broadcast signals.

(xiv) No person shall locate an antenna or tower for wireless communications services upon any lot or parcel except as provided in this ordinance.

(3) Setback from street. Unless there are unusual geographic limitations or other public policy considerations, as determined in the City's sole discretion, no such antenna, antenna array, or its support structure shall be erected or maintained closer to any street than the minimum setback for the zone in which it is located unless otherwise waived or exempt.

(4) Guy wires restricted. No guy or other support wires shall be used in connection with such antenna, antenna array, or its support structure except when used to anchor the antenna, antenna array, or support structure to an existing building to which such antenna, antenna array, or support structure is attached; however, the public works director may permit the temporary use of guy wires where such use is required in an emergency or other circumstances that are in the interest of public health and safety, but in no event should such temporary use be allowed for more than thirty (30) days.

Sec. 87. Permits required. Where a tower or antenna support structure will be sixty feet (60) or less in height, and such facility is not otherwise exempt from coverage by this ordinance, in addition to the other provisions of this ordinance, an applicant will be required to obtain design review approval as set forth in DMMC 18.58. In the event that a proposed tower or antenna support structure will be located in a residential zone, or an unscreened tower in the downtown area, or will be more than 60 feet in height, in addition to the other provisions of this ordinance, an applicant will be required to obtain a conditional use permit. With respect to the placement of antenna on a tower or antenna support structure, the requirements for a conditional use permit or design review will be applicable based on the height of the tower and antenna or mount and antenna unless this ordinance provides other requirements to the contrary.

To meet the standards of this ordinance, a personal wireless service facility must also comply with the other requirements under this ordinance and, for antennas attached to the roof or sides of a building at least thirty feet (30') in height, an existing tower, a water tank, or a similar structure:

(1) Antennas mounted on existing structures in the commercial zones, not exceeding 16 feet in height, may be permitted following design review approval as provided in DMMC 18.58 and submittal of an affidavit of compliance, with this Ordinance and other City regulations.

(2) Antennas, antenna arrays, and support structures not on publicly-owned property shall not extend more than sixteen 16 feet above the highest point of the structure on which they

are mounted. The antenna, antenna array, and their support structure shall be mounted so as to blend with the structure to which the antenna is attached. The antenna and its support structure shall be designed to withstand a wind force of one hundred miles per hour (100 mph) without the use of supporting guy wires. The antenna, antenna array, and their support structure shall be a color that blends with the structure on which they are mounted.

(3) To the extent that antenna are attached to electric, phone or light poles and such antenna are no more than two feet (2') in height, collocation and building permits will be required, but such antenna(s) shall not be subject to setbacks and screening requirements.

Sec. 88. Inspection requirements. Each year after a facility becomes operational, the facility operator shall conduct a safety inspection in accordance with the EIA and FCC Standards and within sixty (60) days of the inspection file a report with the City Manager. Submission of a copy of FCC required, and duly filed, safety inspection report, or the facility operator's maintenance reports for the prior twelve months in the event no FCC report is required for such year, shall satisfy the requirements of this section.

Sec. 89. Landscaping/screening.

(1) Landscaping. Landscaping, as described herein, shall be required to screen personal wireless service facilities as much as possible, to soften the appearance of the cell site. The City may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. If the antenna is mounted flush on an existing building, and other equipment is housed inside an existing structure, landscaping shall not be required.

(2) Screening. The visual impacts of a personal wireless service facility shall be mitigated through landscaping or other screening materials at the base of the tower and ancillary structures. The following landscaping and buffering shall be required around the perimeter of the tower and accessory structures, except that the City may waive the standards for those sides of the facility that are not in public view. Landscaping shall be installed on the outside of fences. Further, existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for or as a supplement to landscaping requirements.

(3) Landscaping and screening requirements may be waived by the City where such measures are not in the public interest.

(4) In the event that landscaping and/or screening is not maintained at the required level, the City after giving thirty (30) days advance written notice may maintain or establish the landscaping and/or screening. All expenses incurred by the City under this section shall constitute a civil debt owing to the City jointly and severally by the owner(s) and lessee(s) which debt shall be collectible in the same manner as any other civil debt.

Sec. 90. Non-Use/abandonment

(1) Abandonment. No less than 30 days prior to the date that a personal wireless service provider plans to abandon or discontinue operation of a facility, the provider must notify the City of Des Moines by certified U.S. mail of the proposed date of abandonment or discontinuation of operation. In the event that a licensed carrier fails to give notice, the facility shall be considered abandoned upon the City's discovery of discontinuation of operation. Upon such abandonment, the provider shall have 60 days or additional period of time determined in the reasonable discretion of the City within which to:

(a) Reactivate the use of the facility or transfer the facility to another provider who makes actual use of the facility; or

(b) In the event that abandonment as defined in this Ordinance occurs due to relocation of an antenna at a lower point on the antenna support structure, reduction in the effective radiated power of the antenna or reduction in the number of transmissions from the antennas, the operator of the tower shall have six months from the date of effective abandonment to co-locate another service on the tower. If another service provider is not added to the tower, then the operator shall promptly dismantle and remove that portion of the tower which exceeds the minimum height required to function satisfactorily. Notwithstanding the forgoing, changes which are made to personal wireless facilities which do not diminish their essential role in providing a total system shall not constitute abandonment. However, in the event that there is a physical reduction in height of substantially all of the providers towers in the City or surrounding area then all of the towers within the City shall similarly be reduced in height.

(2) Dismantle and removal facility. If the tower, antenna, foundation, and facility are not removed within the sixty (60) days time period or additional period of time allowed by the City, the City may remove such tower, antenna, foundation, and related facility at the provider's expense. If there are two or more providers co-locating on a facility, except as provided for in the paragraph above this provision shall not become effective until all providers cease using the facility.

At the earlier of sixty (60) days from the date of abandonment without reactivating or upon completion of dismantling and removal, City approval for the facility shall automatically expire.

Sec. 91. Third party review. Personal wireless service providers use various methodologies and analyses, including geographically-based computer software, to determine the specific technical parameters of their services and low power mobile radio service facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal paths, etc. In certain instances, a third party expert may need to review the technical data submitted by a provider. The City may require a technical review as part of a permitting process. The costs of the technical review shall be borne by the provider.

The selection of the third party expert may be by mutual agreement between the provider and the City, or at the discretion of the City, with a provision for the provider and interested parties to comment on the proposed expert and review its qualifications. The expert review is intended to address interference and public safety issues and be a site-specific review of technical aspects of the facilities or a review of the providers' methodology and equipment used and not a subjective review of the site which was selected by a provider. Based on the results of the expert review, the City may require changes to the provider's application. The expert review shall address the following:

- (1) The accuracy and completeness of submissions;
- (2) The applicability of analysis techniques and methodologies;
- (3) The validity of conclusions reached; and
- (4) Any specific technical issues designated by the City.

Chapter 20.08 - Construction

Sec. 92. Construction standards. No person shall commence or continue with the construction, installation or operation of telecommunications facilities within the City except as provided in this ordinance.

Sec. 93. Construction codes. Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including, but not limited to, the National Electrical Safety Code. Telecommunication facilities shall comply with the City's Building and Construction Code, Title 14 DMMC. In the event of a conflict between Title 14 and this ordinance, this ordinance applies.

Sec. 94. Construction permits. No person shall construct or install any telecommunications facilities within the City without first obtaining a construction permit therefore, provided, however:

(1) No permit shall be issued for the construction or installation of telecommunications facilities within the City unless the telecommunications carrier has filed a registration statement with the City pursuant to this ordinance.

(2) No permit shall be issued for the construction or installation of telecommunications facilities in the public ways unless the telecommunications carrier has applied for and received a license or franchise pursuant to this ordinance.

(3) Unless otherwise provided by law, franchise or license, no permit shall be issued for the construction or installation of telecommunications facilities without payment of all fees pursuant to this ordinance.

(4) No permit shall be issued to cut any public way, the surface of which is less than five (5) years old.

Sec. 95. Applications. Applications for permits to construct telecommunications facilities shall be submitted upon forms provided by the City. The applicant shall pay all associated administrative fees and shall include any additional information as requested by the city manager or designee. The application shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(1) That the facilities will be constructed in accordance with all applicable codes, rules and regulations.

(2) The location and route of all facilities to be installed on existing utility poles.

(3) The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public ways.

(4) The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public ways along the underground route proposed by the applicant.

~~____ (5) The location of all other facilities to be constructed within the city, but not within the public ways.~~

(6) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the public ways.

(7) The location, dimension and types of all trees within or adjacent to the public ways along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

Sec. 96. Engineer's certification. Unless otherwise provided in a license or franchise, all permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations. The engineer shall provide a certificate of the construction cost estimate.

Sec. 97. Traffic control plan. All permit applications which involve work on, in, under, across or along any public ways shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed.

Sec. 98. Issuance of permit. Within forty-five (45) days after submission of all plans and documents required of the applicant and payment of necessary permit fees, the City Manager or designee, if satisfied that the application, plans and documents comply with all requirements of this ordinance, shall issue a permit authorizing construction of the facilities,

subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the City Manager or designee may deem necessary or appropriate.

Sec. 99. Construction schedule. The permittee shall submit a written construction schedule to the City Manager or designee ten (10) working days before commencing any work in or about the public ways . The permittee shall further provide written notification to the City Manager or designee not less than five (5) working days in advance of any excavation or work in the public ways.

Sec. 100. Compliance with permit. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The City Manager or designee and his or her representative shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements.

Sec. 101. Display of permit. The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the City Manager or designee at all times when construction work is occurring.

Sec. 102. Survey of underground facilities. If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standards, the permittee shall cause the location of such facilities to be verified by a registered Washington land surveyor. The permittee, at its expense, shall relocate any facilities which are not located in compliance with permit requirements.

Sec. 103. Noncomplying work. Upon order of the City Manager or designee, all work which does not comply with the permit, the approved plans or specifications for the work, or the requirements of this ordinance shall be removed.

Sec. 104. Completion of construction. The permittee shall promptly complete all construction activities so as to minimize disruption of the public ways and other public and private property. All construction work authorized by a permit within public ways , including restoration, must be completed within ninety (90) days of the date of issuance or at such other interval as the City may specify in writing upon issuance of the permit.

Sec. 105. As-built drawings. Within thirty (30) days after completion of construction, the permittee shall furnish the City Manager or designee with two (2) complete sets of plans, drawn to scale and certified to the City as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit.

Sec. 106. Restoration of improvements. Upon completion of any construction work, the permittee shall promptly repair, but in no event longer than such time as may be established by the City during permit review, any and all public and private property, improvements, fixtures, structures and facilities which are damaged during the course of construction, restoring the same to their condition before construction commenced.

Sec. 107. Landscape restoration.

(1) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair or replacement of telecommunications facilities, which is done pursuant to a franchise, license or permit, shall be replaced or restored to the condition existing prior to performance of the work.

(2) All restoration work within the public ways shall be done in accordance with landscape plans approved by the City.

Sec. 108. Location of facilities. Unless otherwise required in current or future City ordinances regarding underground construction requirements, all facilities shall be constructed, installed and located in accordance with the following terms and conditions:

(1) Telecommunications facilities shall be installed within an existing underground duct or conduit whenever excess capacity exists within such utility facility.

(2) A franchisee with written authorization to install overhead facilities shall install its telecommunications facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

(3) Whenever all existing telephone, electric utilities, cable facilities or telecommunications facilities are located underground within public ways, a franchisee with written authorization to occupy the same public ways must also locate its telecommunications facilities underground.

(4) Whenever all new or existing telephone, electric utilities, cable facilities or telecommunications facilities are located or relocated underground within public ways, a franchisee that currently occupies the same public ways shall concurrently relocate its facilities underground at its expense.

Sec. 109. Conduit occupancy. In furtherance of the public purpose of reduction of public way excavation, it is the goal of the City to encourage both the shared occupancy of underground conduit as well as the construction, whenever possible, of excess conduit capacity for occupancy of future right-of-way occupants. Therefore, if a franchisee is constructing underground conduit for its own telecommunications facility, and the City reasonably determines such construction is in an area in which another telecommunications provider(s) may also construct telecommunications facilities in the future, City may require the franchisee to construct excess conduit capacity in the public ways, provided the expense of such excess capacity shall be borne by the City (calculated as the difference between what franchisee would have paid for the construction of its conduit and the additional cost only of the excess conduit). Franchisee may either lease the excess conduit to City at a rate of one dollar (\$1.00) for the term of the franchise (in which case the City will be permitted to sublease the excess conduit at its sole discretion), or franchisee may manage the excess conduit itself and be permitted to charge a reasonable market lease rate for occupancy of the additional conduit space, provided such lease revenues shall be first applied to reimburse City for its actual contribution to the construction of the excess conduit (plus interest compounded at the rate the City invested its funds during the time in question).

Sec. 110. Franchisee occupancy of City owned conduit. In furtherance of the same objectives of section 108 above, if City owns or leases conduit in the path of franchisee's proposed telecommunications facilities, and provided it is technologically feasible for franchisee to occupy the conduit owned or leased by City, franchisee shall be required to occupy the conduit owned or leased by City in order to reduce the necessity to excavate the public way. Franchisee shall pay to City a fee for such occupancy which shall be the cost franchisee would have expended to construct its own conduit from the outset, as certified by the Franchisee's engineer and approved by the City engineer. City and franchisee may agree to amortize the fee through annual payments to City over the term of the franchise, including the time value of money.

Sec. 111. Construction surety. Prior to issuance of a construction permit, the permittee shall provide a construction bond, as provided in this ordinance.

Sec. 112. Compliance with one number locator service. All licensees and franchisees shall, before commencing any construction in the public ways, comply with all regulations of 19.122 RCW, the One Number Locator Service.

Chapter 20.09 - Fees

Sec. 113. Pre-application conference and application fee. Prior to the acceptance of an application by the City, applicants shall participate in a pre-application conference for the purpose of establishing the application fee. The purpose of the application fee is to ensure the recovery of City costs and expenses associated with the review of the application, including but not limited to actual costs of City staff time and resources as well as any outside consultation expenses which the City reasonably determines are necessary to adequately review and analyze the application. The application fee shall be established by resolution in the sole discretion of the City Council and shall be a minimum of Two Thousand Five Hundred Dollars (\$2,500.00), with the maximum fee established depending upon estimated reasonable City costs and expenditures in review of the application. Disputes in the amount required by City shall be resolved by the hearing examiner in the procedure established pursuant to section 121 of this ordinance. All franchisee and licensee applicants shall deposit the application fee with the City. This application fee shall be applied towards actual expenses and costs of the City. Any unencumbered application fees shall be refunded to the applicant upon written request of the applicant, but in no event earlier than sixty (60) days after granting or denial of the permit.

Sec. 114. Refund. An applicant whose license or franchise application has been withdrawn, abandoned or denied shall, within sixty (60) days of its application and review fee payment, be refunded the balance of its deposit under this section, less all ascertainable costs and expenses incurred by the City in connection with the application.

Sec. 115. Other City costs. All grantees shall, within thirty (30) days after written demand therefore, reimburse the City for all direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal or transfer of the license or franchise.

Sec. 116. Reserved compensation for public ways. The City reserves its right to fix a fair and reasonable compensation to be paid for the authorization granted to a grantee including permit fees and charges as provided in DMMC 12.04, the City's Right-Of Way Use Code. Nothing in this ordinance shall prohibit the City and a grantee from agreeing upon the compensation.

Sec. 117. Compensation for City property. If the right is granted, by lease, license, franchise or other manner, to use and occupy City property for the installation or use of telecommunications facilities, the compensation to be paid shall be fixed by the City.

Sec. 118. Construction permit fee. Prior to issuance of a construction permit for a project on, under, over or through City property, including rights-of-way, the permittee shall pay a permit fee equal to one thousand dollars (\$1,000) or .75 percent of the estimated cost of constructing the telecommunications facilities, as certified by the applicant's engineer and approved by the City engineer, whichever is greater. The purpose of the construction permit fee shall be to recover City's actual attributable costs, expenses, damage or public way value diminution as a result of permittee's occupancy of the public way. City hereby finds that it must at this time attribute costs, expenses, damage, and diminution of value to permittee until such time as actual costs can be ascertained. This results from the inability of City to ascertain the number and type of all public way permittees hereunder as well as the extent and nature of all future such occupancy. Therefore, the City shall within six (6) months of the effective date of this ordinance commence a study to analyze the value-cost to the city ~~city~~ of managing the ~~of city~~ City public ways, after which the city ~~city~~ shall review the fees of this chapter and DMMC 12.04, the city ~~city~~'s Right-of-Way Use Code, and adjust them to the extent city ~~city~~ determines in its sole discretion is necessary, if any, to more accurately represent ascertainable actual costs associated with future permittee's occupancy. In no event shall construction permit fees received prior to such study and analysis be refunded or increased.

Sec. 119. Annual fees. Each grantee shall pay an annual fee to the City equal to the City's costs in connection with reviewing, inspecting and supervising the use and occupancy of the public way.

Sec. 119. Regulatory fees and compensation not a tax. The fees, charges and fines provided for in this chapter are

separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from a telecommunications carrier or provider, its customers or subscribers or on account of the lease, sale, delivery or transmission of telecommunications services.

Sec. 120. City Manager authorized to set and modify fees. The City Manager is authorized to set or modify any and all fees, charges or assessments established under this ordinance by administrative order(s) which shall be filed with and maintained by the City Clerk.

Chapter 20.10. - Appeals.

Sec. 121. Appeal of administrative decision. A decision of the City Manager or designee made in accordance with this title, including assessment of fees as provided herein, shall be considered a final administrative decision. A person aggrieved by a decision of the City Manager or designee made pursuant to this ordinance may appeal such decision to the hearing examiner in accordance with the Hearing Examiner Code, 18.94 DMMC. The time and form of such appeals is provided in DMMC 18.94.114.

Chapter 20.11 - Miscellaneous.

Sec. 122. Context. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

Sec. 123. Codification.

(1) Sections 1 through ____ of this ordinance shall constitute Title 20 DMMC, Telecommunications.

(2) Sections 1 through ____ of this ordinance shall constitute chapter 20.01 DMMC entitled "Purpose and General Provisions."

(3) Sections ____ through ____ of this ordinance shall constitute chapter 20.02 DMMC entitled "Registration."

(4) Sections ____ through ____ of this ordinance shall constitute chapter 20.03 DMMC entitled "License."

(5) Sections ____ through ____ of this ordinance shall constitute chapter 20.04 DMMC entitled "Franchise."

(6) Sections ____ through ____ of this ordinance shall constitute chapter 20.05 DMMC entitled "Cable Franchise."

(7) Sections ____ through ____ of this ordinance shall constitute chapter 20.06 DMMC entitled "Conditions of Grant of License, Franchise or Cable Franchise."

(8) Sections ____ through ____ of this ordinance shall constitute chapter 20.07 DMMC entitled "Antennas and Wireless Telecommunication Facilities."

(9) Sections ____ through ____ of this ordinance shall constitute chapter 20.08 DMMC entitled "Construction."

(10) Sections ____ through ____ of this ordinance shall constitute chapter 20.10 DMMC entitled "Appeals."

(11) Sections ____ through ____ of this ordinance shall constitute chapter 20.11 DMMC entitled "Miscellaneous."

Sec. 124. Ratification. An act consistent with the authority and prior to the effective date of this ordinance is ratified and affirmed.

Sec. 125. Severability - Construction.

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

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

Sec. 126. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

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

Ordinance No. _____
Page 83 of ____

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

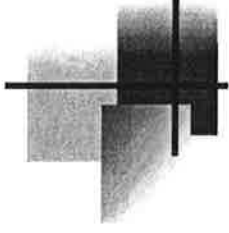
City Clerk

Published: _____

DRAFTORD/01-142

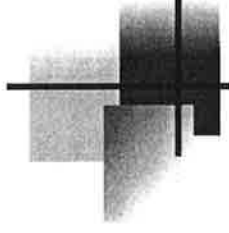
Year 2003 Budget Policy Issues

City of Des Moines



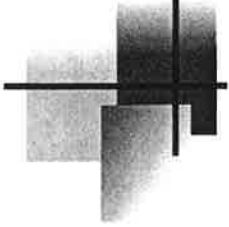
2002 Ending Fund Balance

- \$695,271
- To remain in Operating Fund Balance?
- Allocate to another part of the budget?



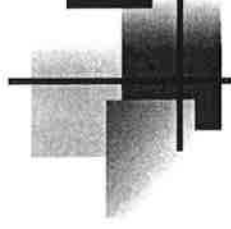
2003 Human Services Budget

- Accept the budget as proposed by the Human Services Advisory Committee?
- Reallocate the funds?
- An acceptable level of funding?



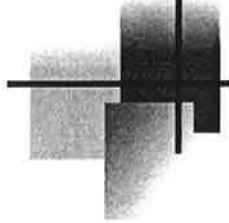
Historical Society's Rent

- Move the expense from Memberships to the All City Buildings Budget?



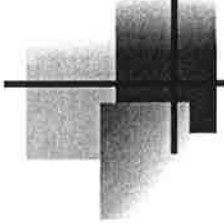
Economic Development Council

- 2003 Membership Dues: \$2,960
- Join the Economic Development Council in 2003?



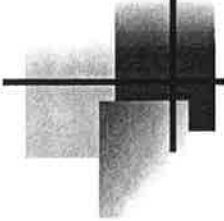
Airport Defense Fund

- \$150,000 of utility taxes has been allocated to the Airport Defense Fund.
- Airport Communities Coalition has requested \$200,000.
- Allocate an additional \$50,000 in the 2003 budget?
- Determine need mid-year?



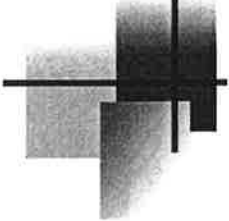
Efficiency Studies

- Rate & Efficiency Study for Surface Water Management: \$45,000 (Included in the 2003 Budget)
- Additional Studies in 2003?
 - Community Development
 - Parks and Recreation
 - Engineering
 - Personnel
 - Finance
 - Information Technology
 - Street Maintenance



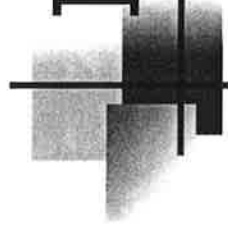
Revenue Stabilization Fund

- 2003 Required Full Funding Level:
\$1,061,250
- 2002 Estimated Ending Fund Balance:
\$1,461,712
- Leave as is?
- Move \$400,000 to the General Fund?



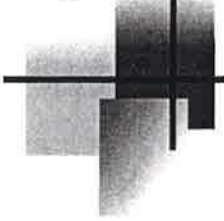
Hotel/Motel Tax

- \$18,000 to \$20,000 per year.
- Revenue must be used to increase/support tourism.
- A board must be appointed, including representatives of the hotel/motel industry, to oversee these funds.
- Consider a Hotel/Motel Tax?



I-790 Police Retirement System

- Potential Increase:
 - Rate: from 2.86% to 16.08%
 - \$176,000 in 2003
 - \$350,000 in 2004
- Reserve Fund Balances or One-time Revenues?
- Institute one or more suggested cuts not taken?
- Wait until further analysis is complete?

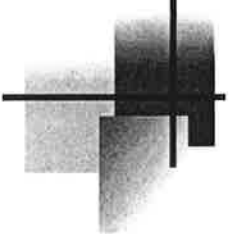


I-776

Loss of Local Vehicle Licensing

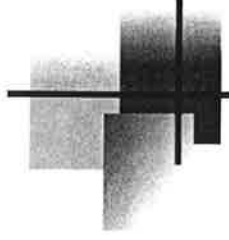
- King County intends to continue charging the fee.
- Restore this funding to Arterial Streets?
- Allocate funds from a another source?
- Wait until more is known?

7/5
5/5



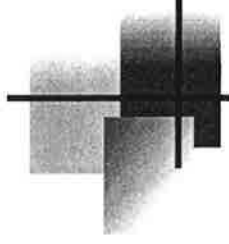
Labor & Industries Premiums

- 2003 Increase: \$85,000
- Increase is included in the 2003 Budget.
- How should the increase be absorbed?



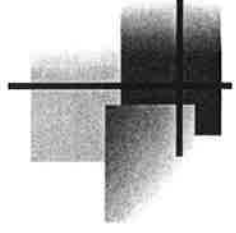
Mt. Rainier Swimming Pool

- Estimated 2003 Operating Costs:
\$217,000 - \$297,000
- Allocate funds to keep the Pool open in 2003?



Capital Improvement Plan

- Changes to the Capital Budgets?
 - Municipal Capital Improvement Fund
 - Arterial Streets Fund
 - Surface Water Management Capital Fund
 - Marina Depreciation & Improvement Fund

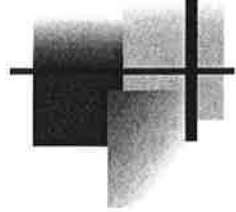


Airport Defense Fund Loans

- Outstanding Loans as of 12/31/01:
 - General Fund \$70,000
 - Revenue Stabilization Fund \$353,646
- Repay the following in 2002?
 - General Fund \$70,000
 - Revenue Stabilization Fund \$175,000
- Forgive the remaining balance in 2002?
 - Revenue Stabilization Fund \$178,646
- Forgive all of the above?

(All funds are funded by general tax dollars.)

THE END



AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Year 2003 Budget Policy Issues

FOR AGENDA OF: November 21, 2002

DEPT. OF ORIGIN: Finance

ATTACHMENTS:

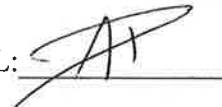
DATE SUBMITTED: November 15, 2002

- Reinvesting in Youth Information
- Human Services Application Material

CLEARANCES:

[] _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this report is to present to the City Council various budget issues for discussion and direction. This report is amended to reflect additional issues not included in previous versions and Council action at the November 14, 2002, meeting.

Background

As of the date of this report, staff has presented most of the operating budgets to the City Council for review and discussion. From those discussions, staff has put together the following list of issues for Council discussion and direction.

Discussion

1. Ending Fund Balance – The Budget Conceptual Plan use a 2002 ending fund balance figure of \$395,000. This figure was developed in mid August. With several more months of expenditure and revenue data available, staff is now projecting an ending fund balance of \$695,271. One reason for this higher figure is the estimate of expenses for the remaining part of the year we used when we put together the original estimated fund balance were much higher than what we now expect them to be. For example, we assumed several positions would be filled by now that were vacant in August (e.g. the Planning Manager position). These are costs that we did not incur. Also, we did the original estimate on a cash basis, not counting revenue received in January but related to December activity in the balance. For example sales taxes from sales that occur in December are received in January, and sometimes February, of the following year.

Question: Does Council want to leave these funds in the fund balance or allocate them to some other part of the budget?

2. Property Tax – At its November 14, 2002, meeting, the City Council adopted an ordinance to increase the property tax revenue to be collected in 2003 by 1% over the collections for 2002.
3. Human Services Budget. – The Human Services budget currently allocates funds to various service providers as recommended by the Human Services Advisory Committee. Council may elect to approve these recommendations as submitted or change the allocations by either moving funds from one provider to another or allocating more funds from another source, such as the fund balance or one-time revenues. Councilmember Steenrod had requested that Council discuss the “Reinvesting in Youth” program for possible funding. Attached are the applications submitted for human services funds, the guidelines the committee uses as it puts together its recommendations, and the information regarding “Reinvesting in Youth” that had been distributed to Council in September.

Question: Does Council want to leave the Human Services budget as proposed by the Human Services Advisory Committee or does Council want to reallocate the funds in some other manner or increase the overall level of funds in this budget?

4. Historical Society – The City pays for the rental of space at the Odd Fellows Hall for the Des Moines Historical Society. Council questioned whether or not it belonged in the Memberships budget. Staff recommends moving it to the All City Buildings budget.

Question: Does Council want to move the funds for the Historical Society’s rent to the all City Buildings budget?

5. Economic Development Council (EDC) – The City has not been a member of the EDC for several years. Councilmembers indicated a desire to consider joining. The cost is \$2,960.00 (\$0.10 per capita).

Question: Does the Council want to budget funds to join the EDC?

6. Airport Defense – The Airport Defense Fund has been allocated \$150,000 of utility taxes for 2003. The Airport Communities Coalition has requested \$200,000 from Des Moines.

Question: Does the City Council want to allocate an additional \$50,000 now or wait until ACC has determined if needs this level of funding mid-year?

7. Efficiency Studies – During discussions with both the full City Council and the Finance and Economic Development Committee, councilmembers asked that staff look into how much it would cost to bring consultants in to review/study departmental operations to see if there are any efficiency

and cost savings measures that could be implemented. Efficiency studies/operational reviews can cost anywhere from a few thousand dollars to tens of thousands. Generally, a reasonably thorough review of an operation, such as the building permitting process, personnel processes, or street maintenance activities will run between \$5,000 and \$15,000. Staff has proposed funding of \$45,000 for a rate and efficiency study for the SWM function.

Question: Does Council want to allocate funds for such studies in one or more of the following budgets?

- ξ Surface Water Management (\$45,000)
- ξ Community Development
- ξ Parks, Recreation and Senior Services
- ξ Engineering
- ξ Personnel
- ξ Finance
- ξ Information Technology
- ξ Street Maintenance

8. Revenue Stabilization Fund – The balance of this fund is currently \$1.4 million. With the loss of I-695 backfill money, the formula for this fund stipulates a funding level of \$1 million.

Question: Does Council want to leave this balance as it is or move \$400,000 into the General Fund fund balance?

9. Hotel/Motel Tax – During his presentation regarding the Governor's economic development conference in Spokane, Ed Coumou, President of the Des Moines Chamber of Commerce, suggested that the City consider instituting a hotel/motel tax and use the proceeds—estimated to be between \$18,000 and \$20,000 per year—to fund activities aimed at increasing/supporting tourism. Revenue from this type of tax is limited to these types of expenditures. In addition, a board, that must include representatives of the hotel/motel industry, oversees these funds.

Question: Does Council want to consider a hotel/motel tax?

10. I-790 – This initiative appears to have been approved by the voters. It changes the police and firefighter's pension system, potentially increasing the amounts that must be paid to provide mandated benefits. The Association of Washington Cities and the State's actuary's estimate that the employer share of the pension premium will go from 2.86% of payroll to 16.08% of payroll in July 2003. (The rate was slated to increase on July 1, 2003 to 3.25%.) Staff estimates that the potential cost of I-790 to be \$176,000 for 2003 and \$350,000 for 2004. We simply won't know what the impact is until more analysis is done. In addition, since enabling legislation must be adopted by the legislature (per the Initiative), the exact impacts of the Initiative are unknown at this time. The Council may want to set aside a portion of the estimated 2002 ending fund balance to fund this potential expense, use some of the one-time revenue expected in 2003 or Revenue Stabilization money to fund this expense, institute one or more of the cuts that were not taken to deal with this potential expense, or wait until additional analysis has been complete.

Question: Does Council want to set aside any funding or make cuts now to deal with the potential impacts of I-790 (and if so which option does Council want to consider), or wait until further analysis is complete?

11. I-776 – With the passage of I-776, Des Moines stands loose approximately \$270,000 in vehicle registration revenue. The City has used this revenue to fund street overlays. King County, however, has indicated that it intends to continue charging the fees that I-776 repealed. The assumption would be that the City will receive some of the \$270,000 in 2003. In addition, several entities, including Sound Transit, have indicated that they are considering a legal challenge to I-776. Council may take action now to reduce the overlay portion of the Arterial Street Fund, replace this revenue using one of the sources noted in the discussion of I-790, or use one of the cuts not taken to free up funds for overlays. Council could also wait for results of the legal challenges, leave the funding level for the overlay program as it is currently proposed, and instruct staff to bring the issue back to Council for discussion when more is known.

Question: Does Council want to make changes to the budget now to remove this funding from the Arterial Streets budget, move funds from another source into this budget, or wait until more is known?

12. L&I Premiums – During discussions of the department budgets, it was pointed out that the L&I premiums for all employers were slated to go up by an average of 51% in 2003. Staff has recently learned that the City of Des Moines premiums will increase by 82%. The dollar value of this increase in premium is approximately \$85,000. The City's increase above the average is due mainly to the fact that the City's experience rating went up because three employees suffered major on-the-job injuries in the last six years. Since this is a cost the City must, by law fund, the Council may use any one of the options noted above address it.

Question: How does Council want to deal with the increases in the L&I premiums?

13. Mt. Rainier Swimming Pool – King County has stated that it will close the Mt. Rainier Pool by the end of 2002 if the some other entity doesn't take over operations or the County receives funds to cover the operating deficit. The with King County operating the pool (including the County's overhead charge) is estimated to be between \$217,000 and \$297,000, depending on what operating scenario is used. The City is working with surrounding cities and the Highline School District to put together a coalition that will provide funding for the County to eliminate the deficit or to take the pool from the County. If the coalition (or one of its members) were to take the pool, there would, in all likelihood, still be an operating deficit to fund. The Council may want to allocate funds, from one of the options noted above, to fund Des Moines' share of addressing the pool's operating deficit.

Question: Does Council want to allocate any funds to keeping the Mt. Rainier Pool open in 2003?

14. Capital Budget Priorities – At the November 7, 2002, meeting, the City Council expressed the desire to prioritize, add, and delete items in the Municipal Capital Improvement, Surface Water Management, and Arterial Streets budgets. When moving, adding or deleting projects, Councilmembers should keep in mind that they may or may not be able to apply funding from one project to another. Also, Council may elect to use reserve or one-time revenues to fund projects or choose to implement one of the budget cuts that was not taken in the Conceptual Budget Plan.

Question: **What, if any, changes to the capital budgets does the City Council want to make?**

15. Airport Defense Fund loan – At the October 31, 2002, City Council meeting, Councilmember Thomasson suggested that the Council may want to consider “forgiving” the loans that the Airport Defense Fund owes to the General Fund and the Revenue Stabilization Fund, since both funds are funded by general tax dollars. The total outstanding loan to the General Fund is \$70,000. The amount owed to the Revenue Stabilization Fund is \$353,646.

Question: **Does the Council want to “forgive” the loans to the Airport Defense Fund?**

Alternatives

None.

Recommendation

Staff asks for the Council to provide direction on these issues so a final budget can be developed.

Concurrence

None.

REINVESTING IN YOUTH

A COMMUNITY PARTNERSHIP

August 27, 2002

COUNCIL - FYI 9-10

Dear Colleague,

"An ounce of prevention is worth a pound of cure."

We would like to bring to your attention **Reinvesting in Youth**, a project that needs and deserves your support. Reinvesting in Youth is a county-wide initiative that will significantly reduce the number of youth in your city who are getting into serious trouble. It is led by a Steering Committee that is chaired by King County Prosecutor Norm Maleng and includes representation from suburban cities, the City of Seattle, King County, the State Legislature, the County Sheriff, chiefs of police, school district superintendents and United Way. The Executive Director of Reinvesting in Youth is Jim Street, a retired Superior Court Judge and former member of the Seattle City Council.

This fall we will be seeking \$10-15 million in foundation support to substantially increase the resources for prevention and intervention services in our county. More specifically, Reinvesting in Youth will invest in nationally proven programs of intervention for youth and families who have been identified as being at high risk of committing juvenile and adult crimes. We intend to demonstrate the long run feasibility of a model that makes front end investments in programs that have been proven to save substantially more in public safety dollars than they cost. We will seek legislative and policy changes at the state and local levels that will permit us to capture those savings and reinvest them to sustain those programs after the foundation dollars are spent.

The Annie E. Casey Foundation has already put \$225,000 into the development phase of Reinvesting in Youth because it believes that this project has the potential to be a national model for how dollars can be cost effectively shifted from incarceration to prevention. We have also received \$150,000 in grants from the Department of Justice and two local foundations, and the City of Seattle has funded most of the administrative costs including two staff.

The City of Seattle has committed to continue to provide fifty percent of the administrative costs for Reinvesting in Youth for the foreseeable future (\$110,000) provided that the other fifty percent can be funded by King County and suburban cities. We know that in any case the foundations will require that a broad array of local governments demonstrate sufficient interest and support for this project before they put into it their much larger contributions.

Reinvesting in Youth

Mission

To reduce the number of Seattle/King County youth entering the juvenile justice system by investing in proven programs, capturing cost savings and reinvesting in additional prevention services to achieve a sustainable and more efficient use of taxpayer money and reduce the number of future victims.

Obstacles to Reform

- Communities have not found the will or the means to simultaneously fund the deep-end costs of the juvenile justice system and the front-end investments in prevention programs needed to generate deep-end savings.
- The existing separation of the juvenile justice system and youth services is a fundamental disincentive for any one organization or jurisdiction to make the needed investments that will accrue to other agencies.
- Few prevention and early intervention strategies that meet strict standards of cost-effectiveness to prevent crime and violence are being used in Seattle/King County.

Strategy

- Use major foundation grant funding to make initial investments in proven intervention and prevention programs to demonstrate that significant savings in juvenile justice and other deep-end programs can be made.
- Capture savings and reinvest them in additional proven programs to create a sustainable and budget-neutral system of cost savings reinvestment.
- Develop and implement a plan to target funding of juvenile justice and youth services and to increase coordination with related agencies to ensure that budgets are most efficiently used, proven programs are being implemented whenever appropriate, and the populations most at risk are being targeted.
- Establish a partnership among Washington State, King County, Seattle and other cities, schools, foundations and nonprofit service providers. This coalition of interests will permit the needs of the whole system to be considered together and eliminate disincentives to investment in prevention.
- Employ rigorous, independent evaluation to measure outcomes. Disseminate the results broadly as the potential basis for statewide and national reform.

We're spending 60% of our youth dollars on institutions and residential treatment tied to juvenile justice. If we were a business, and these were our repair costs, we'd do something about it. We'd invest in preventive maintenance, in quality control, whatever it takes to get a better product, and it would cost less.

Norm Maleng, King County Prosecutor

Crimes Avoided/Dollars Saved: Reinvesting Making a Difference

- After first 5 years – 2,500 fewer court referrals; 3,230 crimes avoided
- Over lifetimes of youth served in first 5 years – 11,550 crimes avoided
- Generates \$16,500,000 in criminal justice savings in first 5 years
- Changes the lives of children and their families

REINVESTING IN YOUTH

Steering Committee Membership

- Norm Maleng** – King County Prosecutor; Steering Committee Chair
- Terry Anderson** – Councilmember, City of SeaTac
- Robert Boruchowitz** – President, Public Defender Association
- Jeanne Burbidge** – Mayor, City of Federal Way
- Edith Chambers** – Representative, Minority Executive Directors' Coalition
- Jim Compton** – Seattle City Councilmember; Chair, Public Safety Committee
- Ed Crawford** – Kent Police Chief
- Mary Lou Dickerson** - Chair, State House Juvenile Justice Committee
- Luke Esser** – Member, State House Judiciary Committee
- Don Felder** – Citizen
- Larry Gossett** – Chair, King County Council Law, Safety and Human Services Committee
- Vince Hayes** – Representative, South King County Community Network
- Laura Inveen** - Presiding Judge, King County Juvenile Court
- Gil Kerlikowske** – Seattle Police Chief
- Jeanne Kohl-Welles**, Member, State Senate Human Services and Corrections Committee
- Conrad Lee** – Bellevue City Councilmember
- Lois Nicholas** - Region Director, State Juvenile Rehabilitation Administration
- Greg Nickels** – Mayor, City of Seattle
- David Okimoto** – United Way
- Joseph Olchefske** - Seattle Public Schools Superintendent
- Dave Reichert** - King County Sheriff
- Dino Rossi** - Member, State Senate Ways & Means Committee
- Michael Silver** - Tukwila Public Schools Superintendent
- Ron Sims** - King County Executive
- Bob Stutz** – Region IV Deputy Administrator, Dept. of Social and Health Services
- Jeri White** – King County Youth and Family Services Association

RISK LEVEL BY HEALTH PLANNING AREA

Based on Assessments of Youth Referred to King County Juvenile Court
For One Year

Health Planning Area	Number of Youth with Moderate or High Risk of Re-offense
Auburn	107
Bellevue	64
Bothell/Woodinville	19
Central -- Seattle	57
East/Northeast County	25
Eastgate/Issaquah	34
Federal Way	82
Highline/Burien	112
Kent	93
Kirkland/Redmond	76
Mercer Island	7
North Central -- Seattle	20
North of Canal -- Seattle	56
North Seattle/North County	94
Renton	100
Southeast County	77
Southeast Seattle	211
Vashon	12
West Seattle -- Seattle	100
White Center/Skyway	133

DES MOINES
THE CARING COMMUNITY

DES MOINES
HUMAN SERVICES
PLAN

April 3, 1997
Wendy A. Morgan
Consultant

Table of Contents
Des Moines Human Services Plan

Description	Page
Table of Contents	i
Acknowledgements	iii
Introduction	iv
Executive Summary	v
Policies	1
What should a definition of human services be for the City of Des Moines?	2
What are the basic values in Des Moines?	3
What are the indicators of need for human services in Des Moines?	4
TABLE 1: 1995 Human Services - City Funded	6
TABLE 2: Resident Ages	8
TABLE 3: Racial Make-Up	9
TABLE 4: Financial Assistance	10
TABLE 5: Highline Schools	11
TABLE 6: Special Education Students	13
TABLE 7: Key Leader Interviews	14
What are housing issues in Des Moines?	16
How do people access human services in Des Moines?	17
What effects will welfare reform have on Des Moines residents?	21

What are the resources in Des Moines that make up the "Caring Community?"	22
How does Des Moines compare with other cities in South King County responding to human services needs?	28
TABLE 8: Des Moines Human Services	28
TABLE 9: Federal Way Human Services	28
TABLE 10: Kent Human Services	29
TABLE 11: Renton Human Services	29
TABLE 12: SeaTac Human Services	30
TABLE 13: Tukwila Human Services	30
TABLE 14: South King County Human Services Funding	31
What are some promising approaches for human services?	32
What human services ideas emerged from the 1996 Community Summit?	34

**City of Des Moines
Human Services Plan**

CITY COUNCIL..... Scott Thomasson, Mayor
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Rita Perkins, Senior Program Coordinator
Park & Recreation Department
Police Department
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DES MOINES HUMAN SERVICES PLAN

- (1). **Introduction:** The Des Moines Human Services Plan is the result of the City's interest in developing an updated definition of human services and a set of policies and strategies which reflect not only the community's needs, but the community's resources. The policies and plan are the result of research, needs assessments, and public opinion outlined below.

- (2). **Methodology:** Research consisted of interviews with current service providers, review of demographic information and other Des Moines area data. Interviews with City officials were scheduled along with questionnaires sent to other local government officials and funders in South King County.

Citizen input included 159 completed surveys at the Des Moines Nibble, 45 completed surveys at the Des Moines Open House, 2 group discussions at the Des Moines Community Summit and 30 key leader interviews. In addition the consultant attended 4 meetings of the Des Moines Human Services Advisory Committee, 5 meetings regarding planning and evaluation of the Des Moines Community Summit and 2 City Council meetings.

- (3). **Data Analysis:** Data was analyzed in answer to questions generated by community discussion and direction by the City Administration.
- (4). **Policies:** Five policies are defined regarding the City's role with human services. These policies take into account existing resources both within the City and the community in an effort to set achievable goals, reach the largest number of citizenry and carry out the intent of the City's definition and role in human service provision and funding.

EXECUTIVE SUMMARY

"Des Moines, the Caring Community," is the title of the 1996 Human Services Plan. The concept of "caring" is in the mission statement of the City, the vision of the Council and the work of City Departments. The Human Services Program is one part of this overall commitment by the City of Des Moines to its residents.

Human services are those resources available to the Des Moines Community which make it possible for citizens to live with dignity and purpose. Those include food, shelter, clothing, services for personal safety, prevention, information and referral.

Based on this definition of human services, the City has established the following priorities for funding:

- Priority One: Those services which help meet basic and emergency needs (food, safety, shelter and clothing).
- Priority Two: Programs which are preventative in nature and promote healthy, violence-free families and self-dependence.
- Priority Three: Programs which seek to maintain and enhance the quality of life in persons whose human basic needs are already met.

As the City of Des Moines participates in human services program planning and funding, these priorities are designed to keep a focus, to measure contribution and outcomes of human services funded by the City, and it helps to define the roles and responsibilities of City staff as they work with the community and human service providers.

Human service needs are defined by public perception, current and projected demands for services, census data, income data, information about family structure, and crime data. Through a series of public opinion surveys, key leader interviews and research, the following are found to be indicators of human service needs in Des Moines:

- (1). Based on a series of 30 key leader interviews and 204 questionnaires along with two community summit planning meetings, the following issues emerged as human service needs or concerns in the City of Des Moines:

- Emergency Assistance such as food, shelter, and clothing
- Crime
- Poverty, meaning the lack of money for basic needs
- Public transportation
- Affordable child care
- Domestic Violence
- Affordable and transitional housing
- Affordable health and dental care
- Youth programs
- Centralized, well identified human services (need for more information and referral about services)

- (2). There are a significant number of residents who either live in some form of subsidized housing, receive some form of financial assistance and/or receive free or reduced lunches.
- 192 live in public housing
 - 994 live in subsidized housing
 - 1,564 receive some form of financial aid
 - 1,322 receive free or reduced lunches
- (3). Reported cases of domestic violence continued to increase each year between 1993 and 1995. Reported child abuse cases were reduced in 1995 from earlier years. Victim crimes continue to be a problem in Des Moines.
- (4). Human Service programs currently funded by the City of Des Moines report increased demand for assistance by Des Moines residents.
- (5). The mix and numbers of Des Moines residents remains constant with the exception of annexations, one of which will occur in January, 1997 with the addition of Woodmont and parts of Redondo. 22% of the population is under age 18 and 13% of the population is over 65. 65% of the population is between 19 and 64 years of age.

Accessing human services is a critical concern of Des Moines residents. 90% of the 30 key leaders interviewed for the human services update stated that people are unable to get services because they do not know where to go to get help. 63% said that people could not get services because transportation was not available, and 46.6% said that limited English skills were barriers. Another 40% said that there were few services located in Des Moines.

Welfare reform impacts are still not fully known for the Des Moines area. Letters are currently going to Des Moines residents notifying them of decreases in food stamp benefits and cuts in aid to legal immigrants.

Other South King County cities are providing funding for human services, most often in the 1-2% range of their general fund budget. Most cities combine community development block grant funding with general funds for human service staffing and contract services for residents. Most cities have human services plans, and many are working closely with their local school districts, human services agencies, health departments and residents to provide a coordinated and collaborative approach to human services.

HUMAN SERVICES POLICIES

Because human services are an integral part of the Des Moines "Caring Community," the following policies are provided in an effort to maximize the resources available to assist Des Moines residents. These policies seek to provide adequate resources for leveraging additional funding, creating effective and innovative problem-solving including strengthening community approaches to deal with emergent issues.

- (1). **Annual 1% General Fund Human Services Allocation.**
The City shall plan an annual budgetary allocation of 1% general fund tax revenues to be distributed through grants to agencies providing human services to Des Moines citizens.
- (2). **Human Services Advisory Committee.**
The Human Services Advisory Committee shall advise City Council on distribution of the 1% funding for human services as part of the annual budget process as outlined in DMMC 4.48, and other human services related issues as directed by Council.
- (3). **Year-Round Community Based Human Services Effort.**
The City of Des Moines shall encourage community involvement by individuals, organizations, churches and businesses committed to human services efforts such as: centralizing human services within the City, improving information and referral, and advocating for improved public transportation.
- (4). **CDBG Funding for Improved Quality of Life.**
A portion of Des Moines annual CDBG allocation shall support programs such as: basic human service needs, capital housing, economic development, and home repair programs to improve the quality of life for low and moderate income persons.
- (5). **Human Services Planning.**
The City of Des Moines shall participate with local and regional human services planning organizations where participation will further the priorities and policies of the plan, and when authorized by the City Council.
 - King County Human Services Roundtable
 - South King County Housing Forum
 - The South King County Youth Violence Prevention Committee

What should a definition of human services be for the City of Des Moines?

In 1991, the City of Des Moines completed a preliminary human services planning process which set out the following vision for human services:

"Those resources available to the Des Moines community which make it possible for citizens to live with dignity and purpose. Those resources include those which enhance life, prevent problems and assist with problem solving."

Between 1991 and 1996, the City has operated with the following definition of human services:

"Those resources available to the Des Moines community which make it possible for citizens to survive by providing for their basic needs – food, shelter, clothing, safety and information about where to find other services and programs they may need."

In 1996, in preparation for a new human service plan, the City of Des Moines commissioned a consultant to conduct citizen surveys including 30 key leader interviews designed to recommend a revised definition of human services. Slight modifications to the earlier definition emerged from a survey of 204 citizens, 30 key leader interviews and the review of the Des Moines Human Services Advisory Committee.

"Human services are those resources available to the Des Moines community which make it possible for citizens to live with dignity and purpose. Those include food, shelter, clothing, services for personal safety, prevention and information and referral."

Based on this definition of human services, the City of Des Moines has established the following priorities for funding:

- | | |
|-----------------|---|
| Priority One: | Those services which help meet basic and emergency needs (food, safety, shelter and clothing). |
| Priority Two: | Programs which are preventative in nature and promote healthy, violence-free families and self-dependence. |
| Priority Three: | Programs which seek to maintain and enhance the quality of life in persons whose human basic needs are already met. |

This definition of human services was derived in large part from community surveys and key leader interviews. Citizens agreed that providing emergency assistance, food, shelter, clothing, information and referral and help for victims of domestic violence were central to a concept of human services. In addition, high priority was placed on helping people

help themselves and preventing problems before they happen. TABLE 12 in Appendix A of this report provides a summary of the highest ranking choices.

In addition, Key Leader interviews included high ratings for issues not listed in the briefer surveys:

- Providing transitional assistance
- Providing senior programs
- Providing employment assistance
- Creating a caring community
- Providing child care
- Providing parent education

During discussions with key leaders and others involved with city government, the theme of "helping people help themselves" was evident. Des Moines is following a regional and national trend toward outcome-based human services in which the services are offered to assist individuals and families toward improved health, safety and self-sufficiency. This is a definition based in the belief that by ensuring available services, local governments can also strengthen neighborhoods and communities to reduce some problems and resist the growth of others.

What are the basic values in Des Moines?

It is important to look at the basic values in Des Moines as expressed by those who answered the surveys, the key leader interviews and other indicators of basic community values. Citizens responding to the questionnaires indicated that they liked the "small town atmosphere of Des Moines." They viewed the City as a "caring and friendly community." Respondents also liked the location, natural setting, waterfront, and access to the freeways and shopping. TABLE 13 in Appendix A provides additional information from the surveys about City values.

The City's guiding principle is its mission listed below: "The mission of Des Moines City Government is: To enrich residential living by providing leadership, administration and community services that reflect the pride and values of Des Moines." The City's vision statement is "A friendly and safe waterfront community." City government imperatives include the following value statements:

- We commit to: responsive and accessible government; respect for the diverse opinions and populations that enrich our community; fostering partnerships that maximize our resources; involving our citizens and enhancing our community.
- We commit to: ensuring personal and community safety and security and protecting property.

What are the indicators of need for human services in Des Moines?

The definition of human services for the City of Des Moines is based not only on the surveyed opinions of residents and leaders, but also on data available from local sources which serve the Des Moines area. Indicators of need for human services are found in data from the following sources; reports from human service providers funded in 1995 by the City of Des Moines; population characteristics taken from census data; information from the King County Housing Authority; data from the Department of Social and Health Services regarding the numbers of Des Moines residents receiving state/federal aid; information from the Highline School District regarding free and reduced lunches; crime data from the Des Moines Police Department; information from the 1996 Des Moines Community Summit; and, a summary of the interviews completed for the human service plan.

Current Funded Human Service Programs: The City of Des Moines funded the following human service providers in its 1996 budget. Services provided by each of these agencies reflect the community need for assistance.

Catholic Community Services: Provides counseling and emergency assistance giving direct help to Des Moines residents who need food, clothing, shelter, utilities, medical or gas vouchers. Services are located at St. Philomena's Church.

Child Care Resources: Provides information and referrals to parents seeking child care in King County.

Domestic Abuse Women's Network: Provides safety and support services to victims of domestic violence.

Crisis Clinic: Provides telephone crisis intervention and information and referral services.

Des Moines Area Food Bank: Serves those in need with quality foods with sensitivity to those in need of special diets.

Adult Literacy Programs: Provides classes and tutoring for people who need help with Adult Basic Education, English as a Second Language and GED preparation. Services located at Highline Community College.

King County Sexual Assault Resource Center: Provides no-cost support and counseling services to victims of sexual assault and their families.

Des Moines Police Chaplain's Emergency Fund: Assists local residents with emergency needs through donations by the City of Des Moines, individuals and local churches.

Pregnancy Aid of South King County: Provides immediate, confidential help to any pregnant woman from South King County.

Des Moines Community Schools Project: Provides a model for school change through parent and community involvement. Services located at Parkside Elementary School.

In their applications for 1997 funding, these organizations indicated unmet needs which would be part of their service goals as funding was available. TABLE 1 on the next two pages provides an overview of the level of need, the area of service, and the proposed strategy(ies) for meeting the level of need.

TABLE 1: 1997 DES MOINES FUNDED HUMAN SERVICES REPORTED
COMMUNITY NEEDS, AREAS OF SERVICE AND STRATEGIES

Level of Need	Agency	Area of Service	Strategies
60% of families at Parkside and Olympic are low income; families have a mobility rate of 40-60% per year; families often need food, clothing and shelter; academic achievement is low and referrals to special education are up.	Community Schools Project at Parkside Elementary School	Community Mobilization and Prevention Program	Increase parent and community involvement; Establish diverse school site councils; begin dialogue with parents and community; establish a parent led Family Center at each school.
Increased demand for food because of increased single parents; elderly, mentally and emotionally ill people.	Des Moines Area Food Bank	Emergency service and transitional service	Help people survive by filling the gap of not enough money for food. Help stabilize families because they know they can get food to survive.
The numbers of women using the community advocacy program, the crisis line, shelter, legal advocacy, support groups increases each year. If numbers continue to increase from the first 3 months of 1996 through the year, there will be a 30-40% increase in demand for services.	Domestic Abuse Women's Network	Emergency services that provide for safety and security for victims of domestic violence.	Provide aid and support to victims of domestic violence, legal assistance, shelter and advocacy to get needed resources to be safe until plans can be made.
Increase in number of low income children in South King County; increase in families needing to know about where to get cost effective licensed child care.	Child Care Resources	Prevention program that provides info about licensed child care	Provide info about licensed child care providers; help maintain quality by giving training opportunities for providers.
Need for information and referral and crisis counseling by telephone.	Crisis Clinic	Emergency assistance and prevention	Assist individuals to find the help they need through the crisis and prevention of future problems.

Level of Need	Agency	Service	Strategies
Increased need for emergency assistance to find resources for rent, utilities, food, clothing. Increased need for counseling assistance to help people articulate their needs and follow through getting help. (Mentally and emotionally ill people very much in need of attention.)	Catholic Community Services	Emergency service and prevention of problems	Provide emergency assistance to help families stabilize their living and work through crisis. Counseling and case management to prevent institutionalization of mentally and emotionally ill people.
In May, 1996, already served same number for all of 1995 (24) with crisis intervention services, or information and referral, or legal and medical advocacy or children's therapy.	King County Sexual Assault Resource Center	Emergency services and community education to prevent problems	Provide crisis intervention services for victims; information and referral, legal & medical advocacy; help victims survive and defend their rights.
Increase in numbers of people needing help with utility bills, homeless needing housing, domestic violence victims needing housing, emergency assistance for gas, food and medicine.	Des Moines Police Chaplain's Fund	Emergency assistance	Help low income individuals get through crises so that they can be better able to make plans for next weeks and months.
Expected increase in the numbers of children, men with infants, and pregnant and parenting women needing food, clothing and related baby items.	Pregnancy Aide	WIC nutrition and food, clothing, and furniture for babies and their parents	Help low income women, men, their infants and children with basic needs -- food and clothing.
Expected increase in the numbers of low income families, including teen parents and single parent families.	Parent Place, Highline Community College	Parent education, information and referral	Assist low income parents with parent education, individual consultations and resource materials.
About 1/3 of Parkside parents are unable to read and are either in or waiting for ESL classes.	Highline Community College Adult Literacy Program	Prevention Program	Help parents of students to read so they can help them understand lessons and America and find good jobs.

Below are listed some of the population characteristics that are helpful in human service planning. Differing age groups have a variety of concerns as do those with limited English knowledge, those with special needs and those with limited incomes. These "Indicators of Human Service Needs" not only provide evidence of the need for assistance, they often provide guidance in planning human service responses to their needs. At the end of each section listed below are conclusions which relate to the human service planning process.

- (1). *Population characteristics taken from census data*
- (2). *Profile of Low Income Populations and Family Information*
- (3). *Child abuse and neglect*
- (4). *Crime occurrence in Des Moines*
- (5). *Special needs populations*
- (6). *Key leader opinions*

(1). *Population characteristics taken from census data:* Knowing the profile of Des Moines residents is helpful in human service planning. For instance, 17% of the Des Moines population is under age 18, 47% between ages 35 and 64, and 13% ages 65 and above.

While all age groups have basic needs -- food, shelter, clothing, children and youth who are 22% of the population and seniors who are over 13% of the population often have special nutritional and care needs. Their dependence on others for shelter, safety and security are directly related to their ages. The large population between ages 35 and 65 may have other needs related to their families, their employment and income, housing, and family relationship issues.

Since its incorporation in 1959, the City of Des Moines has been characterized by growth, mostly due to annexations of neighboring communities. In 1980, the population was 7,373. Ten years later, in 1990, the population was 17,283. On January 1, 1997, Des Moines will grow once again when it annexes Woodmont and part of Redondo. The total population of the City will go from around an estimated 22,790 to 29,000. TABLE 2 below includes census data from the City as it will be on January 1, 1997.

TABLE 2: AGES OF DES MOINES AREA RESIDENTS

Age Range	% of Total Population
0-11	15%
12-15	4%
16-18	3%
19-34	31%
35-64	34%
65+	13%
Total	100%

Although Des Moines is not as culturally diverse a community as other South King County cities, there is still a significant population of people of color and immigrants and refugees with limited English speaking skills. According to the Office of the Superintendent of Public Instruction, the Highline School District has the third highest number of programs for English as a Second Language in all of King County. Many of the new arrivals in Des Moines are refugees and immigrants from other countries where English was not the first language. TABLE 3 indicates the racial make-up of Des Moines. (Figures came from the Puget Sound Regional Council and the City of Des Moines Community Development Department.)

TABLE 3: RACIAL MAKE-UP OF DES MOINES CITIZENS

Race	% of Population
White (Caucasian)	89%
Black (African Amer.)	4%
American Indian	1%
Asian/Pacific Islander	5%
Other	1%

Human service planning conclusions from census data are as follows:

- (1). A significant population of children and youth (22%) and seniors (13%) may require special attention to nutrition and other dependency issues related to age.
- (2). A significant population of limited English speaking residents requires some attention to English as a Second Language and other literacy programs which help people become more independent and able to adapt to the new culture of the United States.
- (3). Population growth due to annexations brings a large number of citizens into the City at the same time. This has the potential of creating more use for services than they are equipped to handle. Assessing the need and planning for services are important parts of providing human services.
- (4). Large numbers of residents between the ages of 19 and 64 (65%) may have needs related to affordable housing, employment and training.

(2). **Profile of Low Income Populations and Family Information:** Information on the number of low income individuals and families living in Des Moines came from a variety of sources; the King County Housing Authority Section 8 and Public Housing Programs, the Washington State Department of Social and Health Services; the Highline School District free and reduced lunch programs; and, the City of Des Moines Finance Department reduced rates for seniors and disabled. Low income individuals and their

families often have need of human services to subsidize their limited resources. Many families depend on the food bank each month to help stretch their meal planning. Others count on clothing banks and cash assistance to stay warm or keep their housing when crises occur.

The King County Housing Authority provides two kinds of housing programs for low income individuals and their families in the Des Moines area -- public housing and Section 8. The primary source of income for families in both types of housing is public assistance. There are three public housing communities in Des Moines with a total of 45 units which house 192 residents. There are 337 units of Section 8 Housing in Des Moines. These are housing units occupied by individuals and/or families with Section 8 certificates issued by the King County Housing Authority. The landlord agrees to rent to the certificate holder and the rental unit is subject to an inspection by the Section 8 staff. The renter pays a reduced rent and the difference is made up by a subsidy provided by the U.S. Department of Housing and Urban Development through the King County Housing Authority. Section 8 housing can be single-family dwellings (66) or apartment units in multi-family buildings (253), or units in duplexes or triplexes (18). Of the 337 Section 8 units in Des Moines, 289 are occupied by single parent households, and 58 are occupied by one person households. There are a total of 994 Section 8 residents in Des Moines. The largest single source of their income is public assistance, then asset income, employment, social security, SSI and child support.

TABLE 4 below outlines information from the Washington State Department of Social and Health Services about Des Moines residents receiving financial assistance.

TABLE 4: 1995 FINANCIAL ASSISTANCE PROGRAMS FOR DES MOINES RESIDENTS (Department of Social and Health Services)

Financial Assistance Programs	Households Served
Aid to Families with Dependent Children	
One Parent Households	596
Two Parent Households	83
Refugee Assistance	0
General Assistance -- Unemployable	44
Presumptive Disability	13
ADATSA (Drug and/or Alcohol Treatment)	2
Food Stamps	204
Medical Assistance	
Over 65	50
Children	168
Medically Indigent	0
Disabled	261
Prenatal Care	143
TOTAL	1564

Information about the numbers of individuals and families dependent on financial assistance from the government is very useful in planning for human services, particularly in light of the proposed cuts in entitlement programs. The numbers of those in need of free or reduced cost human services will increase as benefits decrease.

Free and reduced lunches are another source of information useful in identifying the numbers of low income families in the Des Moines area. Highline School District provided information shown in TABLE 5 about schools located in Des Moines which includes total enrollment, and the numbers of free and reduced lunches in 1990 and 1995. As families are less able to pay the full costs of their children's lunches, many come to rely on the school meal as the nutritional backbone of their children's diets. Families experiencing divorce generally result in the mothers becoming single custodial parents. These families most often have lower incomes than two parent families and are in greater need of human service assistance to provide those needed services they can no longer afford.

TABLE 5: HIGHLINE SCHOOLS LOCATED IN DES MOINES

Name of School	Total Enrollment	% Living with 2 Parents		% Free/Reduced Lunches	
		1990	1995	1990	1995
Des Moines Elementary	329	69%	55%	23%	28%
Parkside Elementary	560	65%	48%	27%	48%
Olympic School	347	73%	66%	40%	52%
North Hill Elementary	411	70%	64%	27%	39%
Midway Intermediate	420	66%	53%	29%	46%
Pacific Middle School	598	66%	55%	15%	32%
Mt. Rainier High School	1254	73%	58%	6%	19%

In most cases the percentage of free and reduced lunches has increased between 1990 and 1995, as the populations have increased in low income families. In all cases the number of children living with two parents has decreased between 1990 and 1995. Although statistics were not available regarding mobility in the schools, most South King County districts are reporting an average of between 25% and 35% turnover each year. Families move from district to district and it is not uncommon for a student to appear twice in the same school during any given school year. The most common reasons for moving have to do with income and the ability to pay rent, credit problems or family violence.

Another indicator of low income populations is the "Senior and Disabled Exempt List" maintained by the City of Des Moines for those eligible to receive exemptions from the Surface Water Billings. Currently there are 110 qualified individuals receiving the exemptions because of low income.

The following conclusions based on data relating to low income residents in Des Moines are integrated into the recommendations in this report:

- (1). Des Moines has a significant number of low income individuals and families in the City who currently use human services.
- (2). As funding for housing and financial assistance are reduced, there will be greater numbers of individuals and families with basic needs of food, shelter, and clothing.
- (3). As the number of single parent families grows, so will their need to find and use human services.

(3). ***Child Abuse and Neglect:*** The 1995 Annual Report of the City of Des Moines Police Department provided the data in TABLE 14 in Appendix A to this report. The data shows a three year comparison of child abuse cases from 1993 to 1995.

Although the number of reported child abuse cases were reduced in 1995, the number of cases is significant enough to continue a watchful stance, and the support of child abuse prevention programs. Strengthening the family is a way to prevent future problems.

(4). ***Crime Occurrence in Des Moines:*** The 1995 Annual Report of the City of Des Moines Police Department provided the frequency of crimes between 1993 and 1995 shown in TABLE 15 which is included in Appendix A to this report. Trends in crime indicate that robbery, assault, theft over \$50, malicious mischief, domestic violence, prostitution and drug crimes increased between 1993 and 1995.

For the newly annexing areas of Woodmont and Redondo, crime data was available for the last quarter of 1994 and the first three quarters of 1995. Similar crime patterns exist in the annexing areas which represent a population increase of 5,000 people for Des Moines when they join the City on January 1, 1997. TABLE 16 in Appendix A to this report shows the types and numbers of crimes reported in 1994-95.

These reported crimes are often associated with drugs and alcohol use. They are also crimes of victimization where an individual is harmed either by having property stolen or damaged, or by having his/her personal safety or health at risk. The damage and human suffering resulting from all crimes, particularly sexual assault and domestic violence, can be lifelong. Children who witness violence in the home often learn such behaviors in response to their own conflicts, and victims of abuse may stay in domestic violence situations for many years because they do not see choices for their futures.

In Des Moines, human services work hand-in-hand with the City of Des Moines Police Department to both prevent crimes and help the victims of crimes in an effort to stop the cycle of violence. This commitment is reflected in the definition of human services proposed in this plan, resulting in funding for services which help victims of sexual assault and domestic violence. Prevention programs to stop the cycle of child abuse and family violence are also part of this commitment.

(5). **Special Populations:** One available source of information about the numbers of special needs populations is school district data. The following information about students with learning difficulties or special education students in TABLE 6 was provided by Highline School District for the schools located in Des Moines.

TABLE 6: 1994 SPECIAL EDUCATION AND NUMBERS OF STUDENTS IN REMEDIAL READING AND/OR ARITHMETIC AND/OR LOW ACADEMIC PERFORMANCE

Name of School	Total Enrollment	Special Education	Chapter/Low Academic Achievement	ESL Students
Des Moines Elementary	329	28	72 (1994)	NA
Parkside Elementary	560	52	131	NA
Olympic School	347	68	81	87
North Hill Elementary	411	40	46	48
Midway Intermediate	420	37*	160	NA
Pacific Middle School	598	54	64	NA
Mt. Rainier High School	1254	101	413	NA

*Also has 45 students in the Challenge Program

Information in TABLE 6 is very useful for human service planning, particularly for prevention activities which can help parents and children learn more about improving family management issues in the home, improve bonding with the school and the community and encourage improvement in school work. Low academic achievement, family management and lack of bonding with the community have been shown through research to be factors in the lives of youth who may later be at risk for violence. These are factors which are the basis for two prevention projects underway in the Des Moines area: The Parkside School Project which is currently funded by the City of Des Moines and the Highline Community Mobilization Team, a group of citizens, school personnel and officials from Highline School District communities who are working to prevent youth violence in South King County.

Prevention is part of the Des Moines Human Service Plan. The City recognizes that one of the most effective deterrents to crime is a combined effort of human services and law enforcement. Community caring and involvement do much to create an environment that sends a strong message that crime is not wanted nor tolerated.

(6). **Key Leader Opinions:** Public opinion is always critical in human service planning. Key leaders were asked to rate a list of human service-related concerns according to the following scale -- "not a problem, major problem, moderate problem, minor problem or don't know." Because community leaders ranked the items contained in TABLE 7 as major or moderate problems more than a total of twenty times, they are included.

TABLE 7: KEY LEADER INTERVIEW QUESTION -- IN YOUR OPINION
WHAT ARE THE MOST PRESSING HUMAN SERVICE
CONCERNS IN DES MOINES?

Issue	Not a Problem	Major Problem	Moderate Problem	Minor Problem	Don't Know
Public transportation	1	10	13	5	1
Emergency assistance such as food, shelter, clothing		19	9	2	3
Lack of affordable child care		15	6	2	5
Crime		10	16	3	
Poverty, meaning lack of money for basic needs		10	16	3	
Domestic violence		12	11	1	5
Transitional housing	1	11	12	2	3
Affordable housing	1	17	8	3	2
Affordable dental care		16	4	3	5
Lack of programs for youth	3	9	13	3	1
Lack of a multi-service center in Des Moines	3	16	5	4	2

Decisions in human service planning are based on a number of factors including data which indicates problems and opinions or perceptions that problems exist. In the Des Moines community, when asked to rate pressing human service concerns, key leaders indicated agreement on a number of issues. The following is a brief analysis of the relationship to human service planning. Sentences are underlined to indicate conclusions which can be drawn from the high ranking of the item.

Public Transportation: Public transportation is a continuing concern in Des Moines because east-west access is an ongoing problem. Most of Des Moines human services are located on the east-west corridors of the City. For many individuals and families needing to access human services, the current system of public transportation is not helpful.

Emergency Assistance such as food, shelter, clothing: Mention of these human service needs is consistent with the findings of need in the community and the inclusion of these items in the definition of human services.

Lack of Affordable Child Care: Lack of affordable child care is a regional issue in South King County. Efforts by local businesses and human service agencies are improving the quality of existing services and encouraging more child care services. Des Moines has supported such responses to child care needs.

Crime: This human service plan acknowledges the strong relationship between human services and law enforcement in preventing crime and aiding victims.

Poverty, meaning a lack of money for basic needs: Lack of income prevents many individuals, both young and old, and many families with children from accessing the

human services they need. Poverty is one of the identified risk factors for children and youth in bonding with the community and schools. The cycle of poverty can have devastating effects on families and individuals who want to do better but are overwhelmed with their very survival. Poverty is also part of the motivational force for frequent moves by families who live a hand-to-mouth existence. The provision of food, shelter and clothing can do much to help those in poverty use their energy for building a more secure life for themselves and their families.

Domestic Violence: The cycle of violence in families can be curbed, if interventions are successful in stopping the violence. Programs which help victims to gain safety and support for their flight from violence do much to stop the fears and suffering and give hope that victims and their children can sustain their safety and security.

Transitional and Affordable Housing: While shelters provide some temporary relief, transitional housing which is generally several months provides the time that individuals and families need to save enough money for first and last month's rent in a more permanent living situation. The availability of affordable housing helps families stay in the City, by stopping what may have been a cycle of moving every few weeks or months and allows the children to begin bonding in the local community. When transitional and affordable housing are linked to human services which can help with such things as food, clothing, employment and training programs, there is hope for economic self-sufficiency and more permanent housing.

Affordable Dental Care: While health care is provided by the Seattle-King County Public Health Department, affordable dental care is available on a much more limited basis. For many, preventive dental care is not affordable, so that when they do seek dental care, their teeth have deteriorated. Affordable dental care is especially important for children and youth and seniors, who make up 35% of the Des Moines population.

Lack of Programs for Youth: Youth programs are an alternative for at-risk youth who are vulnerable to gang involvement and/or drugs and alcohol use. By keeping busy before and after school, youth are able to learn skills, to build friendships and to improve their interest in school and community. Youth programs are excellent prevention tools.

Lack of a Multi-Service Center in Des Moines: Barriers that make it difficult to access human services include a lack of information about what is available, lack of public transportation to human service programs and the general spread out nature of those services. Many times human service needs are so complex, that one family may need to see several different programs at several different locations. By centralizing services, it becomes easier to market them to those who need the help most, and it becomes easier for services to coordinate with one another on behalf of the client.

What are housing issues in Des Moines?

The Des Moines Comprehensive Land Use Plan provides for a commitment to affordable housing. "The City of Des Moines will continue to assist regional, multi-jurisdictional efforts to address the region's need for low and moderate income housing, and special-needs housing...which includes assisting the private sector, non-profit agencies, and public entities in the planning and development of affordable and special-needs housing within and near Des Moines."

With the annexation of Woodmont and Redondo, Des Moines has a housing mix that is nearly 50/50 multi-family and single family residents. TABLE 13 in Appendix A illustrates the housing mix within the current city boundaries and its proposed annexations. The housing mix is skewed toward multi-family residents because retirement communities and group facilities are counted as multi-family residents, as are the numbers of condominiums. Populations residing in either retirement communities or condominiums remain in the community for considerably longer than renters. While it is difficult to know the exact number of rental units, either houses or apartments, there is a significant enough number to suggest that the high rate of mobility within the schools is due in part to a large renter population.

When compared with other South King County cities, Des Moines is just above the SeaTac Airport area in the lowest rents in South King County. Even though rents are lower than neighboring cities, key leader interviews indicated interest in both transitional housing and affordable housing. Shelter is a major concern, but is classified with other basic needs in the questionnaire. 66% of the key leaders interviewed indicated that they felt the City should join an affordable housing group to take advantage of regional strategies.

How do people access human services in Des Moines?

In order to access human services, people must know about them. Key leaders were asked about how they hear of human services in Des Moines. 76.6% replied that they heard about services by "word of mouth." Since key leaders were chosen for the interview process because they know the Des Moines community well, they are very likely to hear about human services through meetings where a speaker shares information, or through talking with others who are active in the community.

33.3% commented that they learned of services in the published directory that the City circulates annually. This four page information bulletin lists the services by category that citizens are most likely to need. It can be kept near the telephone and provides a useful reference. A more detailed description of services available to Des Moines residents is included in the appendix to this plan.

26.6% read about human services in local newspapers. Human interest articles, editorials on services and programs offer the reader the chance to get acquainted with community resources.

When asked which human services key leaders were aware of, the following were the most mentioned: The Des Moines Food Bank, the City of Des Moines Senior Programs, all City programs, the Domestic Abuse Women's Network, the Police Chaplain's Fund, Pregnancy Aid, the Clothing Bank and the King County Housing Authority. A total of 39 different agencies and programs were mentioned, but most were only mentioned by one or two people.

Barriers to getting services give a clearer picture of access issues. When asked about what limits individuals from getting services, key leaders agreed that the following are barriers to access of services: 90% felt that those who need services probably don't know where to get assistance. Transportation was seen as a limiting factor as was limited English speaking skills. 40% felt that there was no service in the local area to assist with the problem.

Not knowing where to get services is an ongoing problem in many communities, however in Des Moines, there is tremendous potential for opening up the information bank. In fact, this was an item of much discussion at the 1996 Des Moines Community Summit Human Service session. The following suggestions were made to increase the public's awareness of human services:

(1). **Research the Need for A Multi-Service Center.** Having human services in one center would provide opportunities for those who need services to get all the help they need under one roof. This significantly reduces the barriers of transportation, limited time, and confusion about what services are available. A Center also provides opportunities for services to collaborate more easily in aiding individuals and families.

time, and confusion about what services are available. A Center also provides opportunities for services to collaborate more easily in aiding individuals and families.

In the key leader interviews, 70% of the respondents favored a multi-service center as part of the City's response to human service needs. 43% of the thirty key leaders interviewed suggested that such a center should be financed by a bond issue. The vision of such a center would be a facility that would provide room space for human services to bring their programs to Des Moines. Access to all human services would be closely identified with one location. There were concerns about including the senior center in such a facility. 53.3% of the respondents suggested that such a center could be located in the same building but should have its own entrance and be separate from the areas where there was public access for human service programs. The Summit suggested that a citizen's group form to examine the need for a multi-service center. As they look at the center as a focal point for responsive human services, they also will look at how information, services, and the Center would be a warm, home-like, family-oriented place. The citizen's group will study multi-service centers in other towns to see which model fits the needs of the Des Moines community. Key leaders view the Center as an opportunity to improve coordination between the food bank, human services and church-related programs.

(2). **Improve communication about changes in the system for advocacy and information.** Begin a network today. Increase networking among churches and human service providers.

- (a). Use Channel 28 to present human services information -- make it more than just a rolling calendar.
- (b). Use City Currents more effectively.
- (c). Post information at the Marina.

(3). **Advocate for improved transportation services in Des Moines.** For those needing access to human services, the only public transportation is buses running north and south in Des Moines and a transportation program for those with special needs called ACCESS. Bus service route descriptions for Des Moines area routes (#130, #132, #174, #166) are included in Appendix A to this report.

Buses do not travel east to west within the Des Moines downtown area. While individuals may be able to travel along Highway 99 or along Marine View Drive, they would have to walk to any location between, often along roads with no sidewalks.

Other public transportation systems are limited to ACCESS and OPTIONS, both of which are demand responsive services. ACCESS is designed for ADA riders who are unable to use regular bus service. OPTIONS is a transportation service available for low income seniors or people with disabilities currently on the weekdays only.

Other, more expensive transportation is available in the form of taxi cabs and vans that specialize in transporting wheel chair bound individuals and others with medical equipment that they must carry with them.

Transportation issues will continue to be a concern for Des Moines residents and businesses as they grapple with the problems of east-west travel. One resolution lies in locating a multi-service center near one of the transportation networks. Another lies in working with other regional governments to create regional solutions to local transportation issues. Other approaches could consist of volunteer ride assistance or business sponsored shuttles.

(4). Respond to the need for assistance in learning English as a Second Language.

In recent years, growing numbers of refugees have moved to South King County because of affordable and public housing and because some of their families settled here before them. These new immigrants have, for the most part limited English speaking skills. Some local school districts estimate between 20 and 30 languages spoken by students and their families.

When communication is limited by language skills, it becomes very difficult to help people understand laws, customs, and requirements for such things as leases and sales agreements. Children from refugee families often assimilate much faster than their parents. They learn and practice English daily in schools and they interact with far more American peers than their parents or grandparents. Prevention programs are generally effective when they help parents learn more about their children and the schools. They are generally receptive to learning more about parenting in the U.S., as they learn more about day-to-day customs in this country.

Highline Community College offers classes in English as a Second Language (ESL) at the Des Moines campus. Students can either learn with books and paper or they can learn with new computer software that teaches ESL. ESL can also be taught by volunteers at local Des Moines sites like parks and recreation facilities, churches or the library meeting room.

(5). Develop innovative ways of connecting people to the service they need.

In some cases there may not be a local office for the service that someone needs. In those cases, a good information and referral network can lead the person to the location and telephone number of the agency he does need to contact. The use of Crisis Clinic's Community Information Line is helpful in locating services out of the immediate area.

The area of service identified in the Summit sessions as lacking in Des Moines was affordable health care. Both Summit sessions mentioned this issue and both issues were listed as moderate concerns in the key leader interview. Currently low income individuals who need public health services must go to either Kent, White Center or Federal Way. This is a particularly difficult trip given the bus routes, none of which go directly to the service needed by Des Moines residents. Often those needing the service

the most are least able to travel to a clinic. Small children, mothers with more than one small child and fragile seniors are two such groups.

One answer is to find a facility or ask a current facility to provide room space to provide selected health services on-site in Des Moines. The Summit participants suggested a partnership between a local clinic and public health.

What effects will welfare reform have on Des Moines residents ?

It is too early to know the full impacts of welfare reform on local communities in Washington State. Both the State of Washington and the federal government can make changes to the current plans. Those most likely to be impacted first are immigrants. Legal immigrants begin losing benefits (August, 1996 to August, 1997). Most legal immigrants receiving food stamps and Supplemental Security Income (SSI) will become ineligible for benefits when their cases are reviewed.

On October 1, 1996, AFDC ended. When the federal fiscal year begins, the Federal guarantee of cash assistance for eligible poor children will end. "No individual or family shall be entitled to any benefits or services under the new major Federal welfare program - The Temporary Assistance for Needy Families (TANF) Block Grant of the Person Responsibility and Work Opportunity Reconciliation Act of 1996. The TANF Block Grant will replace the AFDC Program.

FOOD STAMP benefits decrease (October 1, 1996 to January 1, 1997). New federal rules to the food stamp program start to take effect reducing benefits. Adjustments to the Thrifty Food Plan, a low-cost budget which is used to calculate the amount of food stamps a family receives, will further reduced aid to recipients. Among all food stamp households in Washington, the average benefit loss would be \$557 in Fiscal Year 1998 and \$650 by Fiscal Year 2002. The average food stamp benefit will fall from its current level of 80 cents per person a meal to just 67 cents per meal by 2002. In April, 1996, 477,508 people in Washington were receiving food stamp benefits, at least half of these recipients were children. Most legal immigrants will be wholly ineligible for food stamps.

AID TO LEGAL IMMIGRANTS CUT States will be allowed, but not required to cut off cash assistance. Medicaid and social services for legal immigrants who are receiving such aid on the date of enactment in August, 1996. (Cuts in effect January 1, 1997). ("Overhauling Welfare, A Look at the Year Ahead," Partnership for Washington's Future, The Children's Alliance, August, 1996).

Potential Impact on Des Moines human services: A brief look at Department of Social and Health Services statistics for zip code, 98198 listed earlier in this plan, suggests that there are 596 one parent households on AFDC and another 83 two parent households on AFDC also. Food stamps go to 204 individuals in Des Moines. As they lose financial aid, these individuals will turn to the Des Moines Food Bank, Pregnancy AID and the Police Chaplain's Fund.

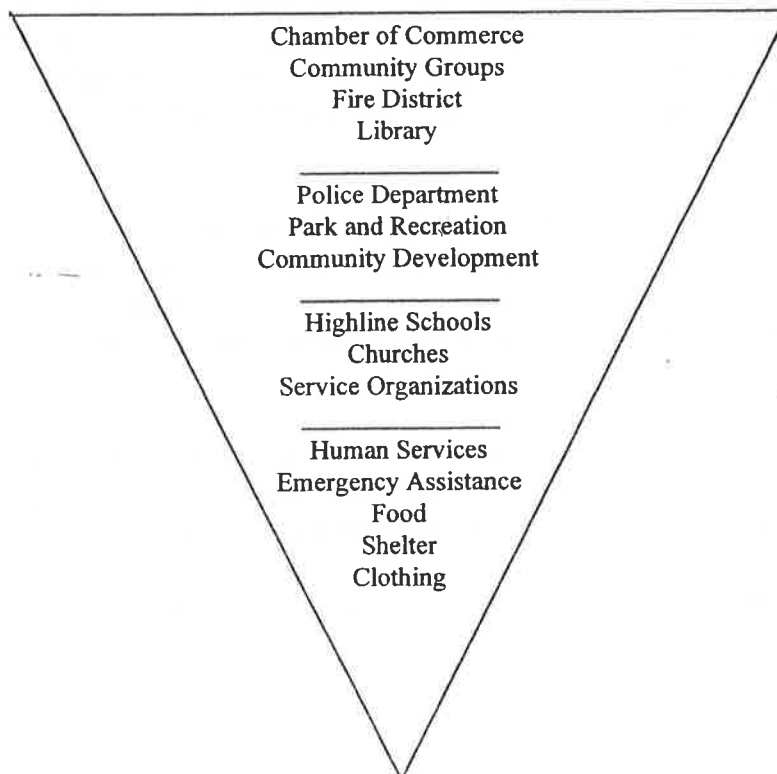
What are the resources in the Des Moines Community that make up the "caring community?"

Along with the basic values of a caring community, Des Moines has other resources that reinforce its image. Because of these resources, Des Moines can sustain its current programs, and it can begin some new promising approaches in helping its residents to help themselves. Existing resources and programs are listed first in answer to this question and new collaborations are suggested for the future.

Core Human Services Definition: Below is the recommended definition of human services provided in this report. It is a definition which reflects the history of human service support, the basic value of helping people help themselves, and the notion that prevention is essential to a human service program to stop cycles of problems early so they don't escalate into devastating problems in the future.

"Human Services are those resources available to the Des Moines Community which make it possible for citizens to live with dignity and purpose. Those include food, shelter, clothing, services for personal safety, prevention and information and referral."

The following diagram illustrates a capacity for resources of Des Moines to work together in providing a caring community.



COMMUNITY CARING ORGANIZATIONS AND INDIVIDUALS

Beyond the resources of City government are the resources of the Des Moines community. Through the years, each of these resources has demonstrated its part in the "Caring Community" of Des Moines. Today, each of them has the capacity to accept new and expanded ways of contributing to the caring spirit of the City.

Churches: There are eighteen churches in the City of Des Moines with the capacity to contribute to human service efforts. Many are already involved by providing space and volunteers for human services

Service Organizations: Local chapters of national and international service organizations exist in Des Moines. Many engage in volunteer activities to help maintain the quality of life in Des Moines. Service organizations actively support human services efforts in Des Moines. Service Clubs listed on the Des Moines Web Site are Kiwanis, Lions, Rotary and Veterans of Foreign Wars. Although it meets in Burien, the South Seattle Soroptomists have Des Moines area members and makes annual contributions to the Highline Community College Women's Program to help women returning to school. The Lion's Club concentrates its fund raising efforts on helping people needing eye glasses and hearing aids. Members will do special projects to help Des Moines area residents who need minor home repairs to help them move toward economic self-sufficiency. The Veterans of Foreign Wars aid veterans to access benefits. The VFW helps families in need particularly around the holiday time. The Rotary Club makes significant contributions to the Des Moines Area Food Bank and youth-oriented programs. The Kiwanis' focus is "Children First" and regularly support many 0-5 year old programs.

Des Moines Library: The Des Moines Library is a part of the King County Library System and one of the most popular gathering places in the City. The Library serves as a center for information and referral and a meeting place for human service groups.

King County Fire District: The Fire District serving Des Moines provides medical aid, fire suppression and fire prevention services for the residents of Des Moines.

Chamber of Commerce and Businesses: The Des Moines Chamber of Commerce is an important leader in motivating the business community to be a leader at the human service table. The Chamber was a major organizer of the Community Summit Open House.

Highline School District: The Highline School District operates public schools serving Normandy Park, Burien, SeaTac, Tukwila and Des Moines.

Community Groups: Community groups that mobilize around needed actions like Improvement Clubs, Community Clubs, and community mobilization teams.

CITY DEPARTMENTS

Complimenting the core human service definition are the City departments which each provide a series of community-oriented programs designed to prevent problems from occurring. Listed below are community-oriented examples of prevention activities in each area.

Des Moines Police Department: The Des Moines Police Department has developed a community-oriented policing approach which involves community members in helping to mobilize their local neighborhoods in crime prevention activities that keep residential areas safe and healthy. Community policing officers have regular contact with youth and their families to help them develop strategies to discourage crime and drugs. The following are examples of community policing programs:

DARE Programs	Halloween Party
Community Gang Info Talk	Safety Town
Community Youth Violence Talk, PTA	School Carnival
Street Defense Classes	Bicycle Safety
Bicycle Rodeos	Teen Chat
Teen Advisory Council	

The Proactive Patrol offers safety town classes, a Midway after school program and self-defense classes at Mt. Rainier High School. In their "Walk with a Cop" program, police focus on a particular area of the city and ask citizens to get involved in helping to solve problems. Students have had input into the police hiring process and parents get involved in the Kid Care ID program.

Blockwatches, apartment manager meetings, and meetings with area senior groups all help build a sense of community which strengthens Des Moines' image of caring and helps to prevent crime from occurring.

In areas like domestic violence and sexual assault, the Police and human services share joint concerns and approaches. Key community-based agencies serving victims of these crimes are funded through human services and coordinate their work with both of these City departments.

Des Moines Park and Recreation Department: Like the Police Department's outreach to involve service organizations, youth groups and others, the Park and Recreation Department is an integral part of the quality of life for Des Moines residents. The Department mission is "to provide the opportunity and encourage the diverse population of the Greater Des Moines area to participate in life enhancing activities through developed and well maintained park land and facilities, professional programming and services, and the optimum utilization of community resources. The Park and Recreation programs include the following areas as well as support to the Human Services Committee and Senior Advisory Committee:

League sports (youth, teen, adult & Senior)
General recreation
Historical and Cultural Activities
Senior Citizens Activities
Parks, Trails and Pathways
Continuing Education

Individual sports and fitness
Trails and Pathways
Special Events/Festivals
Youth and Teen Outreach
(After School and Teen Night programs)

Des Moines Park and Recreation provides an innovative approach to youth activities such as this year's opening of a skateboard park and the facilitation of Teen Nights and After School Programs.

Senior Services Program staff works with the Senior Services Advisory Committee which actively provides information on community needs and suggestions for meeting those needs. Seniors make up over 13% of Des Moines' population and are active throughout the community as volunteers, as program participants and as citizen activists. The Senior Services Program provides activities for seniors including daytime educational programs, nutritional meals, day trips and outreach to seniors who are house-bound. The Senior Services Program provides on-site podiatric care and health screenings. Because the Senior Services Program has information on other area senior services, it is an excellent information and referral source in the Des Moines Community.

Community Development: By its mission, the Community Development Department guides and plans for the future, while preserving the quality of life in Des Moines. The Community Development Department manages the Community Development Block Grant (CDBG) program. The goal of this program is to use CDBG funds to develop a viable community in which the quality of life is enhanced in providing a suitable living environment for all citizens and expanding economic opportunities for low and moderate income persons. The CDBG program includes these human-service related objectives:

- (1). To fund projects which address local needs and strategies.
- (2). To assist in meeting the basic human service needs of low and moderate income persons, especially seniors and youth.
- (3). To assist in addressing present and future housing needs of low and moderate income households, including senior and special needs populations in the south King County area.
- (4). To support projects which encourage economic development activities such as job creation and retention, stabilization of commercial areas, community pride and neighborhood assistance and are consistent with the city's comprehensive plan.
- (5). To support programs which assist City residents with incomes at or below 80% of median to repair, maintain and weatherize their homes.

- (6). To assist in the acquisition of facilities which support social services for city residents at or below 80% of median income. Such services and facilities may include but are not limited to day care, health care, family support, senior and youth services.*

*(Source: City of Des Moines 1997 Housing and Community Development Plan Four Year Strategies)

Human Service related strategies for the three year period beginning in 1997 include plans to join other South King County housing providers in the Housing Forum whose goal of developing affordable housing opportunities is accomplished by the following:

- Providing for support of regional shelter and transitional housing for area citizens.
- Proposing a very important prevention strategy to "Address human service needs which focus on self-sufficiency in order to empower families to make contributions to their own well being and quality of life."
- Working with local human service providers to develop innovative methods of leveraging funds to provide maximum effectiveness.
- Including a commitment to participate in local planning activities which coordinate funding approaches, policies and service delivery for all citizens.

Together these three city departments are a powerful force in shaping human service responses. By coordinating and collaborating with one another, the staffs of these departments bring resources to the table including their citizen committees to help shape human service planning for the future. Together they form the first layer of support for human service efforts and expand upon the core definition of human services. The fact that each of these departments provides some element of human services only strengthens the City's statement about the importance of these efforts.

REGIONAL PLANNING BODIES AND WORK GROUPS

South King County Housing Forum: A regional low income housing group which advocates on behalf of affordable housing in an effort to increase the numbers of affordable housing units in South King County. Currently Tukwila and SeaTac are members.

The Human Service Roundtable: County-wide human services planning group made up of local elected officials from each city in King County and County officials.

The South King Council of Human Services: Private, not-for-profit organization of human service providers in South King County. Provides education and information on human services, funders and planning issues.

The South King County Network: Community group created by the State Legislature to assess local needs and fund local programs which address youth violence prevention and community mobilization at the grassroots level.

The South King County Youth Violence Committee: Community task force composed of representatives from local police departments, human services and other concerned citizens to reduce youth violence in South King County. The Youth Violence Committee is the leader for the Community Mobilization Teams of South King County.

The South King County Department of Transportation Special Services Task Force: Regional transportation planning group representing South King County cities, METRO and King County.

Volunteers: With a 17% population of senior citizens, many of who are potential volunteers, and an active business community and Chamber of Commerce with potential volunteers, Des Moines has a wonderful resource for human service activities. At the community summit held in September, 1996, a Volunteer Information Fair was suggested to include churches and other volunteer groups. The Volunteer Information Fair would be one way of better marketing human service volunteer opportunities to those who might want to be of help.

How does Des Moines compare with other cities in South King County responding to human service needs?

South King County human service providers from local cities were asked to provide information about their level of human service funding, sources of human service funding, funded projects, and human service staffing. That information is summarized below:

City of Des Moines: The City of Des Moines provides human services funding from both its Community Development Block Grant funds (\$62,966) and its general fund (\$101,000). The categories for human services funding are listed below in TABLE 8:

TABLE 8: DES MOINES 1997 HUMAN SERVICES FUNDING- GENERAL FUND

Category of Funding	Amount of Funding
Clothing	\$3,500
Information & Referral	\$8,500
Shelter	\$8,000
Food	\$51,000
Safety	\$8030
Training	\$20,000
General	\$1970
TOTAL	\$101,000

City of Federal Way: The City of Federal Way provides human service operating funding from both its Community Development Block Grant funds (\$74,524 for child care subsidies) and its general tax revenue fund (\$382,000). TABLE 9 below details the funding by Council Goals:

TABLE 9: FEDERAL WAY 1996 HUMAN SERVICES FUNDING

Category of Funding	Amount of Funding
Basic Needs	167,273
Public Safety	\$146,450
Self- Sufficiency	\$68,277
TOTAL	\$382,000

City of Kent: In 1997, the City of Kent will provide funding for human service operating funds from both its Community Development Block Grant funds (\$74,249) and from its City general fund (\$389,685). The City of Kent's funding priorities for 1997 are as follows:

- Priority 1 -- Those services which help meet basic and emergency needs (food, medical care, shelter, protection from abuse and neglect).

- Priority 2 -- Programs which are preventative in nature and provide a high degree of self-dependence.
- Priority 3 -- Programs which seek to enhance the quality of life in persons whose human basic needs are already met.

When describing the Kent city-wide approach to human services, the City of Kent provided the following 1996 information in TABLE 10 below:

TABLE 10: KENT 1996 HUMAN SERVICE AND RELATED FUNDING

Category of Funding	Amount of Funding
Office of Housing and Human Services (Includes \$394,702, CDBG Funds)	\$840,664
Water and Sewer Utility Lifeline rates for Senior Citizens	\$ 24,659
Parks and Recreation Programs listed below	
Youth/Teen Programs	\$484,123
Special Populations Programs	\$290,500
Senior Services Programs	\$687,950
Scholarships for Indigent Program Participants	\$ 20,000
Indigent Defense in Municipal Court	\$210,000
Domestic Violence Advocacy	\$ 52,737
Police Department Programs as listed below:	
Youth Wellness Conference	\$ 7,000
Drinking Driver Task Force	\$ 79,893
Project Lighthouse	\$ 23,278
DARE and Explorers	\$ 27,471
TOTAL	\$3,094,175

City of Renton: The City of Renton makes human service operating contributions from its Community Development Block Grant allocations (1997 - \$57,266). General fund allocations which total \$156,047 are outlined in TABLE 10 below. Approximately 54% of human services funding is CDBG -- either operating funds or capital funds invested in programs like home weatherization.

TABLE 11: 1997 CITY OF RENTON HUMAN SERVICE FUNDING

Services Funded	Amount of Funding
Renton Area Youth and Family Services	\$67,258
Way Back Inn	\$6,000
Central Seattle Community Health Centers	\$3,000
Connection Adult Day Care	\$8,000
Visiting Nurse Services	\$1,900
King County Sexual Assault Resource Center	\$30,456
Domestic Abuse Women's Network	\$20,000
Renton Area Clothing Bank	\$5,000

Renton Technical College Even Start	\$9,433
Washington Women's Employment and Education	\$5,000
TOTAL	\$156,047

City of SeaTac: SeaTac provides human service funding both through Community Development Block Grant Funds and General Revenue. 1997 CDBG funding recommendations were for \$181,833 in capital projects and \$31,360 in public service funds. General Fund tax dollars contributed \$173,000 in 1996 to human service contracts, and in 1997, the recommendation is \$191,095.

TABLE 12: 1997 CITY OF SEATAC PUBLIC SERVICE FUNDING

Services Funded	Amount of Funding
Des Moines Food Bank	\$11,260
Emergency Feeding Program	\$10,000
SKC Multi-Service Center Housing	\$10,100
TOTAL	\$31,360

City of Tukwila: The City of Tukwila is proposing 1997 funding for human services at a total of \$276,318 from the general tax fund of the City's budget. Briefly, funding categories are listed below in TABLE 13.

TABLE 13: 1997 CITY OF TUKWILA HUMAN SERVICE FUNDING

Category of Funding	Amount of Funding
Victim Assistance	\$59,808
Senior Support Services	\$33,627
Emergency Services	\$36,071
Health Care	\$3,750
Youth and Family Services	\$103,332
Information and Referral	\$7,550
Employment Assistance	\$32,180
TOTAL	\$276,318

TABLE 14: HUMAN SERVICE QUESTIONNAIRE RESPONSES ABOUT STRUCTURE, FUNDING AND STAFFING OF SOUTH KING COUNTY HUMAN SERVICE PROGRAMS

Summary responses to a human service questionnaire regarding the structure, funding and staffing in South King County cities.

City	Location of Human Services	% General Fund	1996 Budget	Proportion of CDBG	Staffing Levels	Funding Sources	CDBG Contribution	1996-1997 Priorities
Des Moines	Park and Recreation/ Senior Services Program	1%	\$83,000	14%	Senior Services Manager/staff support	General tax revenue	Housing assistance	Food, shelter, clothing, safety, info/referral
Federal Way	Community Development Services	1%	\$382,000	None	2 Prof. staff, .5 support staff	CDBG - 1 staff, General Fund - 1.5 staff	\$75,524 Child care subsidies	Basic and emergency needs; public safety; self-sufficiency building collaborations and strong neighborhoods
Kent	Planning Department	1%	\$840,664	47%	3.6 Prof. Staff, 1 part-time support	CDBG and General Fund	\$394,702	Basic and emergency needs; prevention; quality of life
Renton	Community Services Dep't/Human Services Division	7%	\$683,177	54%	3.5 Prof. staff 1 Housing maintenance worker; 1 support staff	General Fund - 2 staff, CDBG - 2.5; 1 Vista	\$54,414	Youth and families; medical/dental; basic services and housing
SeaTac	City Manager	1%	\$413,471	6%	1 Prof. staff	General Fund; CDBG	N/A	Emergency services; Access, support services
Tukwila	Mayor	2%	\$431,500	None	2 Prof staff	General Fund	None - 15% is used for human service related city programs	Positive/healthy family relationships; family self-sufficiency; safety net for urgent and basic needs.

What are some promising approaches for human services?

Trends in human services provision that offer some promise for impacting human service needs in very positive ways:

Collaborative grant proposals: More and more funders are requiring collaborations between various sectors of the community to assure that a coordinated approach will have the greatest impact. For instance, where a human service agency used to be able to apply for funding to do a specific service in a specific place, today, they will be asked to have partners in the provision of service. City departments can collaborate with one another in the planning for grant-funded projects and can connect with community-based groups to enrich the approach.

Collaborations involving community partners require a bottom-up decision making process in which each of the stakeholders have a voice in how the project is shaped. This approach provides a basis for commitment and ownership of ideas. Often funders will ask for the signatures of all partners and a listing of their affiliations.

Outcome-based projects: Funders are also requiring outcome indicators of progress in alleviating human service problems. Outcomes are most effective when there are quantifiable measures of impact. For instance, if the goal of a human service project is to strengthen a community's crime prevention activities, outcomes would be reduction in the crime count for that area.

Economic self-sufficiency: Helping people help themselves off welfare, out of public housing towards economic self-sufficiency is the latest trend with the U.S. Department of Housing and Urban Development. One such project is the Family Self-Sufficiency Program of the King County Housing Authority. Currently there are seven families in Des Moines, all single parent families where the parent has signed an agreement that within five years, she will be employed and self-sufficient. After completing training and getting a job, she will experience increases in rent. The difference between the initial rental rate and the increases will be banked in an escrow account which will be given to the woman when she completes her self-sufficiency agreement with the Housing Authority. These families are often in need of some extra support as they struggle toward economic self sufficiency. The program coordinator is the case manager to participants in the program and can work with community groups interested in partnering to help support the resident's efforts.

Community mobilization: At the grassroots level, groups of citizens are forming to tackle problems in their neighborhoods and communities. Through a collaborative effort, citizens target prevention projects which can reduce the rate of youth violence and/or substance abuse. In South King County, the Youth Violence Committee has adopted the use of the Communities That Care Model of community mobilization. So has the

Community Network, a legislatively created program to fund local community efforts. Community mobilization is a prevention based project that measures both risk and protective factors in a community and then develops strategies that reduce the risks and build the protective factors. In the Highline area, there is a community mobilization team. The South King County Youth Violence Committee is the leader of the South King County Community Mobilization Agenda of which the Highline group is one of eight members.

Community-Oriented Policing: Des Moines already has a good start in community-oriented policing programs. Expanding on the apartment manager's meetings might be a very helpful way to reduce crime in apartments and create greater community attachment. Two prevention outcomes which are very critical to healthy community building can come from an expanded involvement with apartment communities:

- (1). The crime rate in multi-family communities will be reduced.
- (2). Families will stay longer if they feel safe in their homes. Having families bond with the community and children stay in the same school longer are very important to preventing future problems.

The City of Tukwila has developed a Crime-Free Multi-Housing Project which is a collaboration between the police department and the human services program.

Americorps and Vista Volunteers: Accessing these programs can provide additional resources to the Des Moines Community to organize programs and serve as staff to those services.

Parkside Family Support Center: This resource center for families and children at Parkside Elementary School is supported in part by the City of Des Moines. The concept of the family support center is a part of the Highline School District designed to involve families more in the school community, to assist with parent education, and to muster resources that help children stay in school and succeed in school.

What human services ideas emerged from the 1996 Community Summit?

At the 1996 Greater Des Moines Chamber of Commerce Community Summit, a variety of human services ideas emerged. Participants in the Human Services Discussion Group made a commitment to work on the following plan of action:

- (1). Create a one-stop multi-service center to house human services.
- (2). Improve communications between groups concerned with human services including the consumers.
- (3). Provide more transitional shelters for families.
- (4). Hold a Volunteer Information Fair to get citizens more involved.
- (5). Offer more public health services at local sites in Des Moines.
- (6). Work with the School District Family Support Centers to set up a rental scholarship fund for the families of children who need to improve their school attendance. It would be an agreement between the family and the scholarship fund or church sponsor (donations would be from members of the church) that as the children's attendance improved, part of their monthly rent would be paid by the fund.
- (7). Continue the Open House with broad-based community support including the Chamber of Commerce in conjunction with other interested individuals and groups.

HUMAN SERVICES COMMITTEE 2003 FUNDING RECOMMENDATIONS

9/6/02

Requesting Agency	2002 Allocation	2003 Request	Grant Summary	Executive Target-\$74,664	10% Cut- \$67,198	15% Cut- \$63,465
Auburn Youth Services	0	\$3,500	Mobile outreach to homeless and runaway youth in S. King Co.	\$3,500	\$3,150	\$2,975
Catholic Community Services: -Emergency Assistance -Katherine's House -Children's Domestic Violence Program	\$6,000 0 0	\$6,000 \$2,000 \$2,000	Emergency Assistance Program. Service to homeless chemically dependent women in recovery. Helping children who have witnessed domestic violence.	\$6,000 0 0	\$5,400	\$5,100
Center for Career Alternatives	0	\$21,172	Low Tech. High Wages Initiative	0		
CHANGES Support Group	\$1,500	\$2,000	Parent Support Group	\$1,500	\$1,350	\$1,275
Child Care Resources	\$1,334	\$2,600	Childcare resources and referral	\$1,334	\$1,201	\$1,134
Crisis Clinic: -Telephone Services -Teen Link	\$2,000 \$1,000	\$5,000 \$3,000	Telephone services Teen crisis line	\$2,500 \$1,030	\$2,250 \$927	\$2,125 \$876
DAWN	0	\$10,000	Confidential Domestic Violence Shelter	\$5,000	\$4,500	\$4,250
Des Moines Area Food Bank	\$25,000	\$29,500	Food for those less fortunate	\$25,000	\$22,500	\$21,250
Des Moines Parks & Recreation- After School Program	0	\$8,000	After School Program At North Hill Elementary	\$5,000	\$4,500	\$4,250
HCC- Volunteer Literacy Program	\$2,000	\$2,000	Volunteer Literacy Program	\$2,000	\$1,800	\$1,700

Requesting Agency	2002 Allocation	2003 Request	Grant Summary	Executive Target-\$74,664	10% Cut- \$67,198	15% Cut- \$63,465
Highline Community Hospital: -Highline Youth Center -Highline Midwifery -Roxbury Family Healthcare	0 0 0	\$10,000 \$5,000 \$5,000	Health services for teens. Midwifery and Women's Health. Family Healthcare.	0 0 0		
Hospitality House	0	\$5,000	Shelter for single homeless women	\$5,000	\$4,500	\$4,250
King Co. Sexual Assault Resource Center	\$4,000	\$5,000	Comprehensive sexual assault services	\$4,000	\$3,600	\$3,400
LOVE Inc.	\$1,430	\$1,430	Family REACH Program	0		
Multi-Service Center: -Emergency & Transitional Housing -Energy Crisis Intervention Program	\$2,000 \$3,000	\$2,100 \$3,000	Emergency & transitional housing Energy Crisis Intervention	\$2,000 0	\$1,800	\$1,700
Parkside Family Center	\$6,800	\$7,400	Parkside School Family Center	\$6,800	\$6,120	\$5,780
Pregnancy Aid	0	\$4,000	Pregnancy aid to parents	0		
Ruth Dykeman Children's Center	0	\$12,330	In-Home Counseling Services	0		
Senior Services of Seattle/King Co: -Meals on Wheels -Volunteer Transportation	\$1,500 \$2,000	\$2,000 \$2,000	Meals on Wheels Program Senior Shuttle Transportation	\$2,000 \$2,000	\$1,800 \$1,800	\$1,700 \$1,700
South Seattle Com. College: -APPLE Parenting -Baby & Me	\$2,500 0	\$3,000 \$5,000	Parenting Skills Program Child Abuse Prevention & Intervention	0 0		
Total Funds	\$74,664	\$118,530		\$74,664	\$67,198	\$63,465

South King County Cities
Human Services General Fund
2003 Application

City of Des Moines

This application due: Friday, June 14, 2002
By 4:15pm.

This following cities accept this common application:

Auburn
Burien
Covington
Des Moines
Federal Way
Kent
Renton
SeaTac
Tukwila



❖ Contact List

If you have questions regarding this application, or require technical assistance please contact city staff listed below:

Auburn	Shirley Aird, Planner	(253) 931-3090	saird@ci.auburn.wa.us
Burien	Lōri Fleming, Contract Management Analyst	(206) 248-5518	lorif@ci.burien.wa.us
Covington	Victoria Throm, Human Services	(253) 638-1110	Vthrom@Ci.covington.wa.us
Des Moines	Sue Padden	(206) 878-1642	Spadden@cityofdesmoines.com
Federal Way		(253) 661-4039	
Kent	Katherin Johnson, Human Services Manager	(253) 856-5070	kjohnson@ci.kent.wa.us
	Merina Hanson, Planner		mhanson@ci.kent.wa.us
	Dinah Wilson, Planner		drwilson@ci.kent.wa.us
Renton	Karen Bergsvik, Human Services Manager		kbergsvik@ci.renton.wa.us
	Dianne Utecht, CDBG Coordinator	(425) 430-6655	dutecht@ci.renton.wa.us
SeaTac	Lydia Assefa-Dawson, Programs Coordinator	(206) 248-6101	lydia@seatac.wa.gov
Tukwila	Evelyn Boykan, Human Services Coordinator	(206) 433-7180	eboykan@ci.tukwila.wa.us

❖ Information for the City of Des Moines

***Applications must be received at Des Moines City Hall no later than 4:15pm, Friday, June 14th.
NO LATE APPLICATIONS WILL BE ACCEPTED. Please deliver applications to 21630 11th Avenue
South.***

Amount of grant available: Approximately \$60,000

Submittal requirements: One signed original application with NO attachments and seven copies of signed application.
Do not bind, staple, or cover the documents
Do not submit instructions

Contact: Sue Padden, Senior and Human Services Manager
Phone: 206-870-6584
Fax: 206-878-2260
E-mail Spadden@cityofdesmoines.com

Allocation Process:

<i>April22-June 14</i>	Individualized technical assistance is available and strongly encouraged. Please contact Sue Padden at 206-878-1642
<i>June14, 2002</i>	Applications due at City Hall by 4:15 p.m.
<i>June17- July 1</i>	Applications reviewed by City staff
<i>July – August</i>	Applications reviewed by Human Services Committee
<i>September,2002</i>	Funding recommendations forwarded to City Council
<i>November, 2002</i>	City Council finalizes the allocations of Human Services funds

❖ Application Instructions

The South King County cities have collaborated to produce a "Common Application" for general fund human services and CDBG funding. Local policies and processes necessitate some variations.

Therefore, you must obtain an application and instructions from each jurisdiction from which funding is requested. Throughout the following instructions, "City" refers to the City to which you will submit the application.

Refer to these instructions as you are filling out the application. The instructions will guide you with further explanation, examples and attached reference information. **Read the entire application before answering the questions. Limit all answers to the space provided. Do not add additional pages. You may use the forms provided or print your own forms (however, you MUST maintain the same format as the forms provided. Do not change fonts, print size, margins, space between questions, etc.).** The application is available on disk in Microsoft Word. **Call the City to which you are applying to request the application in alternate formats.**

Note: Applicants/agencies may provide one service or many related services with City funds. Throughout this application all of the related services shall be defined as a "program". It is also possible that an agency will provide more than one "program". If the agency is requesting City funding to provide more than one program, a separate Part II must be completed for each program. Agencies should complete only one Part I.

Application Instructions

Part I Agency Profile

Part I should be completed only once.

- To start. With the cursor in question one, select the View menu, then Headers and Footers. In the Header – Section 2 box, type of the name of the agency and the program name in the cells provided. If you are submitting an application for more than one program, revise this header for each program you are submitting.
- Question 1. Both the Agency Executive Director and the Board President/Chair signatures are required for this application.
- Question 2. The funding amounts requested in this chart refer only to those amounts requested from the *City*.
- Question 3. Self-explanatory
- Question 4. Answer the questions regarding the Board of Directors.

Community Coordination

- Question 5. Provide a description of the program's efforts to increase awareness regarding program services within the community. Describe any surveys, marketing brochures or other means your program may have employed to reach consumers. Provide a description of the efforts your program will take in 2003 to increase and maintain awareness regarding program services within the community. Describe any surveys, marketing brochures or other means your program will employ to reach consumers.
- Question 6. Discuss the relationships you have developed to collaborate with others to provide services to the community. Include the specific agencies you are collaborating with and what you do.
- Question 7. Self-explanatory

Accessibility and Cultural Relevance

- Question 8. Cite specific examples for each of the six listed factors which impact program accessibility.
- (a) Self-explanatory
 - (b) Include information on your program's **outreach efforts** to minority and special needs populations. Also include information on any **staff training related to cultural sensitivity and competency**.
 - (c) Describe the availability of the agency's physical site in terms of disabled access and proximity of services to city residents.
 - (d) If the program is located outside of the city, describe how city clients will access the service.
 - (e) Self-explanatory
 - (f) Attach policies to original application

Part II: Program Profile

Program Summary

- Question 9. List the official title of the program for which funding is requested.
- Question 10. List one person as the contact that can answer questions specific to this program.
- Question 11. Provide the address of the physical location(s) where the services will be provided. If the location is confidential, state such.
- Question 12. Briefly describe the program for which funding is requested. Include a summary of program goals, objectives and the target population.
- Question 13. If the scope or services of the program have changed (or are expected to change), please briefly describe. Discuss the contingency plans for any decreases in funding.

Question 14. Use supportive statistics to provide information about the need/problem that your program will address. Include information about populations that are effecting the program.

Program Budget

Question 15. On the chart provided, list the various sources and amounts of revenue provided to your program in calendar years 2002 and requested in 2003. List each city separately. List the amount of fees collected in the " Service Fees " row and provide an estimate of fees to be collected in 2003.

In the "Personnel Costs" category, list the total salary and benefit amounts for all staff associated with the **program**. The "Professional Fees/Contracts" category should include contracted expenses (i.e. accounting and legal professional services) and the maintenance of professional licenses, if applicable. List the program's expenditures according to the categories provided. Provide projected expenditures for calendar year 2003. In the last column, include only funds requested from the **City** under this application, by appropriate expenditure category.

In the Net Profit (Loss) line subtract expenses from revenues for the Net Profit (Loss). If the figure is a loss enclose the amount in brackets (i.e., <\$1,000>).

Question 16. Using a narrative description explain how City funds as shown in the budget will be used. Be specific. Specify the service(s) that will be provided with the *City* funds requested. Include the unit of service and the population to be served. For example, "200 hours of counseling for teenage substance abusers". State specifically how City funds will be used to provide these services. For example, "Salary of a counselor, rent, motel vouchers, etc."

Question 17. Describe any current or projected changes to the program budget. This should include changes as a result of decreased funding from the County, State, donors, etc.

Question 18. In the Personnel Expenditures charts only include City funded positions. Annual Salary Range should reflect the annual FTE salary scale for each position included. In the City Funds Requested column indicate the amount of City funds which will be used for each position. Example:

Custodian	.5	1 part-time	\$24,000 - \$28,500	\$4395
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Also calculate the percentage of the total program budget that is used for program administration and insert that percentage in the box to the right of the question.

Question 19. Describe efforts to use City funds to leverage funding from other sources. Include any funding sources requiring City funds as a match and how much is required.

Performance Measures

Question 20. This information will be used by the *City* to develop 2003 contracts with funded agencies. Please provide accurate and realistic estimates. Use this section to define at least two (2) and no more than four (4) performance measures your agency plans to report. Estimate the number of units to be provided for each measure annually.

In the column "Annual Goal (city funds only)" estimate the number of units that will be funded by the City for city residents. The last column, "Annual Goal (all funding sources)" should be the total number of city residents receiving the program services funded by all sources (including City funding).

The *City* has included "Unduplicated *City* Clients Served" as a required performance measure. Please estimate (based on past performance, if applicable) the number of unduplicated *city* clients the program expects to serve in the spaces provided. You must also provide a minimum of one additional performance measure in the form of a measurable unit of service (see Appendix C, Service Unit Examples for guidance).

In the space provided, define each of the service units the program has identified in the performance measure(s) above.

Outcome Measures

Question 21. (a) List the resources needed to accomplish the outcomes
(b) List the specific activities used to meet the outcomes.
(c) Identify the outputs or performance measures related to the outcome.
(d) Identify one to two outcomes.

See Appendix E, Outcome Measures Example for guidance.

Demographic Information

Question 22. (a) Please note that the categories from Client Income Level through ESL should reflect the number of **city clients only** served by your program. Provide demographic information on clients served in 2002 in the first column. In the last column provide estimated 2003 demographic information.

Definitions:

Income Level: Use the guidelines provided in Appendix A.

Sex: Self-explanatory

Female Headed Household: Single parent, female headed households

Age: Self-explanatory

Ethnicity: Self-explanatory

Disabling Condition: Use definition of disabling conditions provided in Appendix B

Limited English Speaking: Clients for whom English is a second language and who require interpretive or translation services.

(b) **Client Residence:** Only those clients who reside within the ***incorporated limits*** of a city should be included as residents of that city. For example, clients residing in "unincorporated Kent" for example should be included in the Unincorporated King County category. Remember to provide different sets of numbers for each city to which you are applying.

Attachments

IMPORTANT: The City of Des Moines does NOT require attachments.

❖ Human Services General Fund Application

Part I: Agency Information

★ Complete this section once for your agency ★

1. Applicant Name and Address E-mail address (if applicable) Signature of Agency Board President 	Signature of Agency Director Signature Name and Title (Area Code) Telephone (Area Code) Fax Number
--	--

By signing above, you certify that the information in this application is accurate to the best of your knowledge.

 Attach Program Contact Sheet –Appendix D

2. Program Cost: List each program for which the agency is submitting an application for 2003 funding.	
Program Title	2003 General Funds Requested
Totals All Programs	

3. Summarize current services provided by your agency

4. Board of Directors information

How many current board members are there?

How many positions are currently vacant?

How many board members are from the City of Des Moines?

How many board meetings were held in the last 12 months?

How many meetings had a quorum present?

What are the requirements for board membership and how does the agency recruit members?

Community Coordination

5. How does your agency make its services known to the community?

6. With whom does the agency collaborate to provide services? Be specific and give examples.

7. Describe how the agency uses volunteers and what positions they fill.

Accessibility and Cultural Relevance – New Agencies Only

8. Describe how the agency is accessible or is working toward full accessibility in terms of:

a) affordability (sliding fee scale, scholarships, toll-free phone numbers, etc.):

b) cultural and linguistic accessibility, relevance, and sensitivity (ethnicity of program staff, training of appropriate staff, and translation services):

c) communication and physical accessibility (for persons with physical disabilities):

Does the program provide TTY/TDD phone service for the speech and hearing impaired?

Yes ☐

No ☐

If yes, TTY/TDD _____

d) transportation (proximity to public transportation, special transportation programs, vouchers, etc.):

e) immediacy of services (waiting lists, prioritization of client need, etc.):

f) non-discrimination (written policies, practices):

Part II: Program Description

⚡ Attach a separate Part II for each program for which the agency is requesting funds ⚡

9. Title of Proposed Program

10. **Program Contact Person:** This must be someone who will be available to answer questions during July and August

Name and Title

(Area Code) Telephone

E-mail address (if applicable)

(Area Code) Fax Number

11. Program Location(s)

12. **Program Summary:** Describe the target population, program goals and objectives for this program.

13. Describe program modifications during the past year or expected in the next year

14. Document the health or human service issue this program will address. Is there any particular population that is having a significant impact on the program? Explain

Agency: _____

Program: _____

15. Program Budget: All columns should include total program revenue and expenses except for the last column, representing the grant request.

Revenue Source	2002 Program Revenue	2003 Program Revenue Requested
Federal		
State		
County		
Cities (indicate city name below)		
Foundations		
United Way		
Service Fees		
Other:		
TOTAL REVENUE		

Expenses	2002 Program Expenditures	2003 Program Expenditures	2003 Funds Requested from City
PERSONNEL COSTS			
Salaries			
Benefits			
Total Personnel			
OPERATING SUPPLIES			
Office Supplies			
Rent and Utilities			
Repair & Maintenance			
Insurance			
Postage & Shipping			
Printing & Advertising			
Telephone			
Equipment			
Conference/Travel/Training			
Dues & Fees			
Professional Fees/Contracts			
Direct Assistance to Indiv.			
Administrative Costs			
Other (specify below)			
TOTAL EXPENSES			
NET PROFIT (LOSS) (revenue - expenses) =			

16. In narrative form, explain the use of grant funds as shown in the Program Budget

17. Are there significant budget changes from previous years? What are your plans to address those changes?

18. Program Budget – Detailed Personnel Costs

Job Title	# of FTE Positions	Number of Employees		Annual Salary Range for 1 FTE		Funds Requested
		Full Time	Part Time	Min.	Max.	

What percentage of the this program budget is used for administration (include all costs related to carrying out activities assisted in whole or in part with grant funds).

%

19. What plans do you have to leverage other funding? What funding sources require a match from the City?

20. Performance Measures: List two or more quantitative performance objectives for the program year. One objective must be the number of unduplicated city residents to be served. Additional performance objectives must be in terms of measurable units of service, which describe the type of services given (see Appendix C, Service Unit Examples for guidance).

Measure	Annual Goal (city funds only)	Annual Goal (all funding sources)
1 Unduplicated City Clients Served		
2		
3		
4		

Define each service unit.

- 1
- 2
- 3
- 4

Agency: _____

Program: _____

21. Outcome Measures: List one or two measurable outcomes of the proposed program. An outcome measure is a systematic way to assess the extent to which a program has achieved its intended result. An outcome answers the question, "What has changed in the lives of individuals, families, or the community?" The following chart is similar to the one used by agencies applying to United Way of King County. Refer to Appendix E for an example of a completed outcome measures form. Questions on completing this chart should be directed to the city to which you are applying.

RESOURCES	ACTIVITIES	OUTPUTS	OUTCOMES

22. Program Demographic Information: Only report the number of Des Moines clients served by this program in the number of clients column. Provide the percentage of the total client population in the percentage of clients column. For income level use the 2002 HUD Income Guidelines given at Appendix A. For disabling condition, use the definition provided at Appendix B.

Select one ☐ Individuals ☐ Households		2002 # of Clients (extrapolated)	2003 Est. # Clients
Client Income Level	30% of median or below		
	50% of median or below		
	80% of median or below		
	Above 80% of median		
	Unknown		
	TOTAL		
Client Gender	Female		
	Male		
Household	Female-Headed Household		
Client Age	0-4		
	5-12		
	13-17		
	18-34		
	35-54		
	55-74		
	75+		
	Unknown		
	TOTAL		
Ethnicity/ Cultural Background	Asian/Pacific Islander		
	Black/African American		
	Hispanic/Latino		
	Native American/ Alaskan Native		
	White/Caucasian		
	Other		
	Unknown		
	TOTAL		
Condition	Disabling Condition		
ESL	Limited English Speaking		

22 (cont.) Program Demographic Information: Please use total program numbers for this chart.

	Jurisdiction	2002 # of Clients (extrapolated)	2003 Est. # Clients
Client Residence	Algona		
	Auburn		
	Black Diamond		
	Burien		
	Covington		
	Des Moines		
	Enumclaw		
	Federal Way		
	Kent		
	Maple Valley		
	Milton		
	Normandy Park		
	Pacific		
	Renton		
	SeaTac		
	Seattle		
	Tukwila		
	Unincorporated. King County		
	Other:		
	Unknown		
	TOTAL		

**CHECKLIST
FOR REVIEWING
HUMAN SERVICES APPLICATIONS**

YES NO

- | | | |
|--------------------------|--------------------------|---|
| ☐ | ☐ | Does the proposal primarily benefit Des Moines residents? |
| ☐ | ☐ | Does proposal meet the City's priorities for funding:
1. meet basic & emergency needs (food, shelter, clothing, and safety)
2. program which is preventative in nature and promotes healthy, violence free families and self-dependence.
3. program that seeks to maintain & enhance the quality of life in persons whose basic human needs are already met. |
| ☐ | ☐ | Will this proposal fill a gap or unmet need? |
| ☐ | ☐ | Is this proposal appropriate for Des Moines, or are other agencies or levels of government more suited to provide the service? |
| ☐ | ☐ | Has the City funded the agency before? |
| ☐ | ☐ | Does the proposal provide culturally appropriate services to diverse populations? |
| ☐ | ☐ | Do the proposal outcomes appear achievable? |
| ☐ | ☐ | Is the program accessible? (easy to get to for Des Moines residents, ADA requirements being met, hours of operation, etc.) |
| ☐ | ☐ | Does the proposal make sense? Is it logical? |
| ☐ | ☐ | If the program serves multiple cities, have the other cities been asked to also fund the services? |
| ☐ | ☐ | Is the amount of money requested proportionate to the number of Des Moines residents being served? |
| ☐ | ☐ | Will City funding supplant other monies (i.e., client donations or fund-raisers)? |
| ☐ | ☐ | Is there evidence of collaboration with other agencies? |

A G E N D A I T E M

SUBJECT:

*Draft Ordinance No. 02-186
Dangerous Fences*

DATE SUBMITTED: October 29, 2002

AGENDA OF: November 21, 2002

DEPT OF ORIGIN: Community Dev.

ATTACHMENTS:

1. Draft Ordinance No 02-186

CLEARANCES:☒ COMM DEV☒ LEGAL

APPROVED BY THE CITY MANAGER FOR
SUBMITTAL: _____

PURPOSE AND RECOMMENDATION:

The attached ordinance proposes to regulate razor wire and other dangerous fencing. Motions consistent with staff recommendation are provided below:

Motion 1:	"I move to suspend City Council Rule #26(b)."
Motion 2:	"I move to adopt Draft Ordinance No. 02-186."

*Approved
come forward
to January 9*

BACKGROUND:

At the July 25, 2002 regular meeting, the City Council heard a citizen's concern regarding the dangers of razor wire to the safety of people, pets, and wildlife. Based on this testimony, the Council directed staff to prepare a draft ordinance regulating razor wire fencing.

DISCUSSION:

Razor wire, which is most often used as a security measure, is very sharp and can easily harm anything that comes into contact with it. There are other methods of securing property that are not as hazardous, such as 6' fences with straight strands of barbed wire located on top of the fences, security lighting, and security cameras.

In addition to razor wire, Staff has determined that there is also a need for additional regulations for other types of dangerous fencing, including barbed and electric wire. In review of our current zoning code it was discovered that there are no regulations for dangerous fences. The proposed ordinance is intended to add the necessary guidelines as a new section of the zoning code, briefly described below.

- Prohibit the use of razor wire, except as provided in subsection (6) of the proposed ordinance.

- Restrict electric fencing to zones containing grazing animals.
- Regulate the number of strands of barbed wire.
- Regulate the height of barbed wire fences.

To help alleviate the current problem the draft ordinance also states that all existing fences must be brought into compliance with this new section within 60 days of adoption by the City Council.

ALTERNATIVES:

The City Council may:

1. Suspend Council Rule 26(b) and adopt the draft ordinance as written.
2. Adopt the draft ordinance as written after a second reading.
3. Suspend the Council Rule 26(b) and adopt the draft ordinance with amendments by the City Council.
4. Adopt the draft ordinance with amendments by the City Council after a second reading.
5. Do not adopt the draft ordinance.

FINANCIAL IMPACT:

Property owners of dangerous fences that are in violation of this proposed ordinance would be required to remove dangerous portions of the fence at their own cost. It is anticipated that the cost of removal of razor wire and similar materials will be insignificant, however, installing a new type of security system will vary depending on the security needs of the site. The property owners will be encouraged to contact the Police Department for a security survey. A security survey is a free service offered by the city to help people determine the best way to protect their property.

There will be no financial impact to the City of Des Moines.

RECOMMENDATION/CONCLUSION:

Administration recommends that the Council adopt the draft ordinance as written.

CONCURRENCE:

The following departments have been involved in the draft ordinance:

- Community Development Department
- Legal Department
- Police Department

The Police Department has expressed concerns about a total ban on razor wire due to security issues. Community Development and the Police Department will work together to develop other options using the types of fencing allowed within the ordinance.

DRAFT ORDINANCE NO. 02-186

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to dangerous fences; adding new sections to chapters 18.04 and 18.40 DMMC.

WHEREAS, there is razor wire and barbed wire fencing located within the City, and

WHEREAS, citizens of Des Moines have voiced concern over the presence of razor wire fencing, and

WHEREAS, coiled barbed wire fencing poses a similar threat, and

WHEREAS, razor wire and materials of similar design pose a danger to wildlife and domestic pets, and

WHEREAS, razor wire and coiled barbed wire also create a safety hazard for human beings, and

WHEREAS, existing regulations do not address dangerous fences, and

WHEREAS, an environmental checklist for this ordinance was prepared and was reviewed by the responsible SEPA official of the City of Des Moines, and a Determination of Non-Significance was issued on October 23, 2002 under the State Environmental Policy Act, RCW 43.21C, (SEPA) and the Administrative Guideline and local ordinance adopted to implement SEPA, and

WHEREAS, by motion regularly passed, the Des Moines City Council scheduled a public hearing for _____, 200__, to consider the textual code amendments contained in this ordinance, and

WHEREAS, notice of the public hearing was given to the public in accordance with law and a public hearing was held on the ____ day of _____, 200__ and all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the amendments contained in this ordinance are appropriate and necessary for the preservation of the public health and welfare; now therefore,

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

NEW SECTION. Sec. 1. Three new sections are added to chapter 18.04 to read as follows:

(1) "Barbed wire" means twisted wires armed with barbs or sharp points.

(2) "Dangerous fence" means a fence which is designed to be able to or is likely to inflict injury or harm. The term includes, but is not limited to, fences constructed of or including barbed wire or razor wire.

(3) "Razor wire" means tense steel coil around which a tape of razor sharp spikes are attached; also called concertina wire.

NEW SECTION. Sec. 2. A new section is added to chapter 18.40 to read as follows:

Dangerous Fences

Dangerous fences are subject to the following restrictions:

(1) Fences containing razor wire, coiled barbed wire, or material(s) of similar design are prohibited in all zones, except that the Community Development Director may approve such dangerous fences for jails, detention facilities and other methods of court-ordered personal confinement, through the building permit process. Only those fences to be used for the purposes set forth in this paragraph will be allowed under such permit.

(2) Electric fences are not permitted in the city except when used to contain grazing animals in an area zoned to allow such a use. Electric fences must be set back at least five (5) feet from the property line and/or must be enclosed by additional fencing or other barriers which prevent access to the electric fence by small children on the adjacent property.

(3) A barbed wire fence may be a maximum of 5' in height and may contain four (4) strands of taut parallel barbed wire.

(4) A non-dangerous fence or wall may incorporate a maximum of three (3) strands of parallel barbed wire a maximum of 2' in height on top of the fence, so long as the orientation is either straight up or angled in toward the enclosure. If such fence is not located within 10 feet of the marginal line of any sidewalk or pedestrian way, the orientation of the barbed wire strands may be angled out toward the exterior of the enclosure. No portion of the fence may overhang any property line.

(5) In residential zones, all permitted dangerous fences shall comply with height and setback restrictions for all fences as set forth in DMMC 18.40.150. For properties where both codes apply, the more restrictive code shall prevail.

(6) All fences not in compliance with this section shall, within sixty (60) days of notification from the City, be removed by the owner or, upon failure to remove the fence, the Community Development Director is empowered to cause the removal of the fence, the cost of which shall be billed to the owner.

NEW SECTION. Sec. 3. Severability - Construction.

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

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

NEW SECTION. Sec. 4. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

Scott
- fences too short
- se fences too big
- barb wire out
- not in.
- wait do it
Gary P.

Not buried
pet
containment

get
CC
for Maggie

look @ allowing
other
zones

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____

DRAFTORD:U:\CELESTE\ORDINANCES\RAZORWIRE

m.

AGENDA ITEM

SUBJECT:

Interlocal Agreement with the City of Kent for Pacific Highway South Project Design

ATTACHMENTS:

1. Interlocal Agreement

AGENDA OF: November 21, 2002

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: November 15, 2002

CLEARANCES:

☒ Finance

☒ Public Works M. Andrews

☒ Legal

**APPROVED BY CITY MANAGER
FOR SUBMITTAL:**

Purpose and Recommendation:

The purpose of this item is to enter into an agreement with City of Kent to cover their participation in costs for the design of the Kent-Des Moines Road Intersection segment of the Pacific Highway South Redevelopment Project.

Suggested Motions

The following motion will appear on the Consent Calendar:

- 1) "I move to enter into the attached agreement with the City of Kent for their participation in costs of design work for the Pacific Highway South Project and further to authorize the City Manager to sign said agreement substantially in the form as submitted."

Background:

The City boundary with the City of Kent on Pacific Highway South divides Kent-Des Moines Road. The City of Des Moines plans to complete its Pacific Highway South project prior to Kent completing their similar project on their adjacent segment of Pacific Highway South. The City of Des Moines project includes the addition of a left turn lane and associated widening to Pacific Highway South on the north side of Kent Des Moines Road. It also includes the replacement of the signal at this intersection.

Discussion:

In order to align the new lanes with the lanes in the City of Kent, additional paving and improvements will need to be constructed for a short length on the south side of the intersection. Kent has agreed to pay for these improvements. The attached agreement

provides for the design phase of this work. In the near future, staff will be negotiating with the City of Kent for participation on the construction phase of this work as well. Our staff is currently finishing the design of the third detention/water quality pond which is planned to be located in the City of Kent behind the QFC on Kent-Des Moines Road. Another agreement will be written to purchase the land for this pond from the City of Kent.

This agreement also acknowledges that the City of Kent will require undergrounding of utilities, and may need to use condemnation authority over parcels located on the west side of Kent's portion of Pacific Highway South, but in the City of Des Moines. It further agrees that the City of Des Moines will require developers to either construct improvements or collect in-lieu fees for improvements on Kent's portion of Pacific Highway South.

Alternatives:

The City could elect to complete the Pacific Highway South Project without accepting funds from the City of Kent.

Financial Impact:

Per this agreement, the City of Kent will provide \$72,737 toward the City's Pacific Highway South Redevelopment Project.

Recommendation/Conclusion:

Staff recommends that we enter into this agreement with the City of Kent and accept the funds offered.

Concurrence:

Legal and Finance are in agreement that the City should enter into these agreements with WSDOT.

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF KENT AND THE CITY OF
DES MOINES REGARDING THE
PACIFIC HIGHWAY SOUTH HOV LANES PROJECT**

THIS INTERLOCAL AGREEMENT is entered into between the City of Kent, a Washington Municipal Corporation, located and doing business at 220 Fourth Avenue South, Kent, Washington 98032 (hereinafter called "City of Kent") and the City of Des Moines, a Washington Municipal Corporation, located and doing business at 21630 11th Avenue South, Des Moines, Washington 98198 (hereinafter called "City of Des Moines").

RECITALS

WHEREAS, the City of Kent is in process of designing a roadway improvement project, commonly known as Pacific Highway South HOV Lanes Project, which commences generally from the Municipal City Limits at the center of the Kent-Des Moines Road and runs generally south terminating at the Municipal City Limits at South 272nd Street in Kent; and

WHEREAS, the City of Des Moines is in process of designing a roadway improvement project, commonly known as Pacific Highway South HOV Lanes, which commences generally from the City of Des Moines Municipal City Limits at South 216th Street and runs generally south terminating at the Municipal City Limits at the center of the Kent-Des Moines Road; and

WHEREAS both the City of Des Moines' and the City of Kent's roadway projects include modifications to the Pacific Highway South/Kent – Des Moines Road intersection; and

WHEREAS, the existing municipal boundary between the City of Des Moines and the City of Kent follows the western limits of the existing Pacific Highway South right of way in several locations along the proposed roadway improvement project: and

WHEREAS, The City of Kent will need to acquire additional right of way along the west margin of Pacific Highway South in order to construct this project; and

WHEREAS the City of Kent, as the lead agency on the City of Kent's Pacific Highway South HOV Lanes Project will be responsible to obtain funding to design and construct Kent's project; and

WHEREAS, the City of Des Moines, as lead agency on the City of Des Moines project will be responsible to obtain funding to design and construct the City of Des Moines' project; and

WHEREAS both Cities desire to work together for the mutual and overall benefit of these improvement projects.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, or attached and incorporated and made part hereof, IT IS MUTUALLY AGREED BY THE CITY OF KENT AND THE CITY OF DES MOINES AS FOLLOWS:

AGREEMENT

A. PACIFIC HIGHWAY SOUTH HOV LANES PROJECTS

1. The City of Kent will continue to design and construct its proposed Pacific Highway South HOV Lanes Project.
2. The City of Des Moines will continue to design and construct its proposed Pacific Highway South HOV Lanes Project.
3. The City of Kent will remain responsible for the overall funding, design, right of way acquisition and completion of its portion of the project except as noted in Part B below.
4. The City of Des Moines will remain responsible for the overall funding, design, right of way acquisition and completion of its portion of the project except as noted in Part B below.

B. PACIFIC HIGHWAY SOUTH/KENT-DES MOINES ROAD INTERSECTION

1. The City of Des Moines, as agent acting for and on behalf of the City of Kent agrees to perform the work in designing the said improvements at the intersection of Pacific Highway South and Kent-Des Moines Road in accordance with the scope of work marked Exhibit A and the budget estimate marked Exhibit B attached hereto, which by this reference are made part of this AGREEMENT.

C. RIGHT OF THE CITY OF KENT TO CONDEMN PROPERTY IN CITY OF DES MOINES

1. The City of Des Moines recognizes the authority of the City of Kent to use its power of eminent domain to acquire right of way property, which is currently within the corporate limits of the City of Des Moines.

D. OBLIGATION OF PARTIES WISHING TO DEVELOP PROPERTIES WITHIN THE CITY OF DES MOINES WHICH ABUT PACIFIC HIGHWAY SOUTH

1. The City of Des Moines will require developers of properties which abut Pacific Highway South and cross streets within the project limits to provide the following in consultation with the City of Kent:
 - a. Dedication of 3 feet of right of way along the entire property frontage.
 - b. Dedication of any slope/utility/construction easement as required.
 - c. All work associated with the construction of the following improvements along the entire property frontage:
 - 1) A 14-foot-wide travel lane for future use as an HOV lane.
 - 2) 8-foot-wide bicycle/pedestrian sidewalk with concrete commercial driveways, curb and gutter.
 - 3) Storm drainage improvements including catch basins and conveyance pipes.

- 4) Channelization to match the new travel lane with the existing roadway at each end of the property.
- 5) Luminaires for street lighting for the frontage of the property.
- 6) Undergrounding of Power.

In lieu of constructing the above-listed improvements as part of the developer's improvements, the developer may, at its option, agree to pay the City of Kent to install these improvements as part of the Kent Pacific Highway South Project.

E. UNDERGROUNDING IN THE CITY OF DES MOINES

The City of Des Moines authorizes the City of Kent to enforce Des Moines Municipal Code Chapter 12.48 concerning undergrounding of utilities; connections to undergrounded utilities; and payment for connection to undergrounded utilities.

F. MISCELLANEOUS

1. Termination This agreement shall terminate on the date that the parties have completed the construction of their respective HOV lanes projects or by mutual agreement.
2. Payment An itemized estimate of cost for work to be performed by the City of Des Moines for the City of Kent marked "Exhibit B" is attached hereto. The City of Kent, in consideration of the performance of the work to be performed by the City of Des Moines agrees to reimburse the City of Des Moines for the actual direct cost of all work that is the financial responsibility of the City of Kent as defined in Exhibits A and B and shall take all necessary action to pledge, budget and allocate the same. Payment shall be made by the City of Kent to the City of Des Moines within 30 days upon receipt of an invoice meeting the requirements of the City of Kent.
3. Extra Work In the event that unforeseen causes require an increase in the City of Kent's cost obligation to be more than that estimated on Exhibit B, this AGREEMENT will be modified by supplemental AGREEMENT covering said increase. In the event it is determined that any "substantial change" from the description of the work contained in the agreement is required, written approval must be secured from the City of Kent before the beginning of such work.
4. Legal Relations The City of Des Moines shall defend and hold the City of Kent, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out or in connection with the performance of this AGREEMENT, except for injuries and damages caused by the City of Kent's negligence.

The City of Kent shall defend and hold the City of Des Moines, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out or in connection with the performance of this AGREEMENT, except for injuries and damages caused by the City of Des Moines' negligence.

this AGREEMENT, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court located in Kent, King County, Washington, unless the parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the parties' performance of this AGREEMENT, each party shall pay all of its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City of Kent's right to indemnification under Section 4 of this AGREEMENT.

6. Assignment Any assignment of this AGREEMENT by either party without the written consent of the non-assigning party shall be void.
7. Modification No waiver, alteration, or modification of any of the provisions for the AGREEMENT shall be binding unless in writing and signed by a duly authorized representative of the City of Kent and the City of Des Moines.
8. Entire Agreement The written provisions and terms of this AGREEMENT, together with any attached Exhibits, shall supercede all prior verbal statements of any officer or other representative of either party, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this AGREEMENT. This document, including all Exhibits, is the entire agreement between the parties. Should any language in any of the Exhibits to the AGREEMENT conflict with any language contained in this AGREEMENT, the terms of this AGREEMENT shall prevail.
9. This AGREEMENT shall be effective as to all parties on the last date signed below.

IN WITNESS WHEREOF, this AGREEMENT and Conveyance is executed by the Parties by
their authorized officers indicated below

CITY OF KENT

CITY OF DES MOINES

BY _____

BY _____

ITS _____

ITS _____

DATE _____

DATE _____

ATTEST:

ATTEST:

CITY CLERK, CITY OF KENT

CITY CLERK, CITY OF DES MOINES

APPROVED AS TO FORM:

APPROVED AS TO FORM:

KENT CITY ATTORNEY

DES MOINES CITY ATTORNEY

EXHIBIT A
**SCOPE OF WORK FOR DESIGN OF
PACIFIC HIGHWAY/KENT-DES MOINES
ROAD INTERSECTION**

City of Des Moines
Kent-Des Moines Road and Pacific Highway South Intersection
(Design Work inside the Kent City Limits)

Scope of Work - Preliminary and Final Design
August 30, 2000

Purpose

The purpose of this scope is to prepare the preliminary design and the final design of the Kent-Des Moines Road (SR 516) / Pacific Highway South (SR 99) Intersection inside the Kent city limits. The south end of this intersection is within Kent, while the north end of the intersection is within the City of Des Moines. The Des Moines project (the Pacific Highway South Redevelopment Project) will construct the intersection improvements as a part of their project. Kent and Des Moines will develop an interagency agreement that provides for a comprehensive approach to the design of the area within the City of Kent.

Proposed Improvements

- Curb gutter and sidewalk
- Pavement reconstruction/overlay
- Roadway storm drainage
- Signing and pavement marking/stripping
- Utility undergrounding or relocation
- Traffic signal system and interconnect

Assumptions

- No additional Public Involvement will be necessary.
- No Landscaping or Streetscape elements will be included within the City of Kent.
- The preliminary and final design for this project will be conducted at the same time as the final design for the Pacific Highway South Redevelopment Project. There will be only *one* set of plans, specifications, and estimates. Any elements of work shared between the two projects (i.e. specifications, mapping, right-of-way acquisition, WSDOT coordination, etc.) will be conducted as one task and the mapping and design costs will be split along the limits mentioned in the 'Project Limits' section below. This will be done to ensure the lowest total cost to both of the cities and reduce duplication of effort.
- All design efforts within the jurisdiction of Kent will be coordinated with the City of Kent.
- The contract for this project will be between CH2M HILL and the City of Des Moines. All invoicing and administration will be conducted through the City of Des Moines.
- Roadway stormwater analysis will be performed by the City of Kent. CH2M HILL will

prepare plans for the storm drainage system within the project limits using pipe sizes provided by the City of Kent.

- Right-of-Way acquisition will be performed and provided by City of Kent.
- A single (NB-WB) left turn lane at this intersection will be acceptable.

Project Limits

Mapping and Preliminary Design

The Pacific Highway South Redevelopment Project and the Kent-Des Moines Road and SR 99 Intersection Project will have two sets of design limits, one for preliminary design and one for final design. The first set is primarily for the preliminary design of traffic operations and channelization improvements. The mapping for the project will also cover the limits for preliminary design. These limits are as follows:

- North - the centerline of Kent-Des Moines Road
- South - South limits of Kent-Des Moines Road R/W and 650 feet south of the centerline of Kent-Des Moines Road
- East - the south side of the Kent-Des Moines Road centerline to the intersection of 30th Avenue S and Kent-Des Moines Road.
- West - the south side of the Kent-Des Moines Road centerline to approximately the 27th Avenue S intersection.

Final Design

Once preliminary design is complete, the project limits will be reduced to accommodate only the area needed to construct tapers necessary to tie in to existing channelization. The final design limits are as follows:

- North - the centerline of Kent-Des Moines Road
- South - South side of Kent-Des Moines Road R/W and approx 150 ft south of the centerline of Kent-Des Moines Road; as shown on attached figure.
- East - the south side of the Kent-Des Moines Road centerline to the intersection of 30th Avenue S and Kent-Des Moines Road.
- West - the south side of the Kent-Des Moines Road centerline approximately 1000 feet west of the Pacific Highway South; to provide room for transition from a 6 lane intersection to the 2 lane existing roadway.

Work Element 1. Project Management and Design Coordination

Provide overall project management, coordination with the City, monthly progress reports and invoicing. 12 months is assumed to be the duration of this work.

- 1.1 Provide overall project management services including:
 - Preparation and execution of subconsultant subcontract
 - Project staff and subconsultant management
 - Implementation of quality control program
 - Control of project budget and schedule
- 1.2 Coordinate with City of Kent staff including attendance at up to 4 meetings throughout the course of the final design project. The CH2M Project manager and a task leader will attend all meetings
- 1.3 Prepare and submit 1-page monthly progress reports and invoices. These invoices will be separate from the Pacific Highway South Redevelopment Project Invoices, but will be sent to the City of Des Moines.

Work Element 2. Mapping

Provide base mapping as required to support the community and agency coordination, design report, right-of-way acquisition, and final design work elements. The City of Kent will provide survey data for the area south of the centerline of Kent-Des Moines Rd; from 500 feet east of the centerline of SR99 along Kent-Des Moines Rd; to 300 feet west of the centerline of SR99 along Kent-Des Moines Rd.

- 2.1 Prepare 1"=20' topographic base mapping for the section outlined under the 'Project Limits' section. The Consultant will establish horizontal and vertical control for the project using the Washington State plane coordinate system for horizontal control and NAD-83 to establish the vertical datum. Mapping limits shall extend 50 feet beyond the right-of-way limits except in areas near walls and intersections where the mapping will extend further. This mapping will extend to the limits shown in Figure 1. The base mapping will be produced using photogrammetric methods. A Digital Terrain Model (DTM) will be produced from this data. Controlled aerial photography will be performed by the Consultant.
- 2.2 Prepare 1"=20' underground utility mapping to match the limits of the planimetric/topographic mapping prepared in Task 2.1. The Consultant will compile this mapping from available as-builts and records obtained from the respective utility companies and from "painted" utility location marks on the ground. The utility location marks will be painted within the project limits and the City of Kent will survey their location and incorporate them into the mapping. The Consultant will arrange for the utilities to be located/painted by Applied Professional Services. Service line locations will not be mapped. The utility mapping will be produced on MicroStation

Underground utilities to be mapped are as follows:

PSE (Power)	Midway Sewer District
US West	AT&T Cable Services
PSE (Gas)	City of Kent Storm Drainage*
Highline Water District	WSDOT Signals

* Assumes City has structure locations, rim and invert elevations available and will require minimal survey.

- 2.4 If required, supplemental topographic field surveying will be performed by the City of Kent to spot check the accuracy of the aerial mapping, and to survey critical interface locations to determine pavement match and planing locations. Additional surveying as required, will be conducted by the City of Kent in private parking lots and other areas that have been determined to need special design to facilitate drainage. The supplemental topographic field survey will be incorporated into the DTM developed in Task 2.1.

Work Element 3. Preliminary Design and Design Report Supplements

Provide the preliminary engineering services necessary for the development of design criteria, preparation of a design memorandum, and preparation of the cost opinions for the project.

- 3.1 Compile and review the following data and records from the City, other agencies, and utilities. This data will be in addition to that collected under Task 3 of the Pacific Highway South Redevelopment Project Preliminary Design and will be used in the production of Utility plans, Channelization plans, Right-of-Way plans and Traffic Signal plans:

As-built/Record drawings: Private utilities, WSDOT signals and sign bridges, City of Kent storm drainage system, private storm drainage systems, WSDOT roadway plans, WSDOT R/W plans, records of surveys, WSDOT surveys. The Consultant will prepare a letter to each agency requesting record information which will be received, reviewed and filed by the Consultant.

Walk-thru: Walk and photograph site and log and index photos.

- 3.2 Establish and document the design criteria for Kent-Des Moines. Document existing conditions of roadway geometry, intersections, signal systems, utilities, property access, and pedestrian and transit facilities. Develop and document design roadway geometric criteria, channelization and access management criteria, signal systems criteria, pedestrian and transit facilities criteria.

- 3.5 A preliminary horizontal and vertical alignment and roadway sections will be prepared for Kent-Des Moines Road and all intersecting roadways for the design alternative.

Determine retaining wall type, size and locations

- 3.7 Prepare WSDOT channelization plans for Kent-Des Moines Road and the intersection. Channelization plans will be prepared showing the proposed channelization, sidewalk, median, and driveways. The plans will be prepared to meet WSDOT Channelization Plan for Approval requirements and will be submitted to WSDOT for approval along with other required supporting documentation including WSDOT design deviations and design vehicle turning movement analysis. WSDOT channelization plans are assumed to require 6 sheets at 1"=50' scale (approximately 1 ½ sheets within the City of Kent.). The Consultant will attend two meetings with WSDOT to establish and coordinate channelization plan issues. The Consultant will prepare one response to WSDOT review comments and resubmit revised documentation for final WSDOT approval.
- 3.8 Prepare preliminary construction sequencing concepts for the intersection. The preliminary construction sequencing, traffic control and detour concepts will be described in a technical memorandum, no plans will be prepared until final design.
- 3.11 With the approval of the City of Kent, the Consultant will perform analysis of pavement design requirements for new pavement sections and overlay sections on Kent-Des Moines Road using 1993 AASHTO Design Methodology with truck and bus loading data. Pavement cores will be taken at locations determined by the Consultant. Existing traffic counts will be utilized in determining required pavement sections. The Pavement section designed for the Pacific Highway South section inside Kent's city limits will be the same section as designed for the Des Moines section of Pacific Highway South.
- 3.12 Conduct a traffic analysis for the project and incorporate into the Pacific Highway South Redevelopment Project Design Report. The analysis will include:
- Analysis of existing traffic conditions. Identification of characteristics such as speed, number of lanes, and traffic control. Perform analysis of accident data. Report existing traffic volume data. Prepare p.m. peak-hour level-of-service calculations for the Kent-Des Moines Road and Pacific Highway South intersection. Existing accident data and existing traffic volume data compiled by the SR99 Corridor Study will be provided by WSDOT.
 - Analysis of signal system operations. Perform analysis of the preferred roadway configuration for the year of opening (2001). Traffic forecasts will be prepared by factoring up existing traffic data. Forecasted traffic volumes developed by the SR99 Corridor Study will be used and provided by WSDOT.
 - Analysis of future traffic conditions (year 2020). Prepare level-of-service calculations using WSDOT provided Transyt 7F data for the same intersections and peak periods as described under the analysis of existing traffic conditions above for the design alternative and the no action alternative. Forecasted traffic volumes developed by the SR99 Corridor Study will be used and provided by WSDOT.

Work Element 4. SEPA Compliance

Providing the City of Kent with SEPA compliance assistance is not a part of this scope of work.

Task 5. Not Used

Task 6. Right-of-Way Acquisition

- 6.1 The City of Kent will perform research of existing right-of-way information and field survey as necessary to establish the existing centerline and R/W of Kent-Des Moines Road. This information will be provided by the City of Kent for the consultants use in determining the location of the existing R/W lines.

Work Element 7. Final Design

The Final Design limits for the Kent-Des Moines Road and Pacific Highway South Intersection project will include those areas outlined in the 'Project Limits' section at the beginning of this scope. The mainline design limits will include the WSDOT right of way as well as any extra private property area necessary for the interface design onto private properties. The scope below includes all the work necessary to complete the design within these limits.

The sheets for the Kent-Des Moines Road intersection will be included in the contract documents for the Pacific Highway South Redevelopment Project. The sheet breakdown likely will be as follows:

Title/index sheet	7.1	Incorporated into PHS plans
General notes and survey control	7.1	Incorporated into PHS plans
Construction sequencing and detour plans	7.2	(1"=50') (2 Sheets)
Alignment, paving, grading, and demo. plans	7.3	(1"=20') (1 Sheets)
Drainage, utility, and erosion control plans	7.4	(1"=20') (1 Sheets)
Roadway Profile sheets	7.5	(1"=20') (1 Sheets)
Channelization, signing and lighting plans	7.6	(1"=20') (1 Sheets)
Signal plan (PHS / KDR)	7.7	(1"=20') (1 Sheet)
Wiring diagrams	7.7	NTS (1 Sheet)
Traffic signal pole schedule	7.7	NTS (1 Sheet)
Roadway section and detail sheets	7.8	(1"=20') (1 Sheet)

In order to complete the contract documents, we anticipate that the following engineering services will be necessary to prepare the detailed construction plans, specifications, and cost opinions for the project in accordance with the December 1998 Design Report for the Pacific Highway South Redevelopment Project.

- 7.1 Assemble a title and index sheet that will include a vicinity map. Also assemble a sheet for symbol and abbreviation legends, general notes and a schematic map showing survey control monuments location and their coordinate values. Incorporate any Kent-Des Moines Road Intersection specific information into the sheet(s) scoped under the Pacific Highway South Redevelopment Project.
- 7.2 Prepare construction sequencing and detour plans that illustrate a method by which the contractor could perform the required work while minimizing, to the extent possible, the impacts on traffic and access to adjacent property.
- 7.3 Prepare alignment, paving, and grading plans. These plans will include all horizontal alignment information and plan views of paving limits and requirements, as well as limits of any cut/fill limits required and walls or rockeries. These plans will also include the limits of paving removal and grading limits.
- 7.5 Prepare Roadway Profiles. These drawings will include Roadway Centerline and curb flow line elevations (left and right) at 25 foot intervals.
- 7.6 Prepare channelization and signing plans. These plans will delineate the locations of all pavement markings including lane lines, crosswalks, turn arrows, HOV lane, stop bars and curb face painting. These plans will also show the locations and sizes of all signing.
- 7.7 The Transpo Group (subconsultant) will prepare traffic signal plans for the Kent-Des Moines Road / Pacific Highway South intersection (Kent's half) including coordination of the signal interconnect with Kent and installation of the master controller. This will include one signal plan sheet and one wiring diagram. It will be assumed that an entirely new signal system will be constructed. Locations for signal poles, signal controller cabinets, junction boxes, conduit runs for signals, interconnects and lighting, will be shown on these plans.

Assume a total of 4 special meetings will be conducted between WSDOT and the City of Kent. These meetings will discuss such issues as mast arm locations and lengths, and operational effects based on the unusual geometry of the intersection.
- 7.8 Prepare roadway section and detail sheets to document the roadway cross sections and provide miscellaneous details not covered by standard plans.
- 7.14 Perform 60%, 90%, and 100% quantity take-offs and opinion of costs. Incorporate into the Pacific Highway South Redevelopment Project contract documents.
- 7.15 Prepare contract specifications based on WSDOT/APWA standards (English). Incorporate into the Pacific Highway South Redevelopment Project contract documents.

Task 8. Offsite Stormwater Detention and Treatment

Stormwater detention and treatment facilities for this project will be constructed outside of the project limits defined above. It is assumed that the stormwater from the Kent portion of the Kent-Des Moines Road/Pacific Highway South intersection will be conveyed to the same stormwater detention/treatment facility as the stormwater from the Des Moines portion of this intersection. The city of Kent will do all design and analysis related to the stormwater flows from Kent.

EXHIBIT B
**COST ESTIMATE FOR PERFORMING
SCOPE AS INCLUDED IN EXHIBIT A**

City of Des Moines
Kent-Des Moines Road & Pacific Highway South

January 31, 2001
Total Budget Summary

1. Direct Salary cost (DSC)				
Classification	Role	Man Hours	Hourly Rate	Raw Cost
E6	Senior Consultant	0	\$46.88	\$0
P6	Sr. Envir. Planner	0	\$39.79	\$0
E5	Project Manager	79	\$47.57	\$3,758
E4	Lead Engineer	78	\$34.13	\$2,662
E3	Proj. Engineer/Plnr	197	\$28.97	\$5,707
E1	Proj. Engineer	92	\$20.13	\$1,852
S4	Survey Technician	26	\$31.16	\$810
T4	Drafting Technician	173	\$20.69	\$3,579
OA	Clerk Steno	74	\$15.00	\$1,110
SUBTOTAL (DSC)		719		\$19,479
2. Overhead Costs (OH)		178.00% x DSC=		\$34,672
3. Fixed Fee:		32.00% x DSC=		\$6,233
4. Reimbursables		100.00%		\$12,353
5. GRAND TOTAL - Estimated Fee				\$72,737

City of Des Moines
Kent-Des Moines Road & Pacific Highway South

January 31, 2001
Work Hour Estimate

Reimbursable Item	Project Management and Design Coordination Work Element 1	Mapping Work Element 2	Preliminary Design Work Element 3	SEPA Compliance Work Element 4	Not Used Work Element 5	Right of Way Work Element 6	Final Design Work Element 7	Work Element 8	Totals
F. Reprographics and Printing							\$85		\$110
G. Travel Costs (Mileage @ \$0.32/mi - Cars & \$0.32/mi - Trucks)	\$38	\$9	\$25	\$0	\$0	\$0	\$158	\$0	\$243
	120	30	120				500		
H. Miscellaneous (Postage, Freight, Film)									\$0
I. Subconsultants							\$12,000		\$12,000
	Transpo APS Gregory Drilling other								\$0
Totals	\$38	\$9	\$63	\$0	\$0	\$0	\$12,243		\$12,353

City of Des Moines
Kent-Des Moines Road & Pacific Highway South

January 31, 2001
Budget Summary by task

Task Description	Total Labor	Total Reimbursables	Overall Totals
1 Project Management and Design Coordination	\$10,513	\$38	\$10,551
2 Mapping	\$2,876	\$9	\$2,885
3 Preliminary Design	\$18,455	\$63	\$18,518
4 SEPA Compliance	\$0	\$0	\$0
5 Not Used	\$0	\$0	\$0
6 Right of Way	\$1,950	\$0	\$1,950
7 Final Design	\$26,590	\$12,243	\$38,833
TOTALS	\$60,384	\$12,353	\$72,737

City of Des Moines
Kent-Des Moines Road & Pacific Highway South

January 31, 2001
Work Hour Estimate

WORK ELEMENT	SR-ENGR E6	ENV-PLNMR E6	PROJ-MGR E5	LEAD-ENGR E4	PROJ-ENGR E3	PROJ-ENGR E3	SURV-TECH S4	DRAFT-TECH T4	CLERK-STENO S/OA	TOTAL HRS	TOTAL LABOR \$
1. Project Management and Design Coordination											
1.1 Project Management Services	0	0	16	0	0	0	0	0	12	28	\$2,917
1.2 Coordinate with City Staff	0	0	12	0	12	0	0	0	2	26	\$2,940
1.3 Progress Reports & Invoices	0	0	24	0	0	0	0	0	24	48	\$4,655
WORK ELEMENT 1 SUBTOTAL	0	0	52	0	12	0	0	0	38	102	\$10,513
2. Mapping											
2.1 Aerial Mapping	0	0	0	4	0	0	4	0	0	8	\$810
2.2 Underground Utility Mapping	0	0	0	4	4	0	0	8	0	16	\$1,296
2.4 Supplemental Topographic Mapping Coord	0	0	0	0	0	0	4	6	0	10	\$771
WORK ELEMENT 2 SUBTOTAL	0	0	0	8	4	0	8	14	0	34	\$2,876
3. Preliminary Design											
3.1 Compile and Review Data	0	0	0	6	6	8	0	0	0	20	\$1,673
3.2 Document Design Criteria	0	0	0	0	2	6	0	0	2	10	\$647
3.5 Alignments and Sections	0	0	0	2	4	16	0	8	0	30	\$2,082
3.7 WSDOT Channelization Plans	0	0	2	2	28	0	0	24	0	56	\$4,560
3.8 Preliminary Construction Sequencing	0	0	1	0	4	2	0	0	1	8	\$678
3.11 Pavement Design Requirements	0	0	0	0	4	0	0	0	2	6	\$452
3.12 Traffic Analysis	0	0	2	36	0	26	0	0	4	68	\$5,912
3.13 Preliminary Opinion of Costs	0	0	0	0	16	8	0	8	0	32	\$2,449
WORK ELEMENT 3 SUBTOTAL	0	0	5	46	64	66	0	40	9	230	\$18,455
4. SEPA Compliance											
WORK ELEMENT 4 SUBTOTAL	0	0	0	0	0	0	0	0	0	0	\$0
5. Not Used											
WORK ELEMENT 5 SUBTOTAL	0	0	0	0	0	0	0	0	0	0	\$0
6. Right of Way											
6.1 Coordination and Calc Existing Right-of-Way	0	0	0	2	0	0	18	0	0	20	\$1,950
Research R/W Records										0	
Mon & corner search										0	
Note Calculations										0	
R/W Calculations and Coord with Kent				2			18			20	
WORK ELEMENT 6 SUBTOTAL	0	0	0	2	0	0	18	0	0	20	\$1,950
7. Final Design											
7.2 Construction Sequencing	0	0	1	2	16	0	0	16	2	37	\$2,915
7.3 Alignment Paving and Grading Plans	0	0	4	2	40	0	0	28	6	80	\$6,469
7.5 Roadway Profiles	0	0	2	6	20	0	0	22	6	56	\$4,416
7.6 Channelization and Signing Plans	0	0	3	0	16	8	0	32	6	65	\$4,710
7.7 Traffic Signal Plans	0	0	2	0	6	0	0	3	1	12	\$1,073
7.8 Roadway Section and Details	0	0	1	0	7		0	10	4	22	\$1,604
7.14 Opinion of Costs	0	0	3	6	6	18	0	8	2	43	\$3,345
7.15 Contract Specifications	0	0	6	6	6	0	0	0	0	18	\$2,058
WORK ELEMENT 7 SUBTOTAL	0	0	22	22	117	26	0	119	27	333	\$26,590
TOTAL LABOR HOURS	0	0	79	78	197	92	26	173	74	719	\$60,384

Pacific Highway South - SR 99/Kent Des Moines Intersection (Kent)

TASKS	Hours by Labor Category						CAD	Contr Admin	Total
	Principal	Engr 4	Engr 4	Engr 2	Engr 1				
A. Traffic Analysis Coordination/Mgmnt	4	8	6					2	20
B. Meetings (4)	8								8
C. Signal Design	8		40				20		68
D. Signal Interconnection	2		12						14
E. Specifications & Cost Estimates	2		9						11
TOTAL	24	8	67				20	2	121

CONSULTANT PRICE ESTIMATION - SUMMARY SHEET

PROJECT: Pacific Highway South - Sr 99/Kent Des Moines Intersection (Kent)

A. DIRECT SALARY ESTIMATING RATES (Invoicing rates will be contract approved rates)

<u>Category</u>	<u>Title</u>	<u>Hours</u>	<u>Estimating Rate</u>	<u>TOTAL</u>
1	Principal	24	\$42.79	\$1,026.96
2	Engineer 4	8	\$31.25	\$250.00
3	Engineer 4	67	\$28.85	\$1,932.95
4	Engineer 2		\$22.74	
5	Engineer 1		\$18.50	
7	CAD	20	\$22.00	\$440.00
8	Contracts Mgr	2	\$34.62	\$69.24
9	Clerical Secr		\$12.00	
	Subtotal (DSC)	121	\$30.74	\$3,719.15

B. OVERHEAD (OH) COST:

OH Rate x DSC or 1.9066 x A \$7,090.93

C. FIXED FEE (FF):

FF Rate 0.30 x A \$1,115.75
\$11,925.83

D. SUBCONSULTANTS:

Quote

E. REIMBURSABLES:

Mileage
Reproduction
Traffic Counts
Mylars
Communications
Estimate
\$74.17
\$74.17

GRAND TOTAL - ESTIMATED PRICE

(A+B+C+D+E)

\$12,000.00

PREPARED BY: Holly Parsons

CHECKED BY: _____

DATE: 1/25/01 REVISION # 1

44

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF KENT AND THE CITY OF
DES MOINES REGARDING THE
PACIFIC HIGHWAY SOUTH HOV LANES PROJECT**

THIS INTERLOCAL AGREEMENT is entered into between the City of Kent, a Washington Municipal Corporation, located and doing business at 220 Fourth Avenue South, Kent, Washington 98032 (hereinafter called "City of Kent") and the City of Des Moines, a Washington Municipal Corporation, located and doing business at 21630 11th Avenue South, Des Moines, Washington 98198 (hereinafter called "City of Des Moines").

RECITALS

WHEREAS, the City of Kent is in process of designing a roadway improvement project, commonly known as Pacific Highway South HOV Lanes Project, which commences generally from the Municipal City Limits at the center of the Kent-Des Moines Road and runs generally south terminating at the Municipal City Limits at South 272nd Street in Kent; and

WHEREAS, the City of Des Moines is in process of designing a roadway improvement project, commonly known as Pacific Highway South HOV Lanes, which commences generally from the City of Des Moines Municipal City Limits at South 216th Street and runs generally south terminating at the Municipal City Limits at the center of the Kent-Des Moines Road; and

WHEREAS both the City of Des Moines' and the City of Kent's roadway projects include modifications to the Pacific Highway South/Kent – Des Moines Road intersection; and

WHEREAS, the existing municipal boundary between the City of Des Moines and the City of Kent follows the western limits of the existing Pacific Highway South right of way in several locations along the proposed roadway improvement project; and

WHEREAS, The City of Kent will need to acquire additional right of way along the west margin of Pacific Highway South in order to construct this project; and

WHEREAS the City of Kent, as the lead agency on the City of Kent's Pacific Highway South HOV Lanes Project will be responsible to obtain funding to design and construct Kent's project; and

WHEREAS, the City of Des Moines, as lead agency on the City of Des Moines project will be responsible to obtain funding to design and construct the City of Des Moines' project; and

WHEREAS both Cities desire to work together for the mutual and overall benefit of these improvement projects.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, or attached and incorporated and made part hereof, IT IS MUTUALLY AGREED BY THE CITY OF KENT AND THE CITY OF DES MOINES AS FOLLOWS:

AGREEMENT

A. PACIFIC HIGHWAY SOUTH HOV LANES PROJECTS

1. The City of Kent will continue to design and construct its proposed Pacific Highway South HOV Lanes Project.
2. The City of Des Moines will continue to design and construct its proposed Pacific Highway South HOV Lanes Project.
3. The City of Kent will remain responsible for the overall funding, design, right of way acquisition and completion of its portion of the project except as noted in Part B below.
4. The City of Des Moines will remain responsible for the overall funding, design, right of way acquisition and completion of its portion of the project except as noted in Part B below.

B. PACIFIC HIGHWAY SOUTH/KENT-DES MOINES ROAD INTERSECTION

1. The City of Des Moines, as agent acting for and on behalf of the City of Kent agrees to perform the work in designing the said improvements at the intersection of Pacific Highway South and Kent-Des Moines Road in accordance with the scope of work marked Exhibit A and the budget estimate marked Exhibit B attached hereto, which by this reference are made part of this AGREEMENT.

C. RIGHT OF THE CITY OF KENT TO CONDEMN PROPERTY IN CITY OF DES MOINES

1. The City of Des Moines recognizes the authority of the City of Kent to use its power of eminent domain to acquire right of way property, which is currently within the corporate limits of the City of Des Moines.

D. OBLIGATION OF PARTIES WISHING TO DEVELOP PROPERTIES WITHIN THE CITY OF DES MOINES WHICH ABUT PACIFIC HIGHWAY SOUTH

1. To the extent permitted by current law, the City of Des Moines will require developers of properties which abut Pacific Highway South and cross streets within the project limits to provide the following in consultation with the City of Kent:
 - a. Dedication of 3 feet of right of way along the entire property frontage.
 - b. Dedication of any slope/utility/construction easement as required.
 - c. All work associated with the construction of the following improvements along the entire property frontage:
 - 1) A 14-foot-wide travel lane for future use as an HOV lane.
 - 2) 8-foot-wide bicycle/pedestrian sidewalk with concrete commercial driveways, curb and gutter.
 - 3) Storm drainage improvements including catch basins and conveyance pipes.

- 4) Channelization to match the new travel lane with the existing roadway at each end of the property.
- 5) Luminaires for street lighting for the frontage of the property.

6) *Undergrounding*

In lieu of constructing the above-listed improvements as part of the developer's improvements, the developer may, at its option, agree to pay the City of Kent to the extent permitted by, and in amounts required by law to install these improvements as part of the Kent Pacific Highway South Project.

E. UNDERGROUNDING IN THE CITY OF DES MOINES

The City of Des Moines authorizes the City of Kent to enforce Des Moines Municipal Code Chapter 12.48 concerning undergrounding of utilities; connections to undergrounded utilities; and payment for connection to undergrounded utilities. Any such enforcement shall be carried out by Kent personnel with necessary assistance from Des Moines personnel, using the processes described in the Des Moines Municipal Code, including use of the Des Moines Hearing Examiner process, with all costs of such enforcement to be paid by the City of Kent.

F. MISCELLANEOUS

1. Termination This agreement shall terminate on the date that the parties have completed the construction of their respective HOV lanes projects or by mutual agreement.
2. Payment An itemized estimate of cost for work to be performed by the City of Des Moines for the City of Kent marked "Exhibit B" is attached hereto. The City of Kent, in consideration of the performance of the work to be performed by the City of Des Moines agrees to reimburse the City of Des Moines for the actual direct cost of all work that is the financial responsibility of the City of Kent as defined in Exhibits A and B and shall take all necessary action to pledge, budget and allocate the same. Payment shall be made by the City of Kent to the City of Des Moines within 30 days upon receipt of an invoice meeting the requirements of the City of Kent.
3. Extra Work In the event that unforeseen causes require an increase in the City of Kent's cost obligation to be more than that estimated on Exhibit B, this AGREEMENT will be modified by supplemental AGREEMENT covering said increase. In the event it is determined that any "substantial change" from the description of the work contained in the agreement is required, written approval must be secured from the City of Kent before the beginning of such work.
4. Legal Relations The City of Des Moines shall defend and hold the City of Kent, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out or in connection with the performance of this AGREEMENT, except for injuries and damages caused by the City of Kent's negligence

The City of Kent shall defend and hold the City of Des Moines, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out or in connection with the performance of this AGREEMENT, except for injuries and damages caused by the City of Des Moines' negligence.

5. Resolution of Disputes and Governing Law This AGREEMENT shall be governed and construed in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this AGREEMENT, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court located in Kent, King County, Washington, unless the parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the parties' performance of this AGREEMENT, each party shall pay all of its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City of Kent's right to indemnification under Section 4 of this AGREEMENT.
6. Assignment Any assignment of this AGREEMENT by either party without the written consent of the non-assigning party shall be void.
7. Modification No waiver, alteration, or modification of any of the provisions for the AGREEMENT shall be binding unless in writing and signed by a duly authorized representative of the City of Kent and the City of Des Moines.
8. Entire Agreement The written provisions and terms of this AGREEMENT, together with any attached Exhibits, shall supercede all prior verbal statements of any officer or other representative of either party, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this AGREEMENT. This document, including all Exhibits, is the entire agreement between the parties. Should any language in any of the Exhibits to the AGREEMENT conflict with any language contained in this AGREEMENT, the terms of this AGREEMENT shall prevail.
9. Concurrent Originals. This Agreement is signed in four (4) counterpart originals.
10. Effective Date. This AGREEMENT shall be effective as to all parties on the last date signed below.

IN WITNESS WHEREOF, this AGREEMENT and Conveyance is executed by the Parties by their authorized officers indicated below

CITY OF KENT

CITY OF DES MOINES

BY _____

BY _____

ITS _____

ITS _____

DATE _____

DATE _____

ATTEST:

ATTEST:

CITY CLERK, CITY OF KENT

CITY CLERK, CITY OF DES MOINES

APPROVED AS TO FORM:

APPROVED AS TO FORM:

KENT CITY ATTORNEY

DES MOINES CITY ATTORNEY

EXHIBIT A
SCOPE OF WORK FOR DESIGN OF
PACIFIC HIGHWAY/KENT-DES MOINES
ROAD INTERSECTION

EXHIBIT B
**COST ESTIMATE FOR PERFORMING
SCOPE AS INCLUDED IN EXHIBIT A**

PRELIMINARY
SPECIAL MEETING DES MOINES CITY COUNCIL

MINUTES

October 31, 2002

The special meeting of the Des Moines City Council was called to order by Mayor Wasson at 6:30 p.m. in the City Hall Conference Room, 21630 11th Avenue South.

ROLL CALL - Present: Mayor Don Wasson, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Maggie Steenrod, Scott Thomasson and Susan White. Also present were City Manager Tony Piasecki, Mike Kenyon (left meeting at 6:45 p.m.) and Assistant City Engineer Loren Reinhold (arrived at 7:15 p.m.).

POTENTIAL LITIGATION

Mayor Wasson announced that the Council will continue in Executive Session for approximately 15 minutes to discuss with legal counsel representing the City, litigation or potential litigation to which the City is, or is likely to become a party and about which public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the City.

6:45 p.m. Mr. Kenyon left the meeting.

LABOR RELATIONS

Mayor Wasson announced that the Council will hold an Executive Session for approximately 15 minutes for the purpose of planning or adopting strategies or positions as part of an ongoing collective bargaining process as provided by RCW 42.30.240(4)(b).

No formal action was taken.

7:15 p.m. Assistant City Engineer Reinhold arrived.

POTENTIAL LITIGATION

Mayor Wasson announced that the Council will continue in Executive Session for approximately 15 minutes to discuss with legal counsel representing the City, litigation or potential litigation to which the City is, or is likely to become a party and about which public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the City.

At 7:32 p.m. City Manager Piasecki announced that Council will continue in Executive Session for approximately 10 additional minutes.

At 7:45 p.m. City Manager Piasecki announced that the Executive Session is will continued for approximately 10 additional minutes.

No formal action was taken.

ADJOURNMENT

The special meeting adjourned at 7:56 p.m.

Respectfully submitted,
Linda A. Marousek, City Attorney

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

October 31, 20002

At 7:32 p.m. City Manager Piasecki announced that Council is in Executive Session and it is expected to continue approximately 10 minutes more.

At 7:45 p.m. City Manager Piasecki announced that the Executive Session is expected to continue approximately 10 minutes more.

The regular meeting of the Des Moines City Council was called to order by Mayor Wasson at 7:58 p.m. in the Council Chambers, 21630 11th Avenue South, Suite B.

PLEDGE OF ALLEGIANCE was led by Councilmember Steenrod.

ROLL CALL - Present: Mayor Don Wasson, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Maggie Steenrod, Scott Thomasson and Susan White. Also present were City Manager Tony Piasecki, City Attorney Linda Marousek, Police Commander Kevin Tucker and City Clerk Denis Staab.

COMMENTS FROM THE PUBLIC

Carol Davis, 812 South 234th Place, Representing Des Moines Historical Society

Ms. Davis thanked the Council for the past financial support of the Historical Society. She also acknowledged the help of the City's Public Works Dept. Ms. Davis briefed Council on the Society's activities, various grants and partnerships with the surrounding communities. In conclusion she requested that the Historical Society funding be continued in the upcoming adoption of the 2003 City budget.

Rena Hamburger, 23600 Marine View Drive, President of Des Moines Legacy Foundation

Ms. Hamburger announced that the Foundation has approved an expenditure of \$14,000 to aid in the renovation of the Activity Center to house seniors. She advised that these funds are designated to be spent in the following manner:

- \$9,792.00 Entry Door 117A
- \$1,893.12 Fabric Awning
- \$2,314.88 Update Restrooms

Ms. Hamburger further announced that the Foundation is holding its annual fund raising event at Anthony's Homeport on Sunday November 3rd. She advised that that this year, the fundraising event is dedicated to raising funds to support building the commercial kitchen at the Activity Center.

BOARD & COMMITTEE REPORTS

Des Moines Legacy Foundation

Councilmember Sheckler thanked the Foundation for its efforts in helping to fund the Activity Center. He congratulated the organization for its impressive efforts in taking on so many large projects in its short period of existence.

Waterland Funding

Councilmember Sheckler noted that staff has prepared a report showing the cost of the Waterland Festival by Department. He requested that staff prepare a breakdown showing exactly which departments actually budget dollars for the Waterland Festival and what those amounts are.

Finance & Economic Development Committee

Councilmember Steenrod reported the Committee has been reviewing the proposed Marina Bond Ordinance and that it will be before Council at the November 14th meeting.

Councilmember Steenrod also noted that the Activity Center Remodel is approximately \$80,000 over budget and a request to amend the CIP to provide the needed funding is on the consent calendar this evening.

"Requests for Action" Tracking

Councilmember Steenrod distributed a form used by the City of Tukwila to track citizens requests/concerns. She noted with this system items are less likely to "fall through the cracks". She felt it is important to that a system be developed to ensure items brought to Council or staff attention be tracked to ensure proper follow-up and closure. She requested staff develop a similar form for Des Moines use.

Mt. Rainier Pool Ad-hoc Committee

Mayor Pro Tem Benjamin advised that the Committee is currently working with surrounding cities and Highline School District to find a solution to have King County keep the Mt. Rainier Pool open. He noted that he will keep Council advised of the negotiations.

ADMINISTRATION REPORTS

Fishing Pier Pilings

City Manager Piasecki reported that while working on the repairs to the Des Moines Marina Fishing Pier, additional problems were discovered. A portion of the Pier has been closed for safety reasons. It has been determined that repairs can be made and he hopes to have an update regarding the costs for these additional repairs at the next Council meeting.

Civil Service Commission Vacancy

City Manager Piasecki announced that a member of the Commission has resigned due to moving out of the City. He noted that he is seeking candidates interested in appointment to this unexpired position, and any interested citizen should contact the City Clerk's office for an application and more detailed information.

Des Moines Memorial Flag Pole

City Manager Piasecki advised that a letter had been received from Mr. Paul Barden commenting on the disrepair of the flag pole and improper sized flag being displayed at the Des Moines Memorial Flag triangle. He noted that Park and Recreation Director Thorell will follow-up with Mr. Barden, who also offered his assistance in bringing this flag pole up to standard. He advised he will keep Council informed.

Highline School District Presentation - Capital Facilities/Bond

City Manager Piasecki introduced Alan J. Schmidt, Director of Facilities Services for Highline School District #401.

Mr. Schmidt proceeded to review written material distributed to the Councilmembers regarding the District's Capital Facilities Improvement Plan. Items covered included:

- Prioritized Construction Schedule
- Pie-Chart showing distribution of the \$189.5 Million Voter Approved Bonds
- Reviewed Elementary School Design Features
- Reviewed Interim Schools to be used during rebuild and remodel projects
- The 2002 Prioritized Construction Schedule
- Schematic site plan and artist rendering of the new 2 story Madrona Elementary School

In conclusion, Mr. Schmidt thanked Council for their support in passage of the School District's Bond issue.

CONSENT CALENDAR City Attorney Marousek noted that Item #2 has been removed and proceeded to read the Consent Calendar.

1. Motion is to approve the minutes of October 17, 2002.
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 Municipal Facilities Committee's request to approve additional funds in the amount of \$87,990 for the renovation of the City's Activity Center and to amend the 2002 Capital Improvement Plan to provide for project funding in that amount.
4. ~~Draft Resolution No. 02-236 Title: A Resolution of the City Council of the City of Des Moines, Washington, adopting an agreement between the City of Des Moines and the Public, Professional and Office Clerical Employees and Drivers Local Union No. 763 (Teamsters) regarding wages, hours and working conditions for the period November 1, 2002 to December 31, 2004.~~

~~MOTION is to approve Draft Resolution No. 02-236.~~

~~[ED NOTE: This item was removed by Councilmember Sheckler.]~~

Councilmember Sheckler requested that Consent Item #4 be removed.

MOTION was made by Councilmember Thomasson, seconded by Councilmember White and passed unanimously, to approve the consent calendar as read, with the deletions of items 2 and 4.

Consent Calendar Item #4 - Draft Resolution No. 02-236

Councilmember Sheckler voiced strong objection to the language in the Draft Agreement, Article I, 1.2 which would require any employee not wishing to become a Union member to still pay 90% of dues. He noted that these employees would have no voice and of course no vote, which is reasonable, but to still have to pay 90% of dues, is not right.

Councilmember Steenrod felt that this section, 1.2 is un-American to be forced to do something you do not want to do, such as paying 90% of dues to an organization you do not want to join.

City Manager Piasecki pointed out that section 1.2.1 would allow employees, based on a bona fide religious tenets or teachings, to pay the 90% fee to a non-religious charity or to another charitable organization mutually agreed upon by the employee and the Union.

Upon questioning by Council, Cabot Dow, negotiator on behalf of the City, noted that to qualify for religious reasons, that would have to be contained within the Church's by-laws and creeds. The only religious group that he is currently aware of having this clause is Jehovah's Witnesses. Mr. Dow further explained the following union terms:

- Closed Shop - Illegal
- Union Shop - Requires membership as condition of employment
- Agency Shop - (Des Moines) - Requires employees to join or pay service fee of 90%. The other 10% is used by the Union to pay for Political actions.
- Open Shop - Employee can join the Union (pay full dues) or not join the Union (no financial requirement)

Upon questioning by Council, City Manager Piasecki advised that approximately 20 employees would be involved in this contract. However he noted, that none are paying any Union dues until the contract is approved and signed.

Mr. Dow noted that Section 1.2 is not standard Union contract language. A standard Union clause that the Union wants, is that everybody become a member as a condition of employment, with no exceptions. He noted that early in the negotiations it was made clear that this was not acceptable to the City.

Upon questioning by Mayor Wasson, Mr. Dow affirmed that if an employee is a Union member, then the employee is basically saying that they are sympathetic to the political causes that the Union promotes and supports. He further advised that Union members are notified annually by the Teamsters that if they object to any political contribution then they can have their dues deducted for that portion, to protect their rights of non-political support.

Mayor Wasson commented that negotiations have been on-going for over two years, and all issues with the exception of section 1.2 have been resolved. He advised that he cannot in good conscience vote for this agreement. He felt it is wrong to force any City employee to pay for something they do not want to be a part of.

Councilmember White advised that she is in favor of approving the agreement as so much time has been spent on the issue, it is time to move forward.

Mayor Pro Tem Benjamin stated that he can understand City workers needing an agreement, but he cannot agree with Section 1.2.

Mr. Dow advised that Council can reject the proposed draft agreement or can recommend agreement with a modification to Section 1.2. He advised then the Union would have the opportunity to accept or reject.

Upon questioning by Council, Mr. Dow noted that the draft agreement was passed by a simple majority of the effected employees.

Councilmember Thomasson requested that revisions to this draft agreement be done in an open Council meeting so employees will know why the Council is not in favor of the draft. He questioned whether the Union will even present Council's version to the employees or just flat reject any changes.

Mr. Dow advised that should Council choose to amend the draft agreement to say employees have the choice of joining the Union or not joining the Union with no financial payment, he felt this would be a "deal breaker" and not be acceptable to the Union. He reminded Council that the City, as an employer, cannot interfere in the affairs of the Union. So to what extent the Union listens to the employees or just does their own thing, is pretty much up to the Union to decide.

Mayor Wasson stated that he is not willing to give the Union the authority to impose their will upon employees of the City who do not choose to belong to the Union.

Councilmember Steenrod noted that the negotiations have been dragging on for too long and she would like the employees to get their bonuses.

Mayor Wasson pointed out that the employees will get a signing bonus retroactive, therefore they are not losing any financial gain.

Councilmember Sheckler advised that he would support a clause that says either you are a Union member or you are not. If an employee choose not to be a Union member there should be no adverse action taken against them. The employee is giving up his right to have a voice in the Union, that is enough.

MOTION was made by Mayor Wasson, seconded by Councilmember Petersen, to direct City Attorney Marousek to rewrite a motion for Council, to say that Council accepts the contract with the condition that section 1.1 and 1.2.1 be removed.

Mr. Dow interpreted this to mean the City wishes to amend the contract to allow each employee to decide if they wish to be a member or not.

Councilmember Thomasson suggested that perhaps more than one motion should be developed for Council's consideration.

City Manager Piasecki reminded Council that Mr. Dow has pointed out that if Council chooses to change the agreement to allow employees to either join the Union or not join the Union, then that would be a deal breaker for the Union and will not go anywhere. However, if the sections are rewritten to allow that 90% is either given to the Union as a representation fee, or to charity that is mutually agreeable, that may be something that the City could talk to the Union about.

Mr. Dow informed Council that by leaving in the 90% representative fee in the draft contract, he felt there is a reasonable possibility that this may be acceptable. However, if Council chooses total freedom of choice by the employee whether to join the Union or not, then he felt the Contract would be rejected.

Mr. Dow advised Council that some of the consequences that could result should there be no contract should the Union choose to exercise right of free speech, could be:

- Picketing which could put jobs & benefits at risk
- Could file unfair bargaining process - bad faith

Mr. Dow also noted that the driving force for the employees is most likely the money that is there for them to receive after waiting a significant amount of time.

9:32 p.m. Mayor Wasson called for a 10 minute break.

City Attorney Marousek read the following as option 1.2A to replace Section 1.2:

The first sentence would read: "It shall not be a condition of employment that all employees of the Employer covered by this Agreement become members in good standing." (The remainder of the paragraph would be stricken)

City Attorney Marousek read the following as option 1.2B:

The following language be added to the end of the existing paragraph 1.2: "In the alternative to paying the service fee an employee may elect to pay an amount of money equivalent to regular Union dues and initiation fee to a non-religious charity or to another charitable organization mutually agreed upon by the employee and the Union. The employee shall furnish written proof each month to the Union that such payment has been made or initiate and maintain a payroll deduction with the Employer. If the employee and the Union do not reach agreement on such matters, the Commission shall designate the charitable organization." And, eliminate section 1.2.1

MOTION was made by Councilmember Sheckler, seconded by Councilmember Thomasson, to adopt Draft Resolution No. 02-236 approving the agreement regarding wages hours and working conditions with the Public, Professional & Office-Clerical Employees and Drivers Local Union No. 763 (Teamsters) and the agreement resolving unfair labor practice charges, with the change that section 1.2 be changed to 1.2A as stated by the City Attorney, and authorize the City Manager to sign both documents substantially in the form as submitted.

Councilmember Sheckler stated that he believes every individual has the right to choose whether they become a Union member or not, without any recourse against them. He felt that the contract as originally written removes individual rights of choice.

Councilmember Steenrod stated that she supports Councilmember Sheckler's philosophy, but cannot support the motion as the City would be back to square one in negotiations.

Mayor Wasson stated that the draft agreement is the Union's priorities, not the City employees.

Councilmember Thomasson voiced appreciation for Mr. Dow's efforts to bring this matter to a closure. He noted this is the first opportunity for employees to hear that the City Council has always had the employees best interests in mind, not the Union. He advised that he feels the proposed change in the agreements is for the good of the employees to allow them to decide. He noted that the Union may not allow the employees to vote on this proposal, but it is a risk he is willing to take.

VOTE ON MOTION: Motion passed 4 to 3 with Councilmembers Steenrod and White and Mayor Pro Tem Benjamin voting NO.

OLD BUSINESS

Towing Services Contract

Police Commander Tucker informed Council that in July this year, request for proposals for impound and Towing services were sent to 16 companies, and four responded. He informed Council that he personally reviewed the proposals, made site visits, reviewed equipment and drive times, ran record checks with Washington State Patrol regarding complaints, contacted references and compared pricing. He advised Council that none of the companies met all of the criteria. He proceeded to review a three page comparison matrix furnished to Council in their packets. He concluded by recommending that the contract be awarded to RoadOne (Dick's Highline Towing) for having the best overall package and value. He did noted that response time will be of concern and would need to be monitored and tracked.

City Manager Piasecki advised that should Council choose to award a contract, a standard contract would be prepared incorporating the information provided by the towing company, including all required insurance.

Upon questioning by Mayor Wasson, Commander Tucker advised that he ran a record check on all drivers for the companies submitting proposals.

Upon questioning by Mayor Pro Tem Benjamin, Commander Tucker advised that since the late 1950's the City has utilized the services of Pete's Towing. It is his opinion that Pete's is a quality company and has provided outstanding service, and he personally knows of no outstanding complaints.

Mayor Pro Tem Benjamin questioned why with a record of 40 years of outstanding service Council is even spending time considering this issue. He was of the opinion that this whole issue was politically motivated and since the service is already being provided, it is a waste of Council time.

Councilmember Steenrod felt that this issue has been raised to try to force Councilmember Petersen to resign. She noted that with longer towing times there is no benefit to the citizens and could force more overtime for Des Moines' Police officers. She reminded Council that Councilmember Petersen's case is still before the Judge to rule on a conflict of interest and that the Council should not make any decisions until the Judge has made his ruling.

MOTION was made by Councilmember Steenrod, seconded by Mayor Pro Tem Benjamin, that Council elect not to award a contract to any of the responders and leave the situation as it currently stands, pending the outcome of the Petersen conflict of interest lawsuit.

Councilmember Petersen announced that he must abstain from participation in this issue.

Councilmember Thomasson spoke against the motion citing that having a towing contract should have been accomplished 10 years ago, as it is just a good business practice. This issue has been heightened by Councilmember Petersen being on the Council and owning Pete's Towing. He felt there are valued reasons to have a contract including indemnity clauses and hold harmless

agreements and other items of that nature. He is of the opinion that having a contract would have a guarantee for a fair price for citizens. He suggested that Council may wish to have a contract with several towing companies, which would be his preference, and let the citizens make the choice.

Mayor Pro Tem Benjamin voiced the opinion that this is a political issue. He noted currently citizens can have any towing company called they name. Picking one towing company does not encourage a free market. He advised that the current system is not broke, it is working well.

Councilmember Sheckler agreed that this is an emotional subject. He noted that probably no one is going to dispute the fact that Pete's Towing is the best company, but even Councilmember Petersen acknowledged at the beginning that he could see a potential problem with a conflict of interest. He reminded Council that three authorities in the State said that they believe there is a conflict and this is the real issue. He does not see any way around that. He acknowledged that the pending court case could be thrown out, then Council would have to revisit the issue.

10:28 p.m. **MOTION** was made by Councilmember Steenrod, seconded by Mayor Pro Tem Benjamin, to extend the meeting another 15 minutes. Motion passed 5 to 2 with Councilmembers Petersen and Thomasson voting NO.

Mayor Pro Tem Benjamin stated that he heard Councilmember Petersen say he may have a conflict and that he had been advised by past City legal representation, which was advice from the Attorney General's office, that he might have a conflict. He also reminded Council that Councilmember Petersen had stated that the State Auditor's office felt the only area that he might have a conflict of interest was in towing City of Des Moines vehicles, if he charged for towing City vehicles. [ED Note: Councilmember Petersen acknowledged this to be true.]

Upon questioning by Mayor Pro Tem Benjamin, Councilmember Petersen acknowledge that he is not charging the City for any towing of City vehicles.

Councilmember Steenrod felt that since Pete's Towing is not charging the City for towing City vehicles, which helps the City's budget, there is no conflict and therefore there is no need to take any action until after the Court case is settled.

Councilmember White stated that she did not believe this was a political issue, but rather a responsibility to have a contract in place outlining services, dispute resolution procedures, insurance, indemnification and hold harmless provisions.

Upon questioning by Council, City Attorney Marousek noted she had reviewed written opinions on the conflict of interest regarding Councilmember Petersen from the following:

- MRSC indicating that the current situation was an apparent conflict of interest
- Two letters from the Attorney General's office expressing an opinion that the current situation was a violation of the Conflict of Interest Rule for Councilmembers
- Opinion from the State Auditor's office noting that they would take the advice of the Attorney General

She noted that she had also read a letter from Mr. Langley, Mr. Petersen's attorney, disagreeing with those opinions. She further noted, that as she understands it, the Court has not yet expressed an opinion, but simply issued an injunction which Mr. Petersen has complied with tonight.

Mayor Wasson voiced the opinion that until the Judge makes a formal ruling, there is no conflict of interest. He felt this expensive process was politically motivated by a disgruntled citizen. He noted that the City Manager used his best judgement to place this RFP. However, he feels the first step is to adopt procurement policy guidelines for all services before any RFP is ever issued. Therefore, he supports Councilmember Stenrod's motion. If Council were to proceed to award a contract, the City could be stuck with the second best choice.

Upon questioning by Council, Councilmember Petersen stated that he believes the Judge may reach a decision around mid-December. He noted that originally he was advised by the City Manager that there may be a possible conflict of interest. He was informed that the Attorney General's office and Washington Cities Insurance Authority believed that there was a potential conflict of interest. He further noted that he then contact his attorney, who informed him that he did not believe there is any conflict of interest, due to the fact that in 1999 the Legislature re-wrote the Conflict of Interest Laws, to allow individuals who had years of good business and involvement in communities to get involved in State government.

10:45 p.m. **MOTION** was made by Mayor Pro Tem Benjamin, seconded by Councilmember Sheckler, to extend the meeting another 15 minutes. Motion passed 5 to 2 with Councilmembers Thomasson and White voting NO.

City Manager Piasecki noted that when a Des Moines officer shows up at a stalled car on the side of the road, or an accident, the owner is asked if they have a preference of tow companies. He noted that even if Council chooses to award the contract, there would be no guarantee that they would have exclusive rights to towing all vehicles. Personal requests for a towing company would be honored. The Police only make the choice when the owner is not present or for some reason is unable to tell the police who they wish to have tow the vehicle.

VOTE ON MOTION: Motion failed by a 3 to 3 vote. With Councilmember Steenrod, Mayor Pro Tem Benjamin and Mayor Wasson voting YES. Councilmembers Sheckler, Thomasson and White voting NO. [ED NOTE: Councilmember Petersen did not participate.]

NEXT MEETING DATE

Mayor Wasson noted that the next meeting is a Study Session on November 7, 2002.

ADJOURNMENT - 10:51 p.m.

MOTION was made by Councilmember Thomasson, seconded by Councilmember White at 10:51 p.m. to adjourn. Motion passed unanimously.

Respectfully submitted,

Denis Staab
City Clerk

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

November 7, 2002

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

ROLL CALL - Present: Mayor Don Wasson, Mayor Pro Tem Richard Benjamin, Councilmembers Bob Sheckler (left at 10:00 p.m.), Maggie Steenrod, Scott Thomasson and Susan White. Absent: Councilmember Gary Petersen (illness). Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Finance Director Paula Henderson, Harbormaster Joe Dusenbury, Public Works Director Tim Heydon, Park and Recreation Director Patrice Thorell, Finance Manager Peggy Watson, Park Manager Bill Miller, Commander John O'Leary, Assistant City Engineers Maiya Andrews and Loren Reinhold, and Deputy City Clerk Angela Chaufy.

MOTION was made by Councilmember Sheckler, seconded by Councilmember Thomasson, and passed unanimously to excuse Councilmember Petersen from attendance.

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

DISCUSSION ITEMS

Improvements to Midway Park

Mayor Wasson announced that he had invited members of the Association of Community Organizations for Reform Now (ACORN) to address Council.

Park and Recreation Director Thorell asked ACORN representative Kay Sanchez and her neighbors to stand and be recognized.

Six people in the audience stood.

Park and Recreation Director Thorell informed Council that a meeting with the neighborhood residents had been held in August 2002. At the meeting, the residents had voiced concerns regarding safety issues, crime, drug use, and prostitution occurring at Midway Park. They asked that lighting, restrooms and a drinking fountain be added to the park.

Park Manager Miller described the Park department's maintenance schedule for Midway Park. In response to ACORN's concerns, Park Manager Miller said that a port-a-potty had been installed, the trees had been limbed to approximately 15 feet, and the shrubbery had been removed. An upgrade of the play equipment had been requested in the proposed 2003 budget and a drinking fountain was scheduled to be installed in the Spring. Park Manager Miller informed Council that he was working with Puget Sound Energy (PSE) to install 200-watt light poles in the park. The project would cost \$1,840 per year. In addition, he said that he would like to replace or move one of the existing play structures.

Park and Recreation Director Thorell informed Council that the 2004 Capital Improvement Plan included a request for \$65,000 to improve play equipment. She proposed that the improvements be funded through Community Development Block Grant funds.

tax equalization, vehicle fuel taxes, plan check fees, and interest earnings. She said that the current fund was funded at a 141% level.

City Manager Piasecki explained that if Council chose to remove sales tax equalization from the formula as it was no longer available to the City, the target amount for the fund would be lowered.

Councilmember Thomasson recommended that the 1997 Loan Receivable for Airport Defense be defeased and the true ending fund balance for the Revenue Stabilization Fund be reflected in the budget.

Finance Director Henderson briefly reviewed the proposed budgets of the Facility Repair and Replacement fund, Equipment Rental Replacement fund, and the Computer Operations – Replacement. She noted that no assessments or purchases were scheduled for 2003 for the Equipment Rental Replacement and Computer Operations- Replacement funds.

Years 2003 – 2008 Capital Improvement Plan

In order to clarify the specific projects, Councilmember Thomasson requested that a picture or map of every capital improvement project be included in the Capital Improvement Plan (CIP).

Finance Director Henderson reviewed the Accounting Software Upgrade request form. She said that software installation and training was scheduled for the second quarter of 2003. In response to Councilmember Steenrod's questioning, Finance Director Henderson said that she would see if a forecasting module was included with the software.

Assistant City Manager Loch explained that the City Hall North Wing Facility Upgrade project began a reserve in preparation for the upgrade of the electrical, noise insulation, flooring and HVAC system in the north wing of City Hall.

Park and Recreation Director Thorell said that the Ad Hoc Parks Recreation and Senior Services Master Plan Committee would be presenting their proposed master plan to Council in January. She then reviewed the Des Moines Beach Park Facility Repairs request form. Park and Recreation Director Thorell noted that the request included the allocation of \$1,400,000 in 2005 for the repair of the Dining Hall and other buildings.

Councilmember Thomasson said that he was not comfortable with the 2005 project being listed in the CIP now as Council had not yet discussed or set policy on the issue. He said that the item should be removed until after the Master Plan process was complete.

Councilmember Steenrod asked that the CIP projects be numbered.

Park and Recreation Director Thorell reviewed the Field House ADA Renovation project. She explained that CDBG funds would be utilized to upgrade the electrical system, install new door hardware, replace drainage and walkways, and repair some of the log chinking.

In regard to the Steven J. Underwood Memorial Park, Phase IB project, Park and Recreation Director Thorell explained that the Community Center money had been reprogrammed to this project. The project included the installation of an additional baseball field and restrooms to complete the baseball complex and provide for tournament play at the park.

In response to Councilmember Steenrod's request for tournament revenue projections, Park and Recreation Director Thorell said that it would be difficult to project them for the first year as the park will have just opened.

At 9:04 p.m., Mayor Wasson declared a ten-minute break.

Park and Recreation Director Thorell briefly highlighted the Park and Recreation Master Plan and Woodmont Park Land Acquisition projects. She noted that the City had not yet met the acreage per capita threshold identified in the last Park Master Plan.

Councilmember Steenrod suggested that the \$50,000 allocated to the land acquisition project might be better spent addressing ACORN's park concerns as significant work and money was needed for Woodmont Park. She said that the improvement to Woodmont Park would also require road improvements. Councilmember Steenrod recommended that signage be placed at the parks. She suggested that Council prioritize park needs.

Councilmember Thomasson said that the prioritization of park needs would involve the balancing of the improvements to existing parks with the acquisition of new park land.

Park and Recreation Director Thorell described the Play Equipment Repairs and Replacement request form.

Councilmember Thomasson recommended that the City enter into negotiations with the Highline School District to purchase the land of Zenith Park. He felt it was a higher priority to maintain an existing park than to purchase future park land. Councilmember Thomasson suggested that Council consider their policy regarding the replacement of play equipment.

Councilmember Steenrod said that community groups often donate or contribute toward play equipment while the City was responsible for obtaining park land.

Public Works Director Heydon informed Council that the outcome of Initiative 776 and Referendum 51 would greatly affect the Arterial Streets CIP. He referred Council to the project list displayed on page 44 of their packets.

Assistant City Engineer Andrews informed Council that the proposed budget for the arterial maintenance program had been reduced to \$350,000. She said that the budgeted amount would not adequately maintain the city's roadways.

Councilmember Thomasson suggested that Council discuss the impact of GASB 34 during the Transportation Plan process.

Public Works Director Heydon said that the condition of the pavement had been evaluated but more data needed to be collected in order to complete the requirements of GASB 34.

Councilmember Thomasson noted that transportation impact fees could assist with the funding of arterial maintenance. He felt that streets were essential to government. Councilmember Thomasson said that Council might wish to allocate money to arterial street maintenance rather than to another project.

Mayor Pro Tem Benjamin agreed that streets needed to remain a priority of the city. He noted that a drop in the streets' condition would make them more expensive to maintain.

Assistant City Engineer Andrews reviewed the following projects:

Neighborhood Traffic Control Program

Pacific Highway South Project

16th Avenue South Improvement (Phase 1)

- Construction of project moved to 2004 per Council's direction.
- "Other" funding source line item added.

Kent Des Moines Road – 16th Avenue South to 24th Avenue South

- Grant funding was being sought for the project.

Wesley Homes Pedestrian Signal

South 216th Street/24th Avenue South Traffic Signal

- Corners of rights-of-way would need to be purchased.
- Position of the signal equipment follows the recommendation of the Comprehensive Plan.
- A grant has been received for the construction phase of the project.

Mayor Pro Tem Benjamin said that he would like to see a plan for pedestrian crossing on Marine View Drive. He said that drivers were not honoring crosswalks.

Mayor Wasson felt Marine View Drive should be a high priority for the Neighborhood Traffic Control Program.

Assistant City Engineer Andrews explained that Marine View Drive improvements would need to be covered through a different program as the area did not meet the criteria identified by the Neighborhood Traffic Control program.

At 10:00 p.m., Councilmember Sheckler left the meeting.

Public Works Director Heydon referred Council to the Surface Water Capital Fund project summary listed on Page 100 of the packet. He said that the Woodmont Culvert/Overflow project was the only new project proposed. Public Works Director Heydon said that the Des Moines Basin project would be affected by Referendum 51.

Due to the flooding problems on Kent Des Moines Road, Councilmember Steenrod suggested that the Kent Des Moines road project be moved to the Surface Water Management budget.

City Manager Piasecki explained that surface water management funds can only finance surface water management related projects.

Assistant City Engineer Reinhold briefly reviewed the 10th Avenue South Culvert Replacement and Intersection Improvement Project, the McSorley Creek Basin Plan, and the Barnes Creek Detention Facility/223rd Culvert Replacement Project. He noted that a Public Works Trust Fund Loan was proposed to fund the Barnes Creek Detention Facility/223rd Culvert Replacement project.

Mayor Wasson asked for a map of all the various creeks located in Des Moines.

Assistant City Engineer Reinhold informed Council that the request form for the Des Moines Creek Basin Project reflected 15% of the actual costs as the project is shared with other Des Moines Creek Basin Committee members.

Public Works Director Heydon confirmed that the City of SeaTac had requested water rights for the area. He confirmed that the SR509 extension committee has participated in the project and has financed a portion of the design work.

In regard to the Marine View Drive Bridge project, Public Works Director Heydon said that interlocals for the Des Moines Creek Basin Plan, its preliminary design, and the design work had been signed. An agreement for the construction of the project and its long term maintenance was still needed.

City Manager Piasecki confirmed that construction of the project would not begin until the agreement was signed.

Public Works Director Heydon informed Council that the plans for the project had been approved by all of the cities throughout the process. A maximum of \$2,000,000 could be financed through the Public Works Trust Fund.

Mayor Wasson noted that Referendum 51 might affect the SR509 committee's contribution to the project.

Public Works Director Heydon said that the development of the plan and its preliminary design had already been completed.

NEXT MEETING DATE – Regular Meeting, November 14, 2002

ADJOURNMENT

At 10:29 p.m., **motion** was made by Mayor Pro Tem Benjamin and seconded by Councilmember Thomasson to extend the meeting fifteen minutes. **VOTE ON MOTION**: Motion failed, 3 –2, with Councilmembers Steenrod and White opposed. *[Editor's Note: Motion to extend the meeting requires approval of three fourths of the Councilmembers who are present and eligible to vote.]*

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

Respectfully submitted,

Angela M. Chaufty, Deputy City Clerk

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:
King County Jail Services

ATTACHMENTS:
Interlocal Agreement between King County and
the City of Des Moines for Jail Services

FOR AGENDA OF: November 21, 2002

DEPT. OF ORIGIN: Municipal Court

DATE SUBMITTED: November 12, 2002

CLEARANCES:

☒ Legal

☒ Municipal Court

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

PURPOSE AND RECOMMENDED ACTION

The purpose of this agenda item is request approval of an interlocal agreement between King County and City of Des Moines for jail services.

The following motion will appear on the Consent Calendar:

"I move to approve the Interlocal agreement with King County for jail services and to authorize the City Manager to sign the agreement substantially in the form as submitted."

BACKGROUND

Last year King County increased their charges for jail services by 12 percent. In addition, King County closed the Regional Justice Center from 9:00 PM to 6:00 AM, forcing cities to take prisoners to downtown Seattle during those hours, rather than Kent. They also informed the cities that they wanted to phase out the housing of city prisoners in the next ten years. Given these development, King County cities, including Seattle, formed a team, consisting of representatives of four cities, to negotiate a new jail services agreement with the county.

DISCUSSION

The negotiating team has been meeting with King County for the past year and a half the parties have developed the attached contract for jail services. By the end of the ten years, cities will no longer use

King County for jail services. This contract is for daily jail services, which include booking and housing inmates, it also includes medical and psychiatric care. This agreement caps the annual fee increases at 5.8 percent per year. At the same time as they were negotiating with King County, the cities also developed a jail services contract with Yakima County to make sure that alternate jail services would be available beyond King County's ten-year phase-out period.

ALTERNATIVE

None

FINANCIAL IMPACT

For the past three years King County has increased their services anywhere between 10- 12 percent, with this new contract the annual increase will only be 5.8 percent.

RECOMMENDATION (OR CONCLUSION)

Enter the Interlocal agreement between King County and City of Des Moines for jail services.

Interlocal Agreement Between King County and the City of Des Moines for Jail Services

THIS INTERLOCAL AGREEMENT ("Agreement") is dated effective the 1st day of November, 2002. The Parties to this Agreement are King County, a Washington municipal corporation and legal subdivision of the State of Washington (the "County") and the City of Des Moines, a Washington municipal corporation (the "City").

This Agreement is made in accordance with the Interlocal Cooperation Act (RCW Chapter 39.34) and the City and County Jails Act (RCW Chapter 70.48).

In consideration of the promises, payments, covenants and agreements contained in this Agreement, the parties agree as follows:

1. **Definitions:** Unless the context clearly shows another usage is intended, the following terms shall have these meanings in this Agreement:
 - 1.1. "Booking" means registering, screening and examining inmates for confinement in the Jail; inventorying and safekeeping inmates' personal property; maintaining all computerized records of arrest; performing warrant checks; and all other activities associated with processing an inmate.
 - 1.2. "Business Day" means Monday through Friday, 8:00 a.m. until 5:00 p.m., except holidays.
 - 1.3. "City Inmate" means a person booked into or housed in the Jail when a City charge is the principal basis for booking or confining that person. A City charge is the principal basis for booking or confining a person where one or more of the following applies, whether pre-trial or post-trial:
 - 1.3.1. The person is booked or confined by reason of committing or allegedly committing a misdemeanor or gross misdemeanor offense within the City's jurisdiction, whether filed under state law or city ordinance;
 - 1.3.2. The person is booked or confined by reason of a Court warrant issued either by the City's Municipal Court or other court when acting as the City's Municipal Court;
 - 1.3.3. The person is booked or confined by reason of a Court order issued either by the City's Municipal Court or other court when acting as the City's Municipal Court; or,
 - 1.3.4. The person is booked or confined by reason of subsections 1.3.1 through 1.3.3 above, in combination with charges, investigation of charges, and/or warrants of other governments, and the booking or confinement by reason of subsections 1.3.1 through 1.3.3 above is determined to be the most serious charge in accordance with Exhibit I.
 - 1.3.5. A City charge is not the principal basis for confining a person where the person is booked or confined exclusively or in combination with other charges by reason of a felony charge or felony investigation.

A City charge is not the principal basis for confining a person where the person is confined exclusively or in combination with other charges by reason of a felony charge or felony investigation that has been reduced to a State misdemeanor or gross misdemeanor.

- 1.3.5. A City charge is not the principal basis for confining a person where the person is booked or confined exclusively or in combination with other charges by reason of a felony charge or felony investigation.
- 1.3.6. A City charge is not the principal basis for confining a person where the person is confined exclusively or in combination with other charges by reason of a felony charge or felony investigation that has been reduced to a State misdemeanor or gross misdemeanor.
- 1.4 "Contract Cities" means cities that are signatory to this Agreement.
- 1.5 "Continuity of Care Records" means an inmate's diagnosis, list of current medications, treatments, PPD results and scheduled appointments or follow-ups.
- 1.6 "County Inmate" means any inmate that is not a City Inmate.
- 1.7 "Force Majeure" means war, civil unrest, and any natural event outside of the party's reasonable control, including fire, storm, flood, earthquake or other act of nature.
- 1.8 The first "Inmate Day" means confinement for more than six (6) hours measured from the time such inmate is first presented to and accepted by the Jail until the inmate is released, provided that an arrival on or after six (6) o'clock p.m. and continuing into the succeeding day shall be considered one day. The second and each subsequent Inmate Day means confinement for any portion of a calendar day after the first Inmate Day. For persons confined to the Jail for the purpose of mandatory DUI sentences, "Inmate Day" means confinement in accordance with Exhibit II.
- 1.9 "JAG" means the Jail Agreement Administration Group created pursuant to Section 10 of this Agreement.
- 1.10 "Jail" means a place primarily designed, staffed, and used for the housing of adults charged or convicted of a criminal offense; for the punishment, correction, and rehabilitation of offenders charged or convicted of a criminal offense; or for confinement during a criminal investigation or for civil detention to enforce a court order. Upon the date of the execution of this Agreement, Jail includes the King County Correctional Facility, the detention facility at the Regional Justice Center, the North Rehabilitation Facility; and any Community Corrections Facility and/or Program, such as Work Release, Electronic Home Detention, Work Crews, Day Reporting, and Evening Reporting operated by the County directly or pursuant to contract.
- 1.11 "Medical Inmate" means a City Inmate or County Inmate clinically determined by the Seattle-King County Department of Public Health, or its successor charged with the same duties, as needing the level of services provided in the Jail's infirmary or other medical facility that the County may choose to send a Medical Inmate. If an inmate is moved to the general population then the inmate is no longer considered a Medical Inmate.

- 1.12 "Official Daily Population Count" is an official count of inmates in the custody of the Jail made at a point in time in a 24-hour period for, among other purposes, security and population management. It is not used for billing purposes.
- 1.13 "PARP" means the Population Alert and Reduction Plan attached as Exhibit IV.
- 1.14 "Psychiatric Inmate" means a City Inmate or County Inmate clinically determined by the Seattle-King County Department of Public Health, or its successor charged with the same duties, as needing the level of services provided in the Jail's psychiatric housing units or other medical facility that the County may choose to send a Psychiatric Inmate. If an inmate is moved to the general population then the inmate is no longer considered a Psychiatric Inmate.
2. Jail and Health Services. The County shall accept City Inmates for confinement in the Jail, except as provided in Sections 4.5 and 11 of this Agreement. The County shall also furnish the City with Jail facilities, booking, transportation among County facilities, as determined necessary in the County's sole discretion, including the various Jail facilities, Harborview Medical Center and Western State Hospital, and custodial services, and personnel for the confinement of City Inmates at least equal to those the County provides for confinement of County Inmates. However, the County reserves the right to operate specific programs and/or facilities exclusively for County Inmates. The County shall furnish to City Inmates all Jail medical, dental and other health care services required to be provided pursuant to federal or state law. Also, the County shall make every reasonable effort to release a City Inmate as expeditiously as possible after the County has received notification of a court order to release.
3. City Compensation. The City will pay the County a booking fee and a maintenance charge as follows:
- 3.1 Booking Fee. The booking fee shall be assessed for the booking of City Inmates by or on behalf of the City into the Jail. The booking fee shall be as provided in Exhibit III. The effective date of each annual adjustment will be January 1st. The County will maintain its program of contacting the City after booking a City Inmate in order to give notice that the City Inmate has been booked and to provide the opportunity for release to the City if the City so desires. Such action will take place as soon as reasonably possible but no later than the next business day after booking and will result in no maintenance charges if the City Inmate is released to the City within six hours of booking. The parties agree that the issue of providing earlier notice to the Contract Cities of booking of City Inmates shall be immediately referred to JAG for resolution. The County will maintain its program to notify the City of the status of its inmates in cases where confinement is the result of multiple warrants from two or more jurisdictions. This program will allow the City to take custody of a City Inmate if it so desires after the other jurisdictional warrants are resolved and thereby prevent unnecessary maintenance charges.
- 3.2 Maintenance Charge. The maintenance charge shall be assessed for a City Inmate for each Inmate Day. The maintenance charge shall be as provided in Exhibit III. The effective date of each annual adjustment will be January 1st. The City will be billed the daily maintenance charge for Medical and Psychiatric Inmates, except as provided for in Section 11.7 of this Agreement.

3.3 Proportional Billing. The parties intend to develop a system of proportional billing which will divide the costs of incarceration between two or more jurisdictions where multiple jurisdictions have a hold on a City Inmate. The parties agree to negotiate, in good faith, in an attempt to develop such a system.

4. Billing and Dispute Resolution Procedures.

4.1 The County shall transmit billings to the City monthly. Within forty-five (45) days after receipt, the City shall pay the full amount billed or withhold a portion thereof and provide the County written notice specifying the total amount withheld and the grounds for withholding such amount, together with payment of the remainder of the amount billed (if any amount remains).

4.2 Withholding of any amount billed or alleging that any party is in violation of any provision of this Agreement shall constitute a dispute, which shall be resolved as follows:

4.2.1 The County and the City shall attempt to resolve the dispute by negotiation. If such negotiation is unsuccessful, either party may refer the dispute to JAG for resolution. In the event JAG is unable to resolve the dispute within 30-days of referral, either party may appeal. All appeals shall be referred to the Chief Executive Officer of the City, or designee, and the County Executive, or designee, for settlement. If not resolved by them within thirty (30) days of the referral, the Chief Executive Officer and the County Executive by mutual written consent may seek arbitration or mediation of the matter. Each party shall pay one-half of the arbitrator's or mediator's fees and expenses. If mutual written consent to apply for the appointment of an arbitrator or mediator is not reached, or the dispute is not resolved through arbitration or mediation, either party may seek court action to decide the dispute. If either party prevails in a court action to enforce any provision of this Agreement, it shall be awarded reasonable attorney's fees to be based on hourly rates for attorneys of comparable experience in the community.

4.3 Any amount withheld from a billing, which is determined to be owed to the County pursuant to the dispute resolution procedure described herein, shall be paid by the City within thirty (30) days of the date of the negotiated resolution or appeal determination.

4.4 Any undisputed billing amount not paid by the City within sixty (60) days of receipt of the billing, and any amounts found to be owing to the County as a result of the billing dispute resolution procedure that are not paid within thirty (30) days of resolution, shall be conclusively established as a lawful debt owed to the County by the City, shall be binding on the parties and shall not be subject to legal question either directly or collaterally. This provision shall not limit a City's ability to challenge or dispute any billings that have been paid by the City.

4.5 If the City fails to pay a billing within 45-days of receipt, the County will notify the City of its failure to pay and the City shall have ten (10) days to cure non-payment. In the event the City fails to cure its nonpayment, the City shall be deemed to have voluntarily waived its right to house City Inmates in the Jail and, at the County's request, will remove City Inmates already housed in the Jail within thirty (30) days. Thereafter, the County, at its sole discretion, may accept no further City Inmates until all outstanding bills are paid.

- 4.6 The County may charge an interest rate equal to the interest rate on the monthly County investment earnings on any undisputed billing amount not paid by the City within forty-five (45) days of receipt of the billing, and any amounts found to be owing to the County as a result of the billing dispute resolution procedure.
- 4.7 Each party may examine the other's books and records to verify charges. If an examination reveals an improper charge, the next billing statement will be adjusted appropriately. Disputes on matters related to this Agreement which are revealed by an audit shall be resolved pursuant to Section 4.2.
5. Term. This Agreement shall commence on November 1, 2002 and shall supersede all previous contracts and agreements between the parties relating to the Jail and jail services. This Agreement shall extend to December 31, 2012 and may be renewed annually by the agreement of the parties.
6. Termination. Neither party may terminate this Agreement prior to January 1, 2004. Thereafter, either party may initiate a process to terminate this Agreement as follows:
- 6.1 Ten-Day Notice of Intent to Terminate. Any party wishing to terminate this Agreement shall issue a written notice of intent to terminate, not less than ten (10) days prior to issuing a ninety (90) day termination notice under Section 6.2 of this Agreement. Upon receipt of the written notice of intent to terminate, the parties will meet to confer on whether there are steps that the non-terminating party can take in order to avoid a ninety (90) day termination notice under section 6.2 of this Agreement.
- 6.2 Ninety-Day Termination Notice. After the ten (10) day period has run under Section 6.1 of this Agreement, the party desiring to terminate this Agreement may provide the other party ninety (90) days written termination notice, as provided in RCW 70.48.090.
7. Limited Re-Opener. The County or the Cities may request (a) during the year 2006, and during the year 2009, that the parties meet to negotiate a change to the charges being paid under Exhibit III; or (b) at any time prior to December 31, 2006, that the parties meet to negotiate a change to any operations covering Medical or Psychiatric Inmates. In the event such a request is made, the parties agree to meet and negotiate in good faith on the issue. However, if no agreement is reached, the terms of this Agreement will continue to apply.
8. Indemnification.
- 8.1 The County shall indemnify and hold harmless the City and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent action or omission of the County, its officers, agents, and employees, or any of them. In the event that any suit based upon such a claim, action, loss, or damage is brought against the City, the County shall defend the same at its sole cost and expense; provided, that, the City retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, and employees, or any of them, or

jointly against the City and the County and their respective officers, agents, and employees, or any of them, the County shall satisfy the same.

8.2 The City shall indemnify and hold harmless the County and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent act or omission of the City, its officers, agents, and employees, or any of them. In the event that any suit based upon such a claim, action, loss, or damage is brought against the County, the City shall defend the same at its sole cost and expense; provided that the County retains the right to participate in said suite if any principle of governmental or public laws is involved; and if final judgment be rendered against the County, and its officers, agents, and employees, or any of them, or jointly against the County and the City and their respective officers, agents, and employees, or any of them, the City shall satisfy the same.

8.3 In executing this agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility, which arises in whole or in part from the existence or effect of City ordinances, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, rule or regulation is at issue, the City shall defend the same at its sole expense and if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and attorney's fees.

8.4 The terms of Section 8 "Indemnification" shall survive the termination or expiration of this Agreement.

9. Most Favored Treatment. The County represents and assures the City that no other city or town has or will receive more favored treatment under a contract with the County covering the Jail or jail services. If advantages are provided inmates of another city or town, like advantages shall be extended to City Inmates; and if lower rates are provided in any contract with another city or town, such reduced charges shall be extended to the City under this Agreement. This Section shall not apply to a) temporary service contracts twelve months' or less in duration; provided that such temporary service contracts shall not cause the City to pay more in maintenance charges and booking fees than the City would have paid without such a temporary service contract; b) reciprocal bed use agreements; c) any agreement among the County and any city or town related to additional jail capacity at a new or expanded Jail; and d) any agreements for services among the County and any city or town for additional services not provided for in this Agreement.
10. Jail Agreement Administration Group (JAG). JAG is hereby established to work together to assure the effective implementation of this Agreement and resolve any Agreement or PARP administration, implementation or interpretation issues including, without limitation, issues related to inmate transportation, alternative and community correction programs, coordination with the courts and law enforcement, mental health, drug and alcohol treatment, Agreement interpretation, any capital expenditure charge or budget included in the maintenance fee, referrals of disputes under Section 4 and issues related to the expedient transfer of City Inmates into or out of alternative facilities within or outside of King County. JAG shall also negotiate any reopener of the provisions described in Section 7 of this Agreement. JAG shall be initially established by November 1, 2002.

The committee shall be composed of eight persons as follows:

County Executive Representative	(1)
City of Seattle Representative	(1)
City of Bellevue Representative	(1)
Director of the Department of Adult and Juvenile Detention	(1)
Suburban Cities Representatives	(4)

The City of Seattle representative will be appointed by the Mayor of Seattle. The City of Bellevue representative will be appointed by the City Manager. The Suburban Cities Association (SCA) shall select four (4) representatives through a process defined by the SCA. The Mayor of Mayor/Council cities or the City Manager of Council/Manager cities shall appoint the representative of each city selected by the SCA. Notice of the city representatives and any changes thereto shall be provided to the County Executive. The Committee shall meet at least quarterly. A Chair shall be selected from among the members.

11. Jail Capacity. The parties understand that the number of beds available in King County may not meet the demands for those beds in the future. The following items attempt to address the needs of the local criminal justice system for adequate secure bed space and the County's ability to prevent excessive and unmanageable crowding conditions within capacity.
 - 11.1 PARP. The parties agree to make a good-faith effort to cooperatively implement all provisions of the PARP. Additionally, King County agrees to be bound to the Population Alert Notification section of the PARP with the caveat that King County will not be held to the Population Alert Notification section of the PARP in the event of force majeure or computer or telecommunications failure. The parties have also prepared a Table set forth in Exhibit V. This Exhibit represents a good faith effort by the parties to estimate Jail bed demand and supply for the years 2002 through 2005. However, the King County supply scenarios contained in Exhibit V are not binding on the County.
 - 11.2 Capacity for City Inmates. When necessary, King County will double bunk the Regional Justice Center up to 65% to accommodate City Inmates. The parties understand that the County's commitment to double bunk up to 65% at the Regional Justice Center to accommodate City Inmates means that the County will not set a budgetary constraint that will prevent the County from performing under the terms of this Agreement.
 - 11.3 The Contract Cities agree to the following population reduction schedule for the aggregate number of City Inmates.
 - A) By December 31, 2003, at the time of the Jail's Official Daily Population Count the Contract Cities agree to reduce the aggregate number of City Inmates in the Jail to 380.

- B) By December 31, 2004, at the time of the Jail's Official Daily Population Count, the Contract Cities agree to reduce the aggregate number of City Inmates in the Jail to 250.
- C) By July 1, 2005, at the time of the Jail's Official Daily Population Count, the Contract Cities agree to reduce the aggregate number of City Inmates in the Jail to 220.
- D) By December 31, 2012, at the time of the Jail's Official Daily Population Count, the Contract Cities agree to reduce the aggregate number of City Inmates in the Jail to 0, with the exception that inmates whose status has changed to City Inmate will not be included in the calculation of the aggregate number of City Inmates if the inmate is removed from the Jail within 72-hours of such change in status.

For the purpose of determining the aggregate number of City Inmates only, and not for billing purposes, inmates held on multiple warrants by the County which include one or more city warrants in addition to a County and/or state warrant and City Inmates that have been booked into the Jail and the Contract Cities have not been notified of such booking shall not be considered a City Inmate. Also, City Inmates housed in the Jail pursuant to a reciprocal bed-use agreement will not be considered City Inmates for the purpose of determining the aggregate number of City Inmates.

- 11.4 The City agrees to be bound by the population reduction schedule listed in Section 11.3. Accordingly, in the event the aggregate City Inmate population:

- A) Exceeds 380 on any given day from December 31, 2003, through December 31, 2004; or
- B) Exceeds 250 on any given day from December 31, 2004, through June 30, 2005; or
- C) Exceeds 220 on any given day from July 1, 2005 to December 31, 2012; or
- D) Exceeds 0 on any given day after January 1, 2013, except as provided in Section 11.3;

then the County will have the right to take the actions outlined in Section 11.5.

- 11.5 The County will notify the Contract Cities by phone or electronic mail, if the Contract Cities have exceeded the population reduction schedule described in Sections 11.3 and 11.4. The County may then decide to continue to house City Inmates in excess of the population reduction schedule listed in Sections 11.3 and 11.4. Alternatively, the County may refuse to accept bookings from the City until such time as the aggregate number of City Inmates is reduced below the population reduction schedule listed in Sections 11.3 and 11.4. If the aggregate number of City Inmates is reduced below the population reduction schedule listed in Sections 11.3 and 11.4, through removal of City Inmates from the Jail, then the County will be obligated to accept new City bookings. The notification required by the first sentence of this Section, will be made to the person

designated in Section 13.10 of this Agreement, and will inform the City whether the County intends to continue to house City Inmates in excess of the population reduction schedule listed in Sections 11.3 and 11.4, or whether the County will refuse to accept bookings from the City until such time as the aggregate number of City Inmates is reduced below the population reduction schedule listed in Sections 11.3 and 11.4.

- 11.6 The Jail's capacity limit for Medical Inmates is twenty-six (26). The Jail's capacity limit for Psychiatric Inmates is one hundred fifty one (151). For the purpose of this Section the Medical and Psychiatric Inmate population will be determined following the definitions in Sections 1.11 and 1.14 at the time of the Jail's Official Daily Population Count.
- 11.7 When the Jail has reached its capacity limit for either Medical or Psychiatric Inmates as set forth in Section 11.6, the County will notify the City by phone or electronic mail. Such notification will be made to the person designated in Section 13.10 of this Agreement. At the time this notification is made the County may request that the City take custody of a sufficient number of its Medical or Psychiatric Inmates to reduce the number of Medical or Psychiatric Inmates to the capacity limits detailed in Section 11.6, or the County may inform the City that it is willing to continue to house these inmates at the premium maintenance day charge as detailed in Exhibit III. The premium maintenance day charge in Exhibit III may only be charged when 1) the capacity limit is exceeded, 2) additional staff are assigned and compensated to serve these excess Medical or Psychiatric Inmates, 3) additional medical or psychiatric bed capacity is created, and 4) notice is provided as detailed above in this Section.
- 11.8 County requests under Section 11.7 will be made as follows. The billable City with the most recent City Inmate admitted as Medical or Psychiatric Inmate will be asked to take custody of that inmate. This process will be repeated until such time as the Medical and Psychiatric populations are reduced below capacity limits, or the Jail is willing to continue to house these inmates at the premium maintenance day charge as detailed in Exhibit III.
- 11.9 If the County, pursuant to Sections 11.7 and 11.8, requests that the City take custody of Medical or Psychiatric Inmates, the City shall comply with the County's request. The City may take custody of its¹ Medical or Psychiatric Inmates by picking them up within 24-hours of the County's request, or by notifying the County, within 24-hours of the County's request, that the City would like the County to deliver the inmates to the City's

¹ Within eight (8)-hours of the County's request, the City may provide the County with the names of other Medical Inmates to substitute for the Medical Inmates identified for pick-up by the County. In the event the City identifies substitute Medical Inmates that are City Inmates, the provisions of Section 11 will continue to apply. In the event the City identifies substitute Medical Inmates that are the responsibility of a different City (Substitute City), the Substitute City will be responsible for picking-up the substitute Medical Inmates within 24-hours of the initial request for pick-up. In the event the Substitute City fails to pick-up its Medical Inmates within 24-hours of initial notification to the City, the County will deliver the Medical Inmates named in the original notification to the City's designated drop-off location or backup location. The substitution procedures outlined in this footnote will also apply to Psychiatric Inmates.

designated drop-off location or a backup location previously provided to the County². If the City has not picked-up the Medical or Psychiatric Inmate within 24-hours of the County's request, or the City has requested that the County take the Medical or Psychiatric Inmate to the designated drop-off location or backup location, the County will deliver the Medical or Psychiatric Inmate to the City's designated drop-off location or backup location. In either case, the City's designated drop-off location or backup location must accept delivery from the County, and must be available to do so seven days a week, twenty-four hours a day. In all cases, the County shall provide the receiving entity with Continuity of Care Records, in a sealed envelope, at the time custody is transferred. The City will ensure that the City and the receiving entity comply with all applicable confidentiality laws and rules. Similarly, the City will ensure that Continuity of Care Records are provided to the County at the time custody of a City Inmate receiving the level of care consistent with a Medical or Psychiatric Inmate is transferred to the County.

- 11.10 The County will transport Medical or Psychiatric Inmates to a designated drop-off location or backup location within King County, Washington without charge. The City will pay all transportation costs for Medical or Psychiatric Inmates taken to a designated drop off location or backup location outside of King County, Washington. In no case will the County be obligated to transport a Medical or Psychiatric Inmate out-of-state.
12. Transfer of Property. The parties agree that prior to July 1, 2004 the County will convey, pursuant to the terms of the Land Transfer Agreement attached as Exhibit VI, to the City of Bellevue, Washington, to hold on behalf of all Contract Cities, as third party beneficiaries, certain real property located at 1440 116th Avenue N.E. and 1412 116th Avenue N.E., Bellevue, Washington (Property). The Contract Cities may at their sole discretion enter into an agreement with other King County cities for the purpose of providing for the disposition of the Property. The Property will be used to contribute to the cost of building secure capacity, or contracting for secure capacity, and, at the sole discretion of the Contract Cities, building or contracting for alternative corrections facilities, sufficient to enable the Contract Cities to meet the final step (occurring on December 31, 2012) of the population reduction schedule as detailed in Sections 11.3 and 11.4 of this Agreement. The parties understand that the Property may be sold or traded and the proceeds and/or land acquired from such sale or trade used for the purposes detailed in the preceding sentence. The parties further agree that in the event the cities do not build secure capacity, or contract for secure capacity, and, at the sole discretion of the Contract Cities build or contract for alternative corrections facilities, sufficient to enable the Contract Cities to meet the final step (occurring on December 31, 2012) of the population reduction schedule as detailed in Sections 11.3 and 11.4 of this Agreement the City of Bellevue shall transfer title to the Property back to the County if such Property has not been sold; or if such Property has been sold, pay the County an amount equal to the net sale price of the Property, plus investment interest earned; or if the Property has been traded, pay the County the appraised value of the Property at the time of the trade, as determined by an MIA appraiser selected by mutual agreement of King County and

² The City's designated drop off location and backup location must be either a facility in the direct control of the City or a facility that is contractually obligated, consistent with the terms of this Agreement, to act as the City's designated drop-off location or backup location. The City may change their designated drop off location or backup location by notifying the County, in writing, of the change.

the City of Bellevue, plus investment interest earned. This section shall survive any termination of this Agreement prior to December 31, 2012.

13. General Provisions

- 13.1 Other Facilities. This Agreement reserves in each party the power to establish a temporary holding facility during a riot or civil disobedience, to establish group homes or other care or rehabilitation facilities in furtherance of a social service program, and to comply with a final order of a federal court or a state court of record for the care and treatment of inmates.
- 13.2 Grants. Both parties shall cooperate and assist each other toward procuring grants or financial assistance from the United States, the State of Washington, and private benefactors for the Jail, the care and rehabilitation of inmates, and the reduction of costs of operating and maintaining Jail facilities.
- 13.3 Harborview Costs. Should the County be charged for hospitalization costs for City Inmates, excluding costs reimbursable from another jurisdiction, both parties agree to reopen negotiations on this specific point. If an impasse is reached then the process outlined in Section 4 of this Agreement will be followed.
- 13.4 Severability. If any provision of this Agreement shall be held invalid, the remainder of this Agreement shall not be affected thereby.
- 13.5 Remedies. No waiver of any right under this Agreement shall be effective unless made in writing by the authorized representative of the party to be bound thereby. Failure to insist upon full performance of any one or several occasions does not constitute consent to or waiver of any later non-performance nor does payment of a billing or continued performance after notice of a deficiency in performance constitute an acquiescence thereto. The parties are entitled to all remedies in law or equity.
- 13.6 Exhibits. This Agreement consists of several pages plus the following attached exhibits, which are incorporated herein by reference as fully set forth:
- | | |
|-------------|--|
| Exhibit I | Method of Determining Billable Charge and Agency |
| Exhibit II | Exception to Billing Procedure |
| Exhibit III | Maintenance Charge, Premium Maintenance Charge and Booking Fee |
| Exhibit IV | Population Alert and Reduction Plan |
| Exhibit V | Comparison of Estimated King County Jail Bed Demand and Supply
2002 to 2005 Table |
| Exhibit VI | Land Transfer Agreement |
| Exhibit VII | List of Cities |
- 13.7 Entire Agreement. This Agreement represents the entire understanding of the parties and supersedes any oral representations that are inconsistent with or modify its terms and conditions.

- 13.8 Modifications. All provisions of this Agreement may be modified and amended with the mutual written consent of the parties hereto.
- 13.9 Force Majeure. In the event either party's performance of any of the provisions of this Agreement become impossible due to Force Majeure, that party will be excused from performing such obligations until such time as the Force Majeure event has ended and all facilities and operations have been repaired and/or restored.
- 13.10 Notices. Except as otherwise provided in this Agreement, any notice required to be provided under the terms of this Agreement, shall be delivered by certified mail, return receipt requested or by personal service to the following person:

For the City:

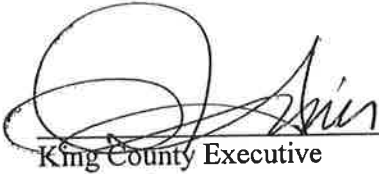
For the County:

Steve Thompson, Director
King County Department of Adult and Juvenile Detention
500 5th Avenue, MS KCF-AD-0600
Seattle, WA 98104

- 13.11 Agreement Offered. The County will offer this Agreement to the cities listed in Exhibit VII. Such offer is open to those cities until October 31, 2002, or such later date as may be approved by King County and all of the Contract Cities. Additionally, King County and all of the Contract Cities, by mutual agreement, may offer this Agreement to cities not listed on Exhibit VII.
- 13.12 Council Approval. The parties' obligations under this Agreement are subject to official City or County Council approval.
- 13.13 Information. The parties further agree to share data and information for the purpose of assisting the Contract Cities in the planning and construction of secure capacity, contracting for secure capacity or alternative correction facilities.

King County

City of Des Moines:



King County Executive

Date

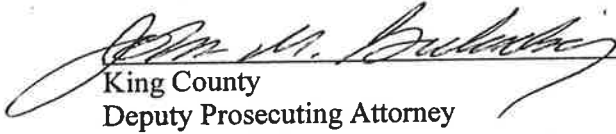
Approved as to Form

8-27-2002

Title

Date

Approved as to Form



King County

Deputy Prosecuting Attorney

Date

5/27/02

City Attorney

Date

EXHIBITS

Exhibit I	Method of Determining Billable Charge and Agency
Exhibit II	Exception to Billing Procedure
Exhibit III	Maintenance Charge, Premium Maintenance Charge and Booking Fee
Exhibit IV	Population Alert and Reduction Plan
Exhibit V	Comparison of Estimated King County Jail Bed Demand and Supply 2002 to 2005 Table
Exhibit VI	Land Transfer Agreement
Exhibit VII	List of Cities

EXHIBIT I
Method of Determining Billable Charge and Agency

Daily the billing program examines the open charges for each active booking and applies a uniform set of rules to select the billable charge. Then the billable agency is determined from the billable charge. Under these rules, the most serious charge, as determined by type of charge (felony, investigation, misdemeanor), pretrial or sentenced status and bail amount, is considered the principal basis for incarceration, pursuant to Section 1 of this Agreement.

The procedure for selecting the billable charge is as follows. The program will proceed in sequence through the series of procedures only as far as needed to isolate one charge as billable.

1. Select the only felony or investigation of felony charge. If there are more than one, go to Rule 2. If there are no felony or investigation of felony charges, proceed to Rule 3.
2. Select the charge with charge status other than Federal or Immigration. If there are no other charge statuses, determine if the charge is Federal or Immigration and bill accordingly.
3. Select the only misdemeanor charge. If there are more than one, continue to Rule 4.
4. Select the sentenced charge. Find the agency with the longest sentence. If there are no sentenced charges, go to Rule 6.
5. If there is no longest sentence, or if all are sentences of equal length, select the charge with the earliest sentence date.
6. Select the charge for the arresting agency. If there is no arresting agency or charges, select the earliest charge entered and set the billable agency of that charge.
7. If there are no sentenced charges, and if the arresting agency has no charge, then find the agency having the highest total accumulated bail amount and select the first charge entered for that agency.
8. If bail is equal among jurisdictions and no charges are sentenced, or if all charges are sentences of equal length, select the charge having the earliest charge number.

EXHIBIT II
Exception to Billing Procedure between King County
and Cities Signing the Agreement for Jail Services

For persons serving the one and two day commitments pursuant to the mandatory DUI sentence grid who report directly from the community to the Jail for incarceration, inmate day shall not be defined according to Section 1.8 of the Agreement. Instead, inmate day shall be defined as a twenty-four hour period beginning at the time of booking. Any portion of a twenty-four hour period shall be counted as a full inmate day. The number of days billed for each sentence shall not exceed the sentence lengths specified on the court commitment.

Two examples are provided for illustration:

Two-day sentence served on consecutive days:

John Doe	Booked 7/1/90 0700	Released 7/3/90 0700
	Number of inmate days = 2	

Two-day sentence served on non-consecutive days:

John Doe	Booked 7/1/90 0700	Temporary Release 7/2/90 0700
	Return to Jail 7/8/90 0700 Number of Inmate days = 2	Released 7/9/90 0700

The Department of Adult and Juvenile Detention will apply this definition of inmate day to the City's direct DUI one and two-day inmates by adjusting the City's monthly bill before it is sent to the City. If the changes are not made for some reason, the City will notify the Department of Adult and Juvenile Detention, which will make the necessary adjustments.

EXHIBIT III
Maintenance Charge, Premium Maintenance Charge & Booking Fee

1. MAINTENANCE CHARGE.

The maintenance charge for 2002 is \$77.37. For each calendar year thereafter the maintenance charge will be increased by 5.8 percent.

In addition to the 5.8 percent increase, King County will increase the maintenance charge to capture the cost of capital expenditures. Capital expenditures are defined as the cost of repairing and renovating current jail capacity and support and administrative facilities that benefit Jail operations. Capital expenditures include the Integrated Security Project (ISP) and the Courthouse Seismic Stabilization Project (CSSP). Additional capital expenditures will be included in the maintenance charge if such expenditures benefit City Inmates. Any capital expenditure that solely benefits County Inmates will not be charged to the City.

Capital expenditures will be calculated in proportion to the square footage that benefits adult detention. Cities will be billed their proportionate share based on the total number of inmate days. DAJD will estimate the total number of inmate days for a given year. By April 30th of the following year DAJD will reconcile this capital expenditure number and adjust the City's next billing accordingly.

The County shall provide its 6-year CIP and its 6-year major maintenance plan to the City on an annual basis. The County will provide a detailed line item budget of each capital expenditure. If the City disputes that the capital expenditure benefits City Inmates or otherwise disputes the inclusion of the capital expenditure or any portion of the capital expenditures' budget in the maintenance fee, the matter will be referred to JAG as described in Section 4 of this Agreement. Capital expenditures will not be charged to the City to the extent such capital expenditures are covered by federal grants, state grants, insurance proceeds, capital maintenance reserves or voter approved capital funding for jail related improvements. King County will provide the City with a sample calculation of the maintenance charge for the years 2002-2005, which will include a rough estimate of capital expenditures.

Capital expenditure charges shall begin, if debt financed, when debt service payments begin for the permanent financing of the capital expenditure and shall continue until the end of the debt amortization unless the debt amortization is less than fifteen (15) years, in which case the charges to the cities will be amortized over fifteen (15) years. If the capital expenditure is not debt financed, capital expenditure charges shall be based on actual expenditures. The County will make available documentation evidencing such expenditures.

2. PREMIUM MAINTENANCE CHARGE.

The premium maintenance charge for 2002 for Medical and Psychiatric Inmates is \$205.35 and may only be charged consistent with the conditions in Section 11.7 of the Agreement. For each calendar year thereafter, the premium maintenance charge will be increased by 5.8 percent.

3. BOOKING FEE.

The booking charge for 2002 is \$148.78. For each calendar year thereafter the booking charge will be increased by 5.8 percent.

EXHIBIT IV

Population Alert and Reduction Plan

This Population Alert and Reduction Plan (PARP) attempts to balance the needs of the local criminal justice system for adequate secure bed space and the County's ability to prevent excessive and unmanageable crowding conditions. Periodic reports (at least quarterly) will be provided by the County and the Cities to the Jail Agreement Administration Group established in the Agreement on PARP implementation efforts.

I. Reduction Plan: Initial Steps

It is the goal of King County and the Contract Cities to avoid reaching population levels that trigger population alerts. To this end the parties will examine current practices and to the extent available use population reduction strategies and alternatives to secure detention programs to reduce reliance on secure jail beds.

In addition, during 2002 and 2003 the following actions will be undertaken to prepare for the possibility of a mismatch between capacity and demand for secure jail beds.

1. Development and implementation of the notification system outlined below by November 15, 2002.
2. The Contract Cities will sign a contract to be effective no later than third quarter 2003 with Yakima County or another jurisdiction to achieve the population reduction schedule listed in Sections 11.3 and 11.4 of the Agreement.
3. King County Executive will make best efforts to obtain funding and implement community corrections pilot programs (Day Reporting and Work Crews) which are expected to reduce the utilization of secure capacity by 60 beds.
4. The County agrees to seek participation by the King County Prosecutor, Superior Court and District Court to develop a plan for reducing the use of secure beds. The goal would be to reduce the use of non-city secure beds based on seriousness of offense and risk to public safety, and/or risk of flight to avoid prosecution. The County agrees to make a good-faith effort to implement court approved plans for which funding has been approved.
5. The Contract Cities agree to seek participation by City prosecutors and courts to develop a plan incorporating the elements described below for reducing the use of secure beds. The goal would be to reduce the use of secure beds based on seriousness of offense and risk to public safety, and/or risk of flight to avoid prosecution. The City agrees to make a good-faith effort to implement court approved plans for which funding has been approved.
6. The JAG will discuss and provide advice on an implementation plan for all reduction plans.

II. Definitions

"Operational capacity" is the number of secure jail beds that can be operated by DAJD within annual adopted budget appropriation and within legal limitations including, but not limited to, limitations outlined in the *Hammer* settlement agreement and the Agreement with the Contract Cities. Vacancy rates at 5% for the Regional Justice Center and 2½% for the King County Correctional Facility will also be factored into operational capacity. In the event the County changes such vacancy rates, the County agrees to notify JAG.

III. County Population Alert Notifications

The County will provide the Contract Cities with a Population Alert Notification covering three categories: total population, Medical Inmates, and Psychiatric Inmates (PAN-TMP), and a Population Alert Notification for City Inmates (PAN-CI)

A. Timing

The PAN-TMP will be updated daily.

The PAN-CI will be updated monthly with a lag time of two weeks until such time as the County is able to provide more frequent notice to the Contract Cities.

B. Format

The County will develop a format for the PAN-TMP and PAN-CI that has an easily understood visual element. A visual “meter” type notice graphic will be developed that will be sent to Contract Cities by automated e-mail and/or appear on the County’s web site.

C. Contents

1) The PAN-TMP will provide a snap shot of short-term secure bed population status by the following status groups:

Total secure population
Medical Inmates
Psychiatric Inmates

The PAN-TMP will have three levels.

Alert Level I/Yellow - Greater than or equal to 95 percent operational capacity by category at the daily official count.

Alert Level II/Orange - The jail population is between 95 percent and 100 percent of operational capacity and has maintained that level for three consecutive days.

Alert Level III/Red – The jail population exceeds total operational capacity.

The PAN-TMP will contain a “notes” section where the County can inform the cities of events that may affect jail population.

2) The PAN-CI will be a count of the number of City Inmates.

V. Other General Notification Requirements

Notice or information will be provided to the other party through the County or cities representative on the JAG as soon as it is available as follows:

- ISP -- County
 - Transmittal of project budget to the King County Council
 - Council approval of funding
 - Project schedule
 - Bid notice
 - Notice to proceed
 - Construction schedule and inmate transfer schedule
- Status of contracting for secure jail beds in other jurisdictions - Cities
 - ⊖ Signature of contracts
 - Financing approval
 - Bid notice
 - Notice to proceed
 - Construction schedule
 - Prisoner transfer schedule
- Alternatives to Secure Detention Programs – County
 - The County will provide to the JAG a description of all alternative programs to secure detention (including program capacity) either directly operated by the County or operated by another entity under contract.
 - Notice of plans to initiate or expand alternatives and notice that plans have been implemented, including program capacity.
 - Copies of program placement criteria and operating protocols, including any agreements with courts.
- Alternatives to secure detention programs – Cities
 - The City will provide to the JAG a description of all alternative programs to secure detention (including program capacity) either directly operated by the City or operated by another entity under contract.
 - Notice of plans to initiate or expand alternatives and notice that plans have been implemented, including program capacity.
 - Copies of program placement criteria and operating protocols, including any agreements with courts.

EXHIBIT V

COMPARISON OF ESTIMATED KING COUNTY JAIL BED DEMAND AND SUPPLY 2002 TO 2005

		Jail and Alternatives Misdemeanor Space Demand				King County Supply Scenarios				
Year		Cities Beds	State/Co Misd Beds	Felony Beds	Total Beds	Types of Beds	Status Quo	Close NRF & ISP	Close NRF only	ISP only
2000	Pre Sentence	227				Secure Beds	2973			
	Post Sentence	492				NRF Beds	291			
	Total	719	296			Work Release	191			
						Total	3455			
2002	Projected	477	300	2009	2786	Secure Beds	2973	2973	2973	2973
					0	NRF Beds	191	0	0	191
						Addn'l Alternatives	60	60	60	60
						Work Release	190	190	190	190
						Total	3414	3223	3223	3414
2003	Projected		320	2094	2414	Secure Beds	2973	2430	2782	2621
	Maximum	380			380	NRF Beds	191	0	0	191
						Addn'l Alternatives	60	60	60	60
						Work Release	190	190	190	190
						Total	3414	2680	3032	3062
2004	Projected		340	2191	2531	Secure Beds	2973	2430	2782	2621
	Maximum	250			250	NRF Beds	191	0	0	191
						Addn'l Alternatives	60	60	60	60
						Work Release	190	190	190	190
						Total	3414	2680	3032	3062
Mid 2005+	Projected		350	2270	2620	Secure Beds	2973	2973	2973	2973
	Maximum	220				NRF Beds	0	0	0	0
2012+						Addn'l Alternatives	60	60	60	60
	Maximum	0				Work Release	190	190	190	190
						Total	3223	3223	3223	3223
NOTES:										
1) Assumes a 3% growth rate per year for felony bed demand										
2) Assumes no impact from DWLS diversion programs by District Court										
3) Assumes cities will reduce jail bed use by Dec 31 of year unless noted.										
4) Assumes cities are able to occupy 530 beds in Yakima County and/or Benton County Jail by Decemeber 2003										
5) The County is pursuing policies to reduce the use of secure beds beginning in 2002 that are not reflected in these numbers. Also, capacity restrictions could begin as soon as 2003 depending on County policy decisions.										
6) The number of secure beds listed include double bunking the RJC up to 65% (492 beds). Utilization Of these beds requires that funding be sought and approved by the County Council.										
7) Assumes ISP begins 3rd Qtr. 2003.										
8) Assumes additional alternative beds available 4 th Qtr of 2002.										
9) Fifteen days per quarter there is a peak at 5% over average.										

EXHIBIT VI
Land Transfer Agreement

**Intergovernmental Land Transfer Agreement Between
King County and the City of Bellevue**

Intergovernmental Land Transfer Agreement Between King County and the City of Bellevue

This Intergovernmental Land Transfer Agreement ("Agreement") is made and entered into by and between King County ("County"), and the City of Bellevue ("City").

WHEREAS the County has entered into a Jail Services Agreement ("JSA") with many of the cities located in King County ("Cities") to which this Agreement is an attachment; and

WHEREAS the JSA provides for the transfer of real property located at 1440 116th Avenue N.E. and 1412 116th Avenue N.E. in Bellevue, Washington, (said property is described more fully in Exhibit A and referred to herein as the "Property") to the City of Bellevue in consideration for the negotiated rate in the JSA and promises made by the Cities in the JSA related to population reduction; and

WHEREAS it is in the best interest of the public that the County transfer said property to the City for the purposes detailed in the JSA;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and the County agree as follows:

1. Obligations of Parties

1.1 Agreement Contingent

This Agreement is subject to the execution of an Interlocal Agreement ("Cities Interlocal") between the City and all other interested cities located within King County to provide for the maintenance and disposition of the Property. If the City and the other interested cities are unable to reach agreement on the terms of the Cities Interlocal prior to the date of conveyance as provided in paragraph 1.2, upon written notice from the City of Bellevue to King County, this Agreement shall, at the City's sole discretion, become null and void and the parties will have no further obligation hereunder.

1.2 Conveyance of Title

On July 1, 2004, or earlier as hereinafter provided, the County will execute and deliver to the City: 1) a Statutory Warranty Deed conveying and warranting good and marketable title to parcels A, B-1 and B-2 free and clear of all defects or encumbrances except for the lien of real estate taxes and drainage service charges not yet due and payable and those exceptions, defects and/or encumbrances identified on Exhibit B; and 2) a Quit Claim Deed conveying parcel C. Parcels A, B-1, B-2 and C are described more fully in Exhibit A and collectively referred to herein as the "Property."

1.3 The City will provide written notice to the County upon satisfaction of all contingencies under Sections 1.1 and 6.2 of this Agreement and the County shall have sixty (60) days thereafter to deliver a conveyance to the City.

2. Existing Restrictions, Agreements, Contracts or Permits

2.1 The City shall abide by and enforce all terms, conditions, reservations, restrictions and covenants of title at the time of conveyance and/or in the deed of conveyance.

2.2 The Property will be used as required in Section 12 of the JSA to enable the Cities to meet the final step (occurring on December 31, 2012) of the population reduction schedule as detailed in Sections 11.3 and 11.4 of the JSA. The parties understand that the Property may be sold or traded and the proceeds and/or land acquired from such sale or trade used for the purposes detailed in the preceding sentence. The parties further agree that in the event the cities do not comply with Section 12 of the JSA and meet the final step of the population reduction schedule as detailed in Sections 11.3 and 11.4 of the JSA, the City of Bellevue shall transfer title to the Property back to the County if such Property has not been sold; or if such Property has been sold, pay the County an amount equal to the net sale price of the Property, plus investment interest earned; or if the Property has been traded, pay the County the appraised value of the Property at the time of the trade, as determined by an MAI appraiser selected by mutual agreement of King County and the City of Bellevue, plus investment interest earned.

2.3 Should any disagreement arise between the parties as to the interpretation or application of the terms and provisions of this Agreement, the parties shall first engage in informal dispute resolution between designated City and County staff persons. If those staff persons are unable to resolve the dispute, the matter shall be referred to the City Manager and the County Executive or their respective designees. If the City Manager and the County Executive or designees are unable to resolve the dispute, the matter shall be referred to non-binding mediation. Should the mediation process fail to resolve the dispute, either party may file an action in King County Superior Court. Each party shall bear its own costs and attorney fees incurred in the dispute resolution process.

3. Condition of Property and Responsibility for Operations, Maintenance, Repairs, Improvements, and Recreation Services

3.1 The County warrants that it has and will deliver marketable title to Parcels A, B-1 and B-2. The City has inspected and knows the condition of the Property and accepts the Property AS IS, WHERE IS and WITH ALL FAULTS. More specifically, King County does not make and specifically disclaims any warranties; express or implied, including any warranty of merchantability or fitness for a particular purpose, with respect to the Property, and no official, employee, representative or agent of the County is authorized otherwise. Without limitation, the foregoing specifically excludes warranties with respect to the condition of the Property for development and/or use by City, the presence of any Hazardous Materials,

underground storage tanks or contaminated soil, or the actual or threatened release, deposit, seepage, migration or escape of Hazardous Materials at, from or into the Property, and the compliance or noncompliance of the Property with applicable federal, state, county and local laws and regulations, including, without limitation, environmental laws. "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended. Except as provided in Sections 4 and 5, the City acknowledges and agrees that the County shall have no liability for, and that the City shall release and have no recourse against the County for, any defect or deficiency of any kind whatsoever in the Property without regard to whether such defect or deficiency was known or discoverable by the City or the County.

3.2 Except as provided in Section 5, the County shall not have any obligation to make any changes or improvements, or to incur any expenses whatsoever for the operation, maintenance, monitoring, repair or remediation of the Property.

4. Indemnification and Hold Harmless

4.1 The County shall protect, indemnify and hold harmless the City and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liabilities, losses, costs, expenses or damages of any nature whatsoever arising from those occurrences related to the Property that occurred prior to the date of conveyance of the Property to the City. In the event that any suit based upon such claims, actions, suits, liabilities, losses, costs, expenses or damages is brought against the City or the City and the County, the County shall defend the same at its sole cost and expense and, if final judgment be rendered against the City and/or its elected officials, officers, agents and employees or jointly against the City and the County and/or their respective elected officials, officers, agents and employees, the County shall satisfy the same.

4.2 Except as provided in Section 5, the City shall indemnify and hold harmless the County and its elected officials, officers, agents and employees, or any of them, from and against any and all claims, actions, suits, liabilities, losses, costs, expenses or damages of any nature whatsoever arising from those occurrences related to the Property that occurred on or after the date of conveyance of the Property to the City. In the event that any suit based upon such claims, actions, suits, liabilities, losses, costs, expenses or damages is brought against the County or the County and the City, the City shall defend the same at its sole cost and expense and, if final judgment be rendered against the County and/or its officers, agents and employees or jointly against the County and the City and/or their respective officers, agents and employees, the City shall satisfy the same.

4.3 Each Party to this Agreement shall notify the other of any and all claims, actions, suits, liabilities, losses, costs, expenses or damages that arise or are brought against that party relating to or pertaining to the Property, within thirty (30) days of receipt of such information.

4.4 Each party agrees that its obligations under this paragraph extend to any claim, demand,

and/or cause of action brought by or on behalf of any employees, or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify the other party.

4.5 These indemnification provisions shall survive the conveyance of the Property and any termination of this Agreement or the JSA.

5. Environmental Liability

5.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.

5.2 Nothing in this Agreement shall be deemed to waive any statutory claim for contribution that the City might have against the County under federal or state environmental statutes that arises from hazardous materials deposited or released on the Property by the County, its agents or permittees during the County's period of ownership. The City may not, however, assert such a claim to the extent that the City exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of the City performing construction activities on the Property, changing the configuration of the Property, or changing the use of the Property. The preceding sentence shall not apply to tests, inspections, studies, surveys or appraisals conducted by the City pursuant to Section 6.1.

5.3 If the City discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against the County it shall notify the County in writing as soon as reasonably practicable, but in any event not more than sixty (60) days after discovery. The parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.

5.4 In no event shall the County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

6. City Right of Inspection

6.1 Prior to the date of conveyance, the City shall have the right at City expense to perform any and all tests, inspections, studies, surveys or appraisals of the Property reasonably deemed necessary by the City. Upon seven (7) days written notice to the County, the City may enter the Property and conduct such tests, inspections, studies, surveys and appraisals. County representatives may attend and witness such tests, inspections, studies, surveys and appraisals. After conducting its tests, inspections, studies, surveys or appraisals of the Property, the City shall restore the Property, as nearly as is practicable, to its condition on the date of City's entry thereon, except to the extent that the City may be required by state or

federal agencies to leave any exposed or altered area open for inspection and/or remediation. In addition, the City shall defend, indemnify and hold harmless the County and its elected officials, officers, agents and employees, or any of them, from all claims, demands, suits, actions, and liabilities of any kind, including injuries to persons or damages to property, which arise out of, are connected with, or are due to any negligent errors, omissions or acts of the City and/or its contractors, employees, agents, and representatives in the performance of the tests, inspections, studies, surveys or appraisals of the Property. The City specifically assumes potential liability for actions brought by the City's own employees against the County arising from such tests, inspections, studies, surveys or appraisals, and for that purpose the City specifically waives, as respects the County only, any immunity under the Worker's Compensation Act, RCW Title 51; and the City recognizes that this waiver was the subject of mutual negotiation.

6.2 If after conducting its tests, inspections, studies, surveys and appraisals the City determines, in its sole discretion, that condition(s) exist on the Property that will substantially impact the salability of the Property (other than naturally occurring conditions), the City may request that the County remediate such condition(s). In the event that the County fails, within 90 days of receiving the request from the City, to agree to such remediation, or thereafter fails, within a reasonable period of time (but in any event prior to the date of conveyance of the Property), to accomplish such remediation, this Agreement shall, at the City's sole discretion, upon written notice to the County, become null and void and the parties shall have no further obligations under this Agreement or the JSA with respect to this Property.

6.3 Within thirty (30) days of the execution of this Agreement, the County shall provide the City with copies of all of its records related to the County's acquisition and maintenance of and to the condition of the Property.

7. Legal Relationship

7.1 The parties to this Agreement execute and implement this Agreement solely as County and City. No partnership, joint venture or joint undertaking shall be construed from this Agreement.

8. Waiver and Amendments

8.1 Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition shall be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

9. Entire Agreement and Modifications

9.1 The JSA and this Intergovernmental Agreement and its Exhibits set forth the entire agreement between the parties with respect to the subject matter hereof. Any amendment or modification of the terms of this Agreement must be made in writing and signed by both parties hereto.

10. Duration and Authority

10.1 This agreement shall be effective upon signature by the authorized signatories of and authorization by the legislative bodies of both parties. The terms, conditions, covenants, and representations contained herein and in the JSA shall not merge into the deed of conveyance, but shall survive the conveyance and shall continue in force.

10.2 Termination of this Agreement by the City pursuant to Section 1.1 or 6.2 shall have no effect upon the terms and enforceability of the JSA except for Section 12 of the JSA.

11. Assignment.

11.1 The City shall not assign this agreement or any rights hereunder except to the cities or another city representing the cities for whose benefit this conveyance of the Property is to be made, and then only if the assignee(s) assume(s) all obligations of the City under this Agreement.

12. Negotiation and Construction.

12.1 This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party. All parties acknowledge and represent, as an express term of this Agreement, that they have had the opportunity to obtain and utilize legal review of the terms and conditions outlined in this Agreement, although each party must determine if they wish to obtain and pay for such legal review. Each party shall be and is separately responsible for payment of any legal services rendered on their behalf regarding legal review of the terms found in this Agreement.

13. Notice

13.1 Any notice provided for herein shall be sent to the respective parties at:

King County
[INSERT INFO]

City
[INSERT INFO]

IN WITNESS WHEREOF, the parties have executed this Agreement.

King County

City of Bellevue

King County Executive

City Manager

Date

Date

Approved as to Form:

Approved as to Form:

King County
Senior Deputy Prosecuting Attorney

City Attorney

Date

Date

STATE OF WASHINGTON

COUNTY OF KING

SS.

On this day personally appeared before me _____, to me known to be the _____ of KING COUNTY, the municipal corporation and political subdivision of the State of Washington that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such municipal corporation and political subdivision, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 2002.

Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

STATE OF WASHINGTON

COUNTY OF KING

SS.

On this day personally appeared before me _____, the _____ of _____, known to me to be the City that executed the foregoing instrument, and acknowledged such instrument to be [his/her] free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that [he/she] was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 2002.

Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

EXHIBIT A
Legal Descriptions

Parcel A: Lots 3 and 4 of Bellevue Short Plat No. 78-43 as recorded under Recording No. 7807030722, records of King County, Washington; EXCEPT the South 10 feet thereof.

Parcel B-1: That portion of the South 267.6 feet of the North 634.7 feet of the NW 1/4 of the SW 1/4 of Section 28, Township 25 North, Range 5 East, W.M., in King County, Washington, lying Westerly of the Northern Pacific Railway Right-of-Way; EXCEPT the North 242 feet of the West 450 feet thereof; AND EXCEPT the West 30 feet thereof for 116th Avenue NE; AND EXCEPT the South 26.6 feet of the West 250 feet thereof.

Parcel B-2: An easement for access for the benefit of Parcel B-1 as granted and set forth in document recorded under Recording No. 7908020842, records of King County, Washington.

Parcel C: The South 10 feet of the North 367.10 feet, measured along the Westerly line thereof, of that portion of the Northwest quarter of the Southwest quarter of Section 28, Township 25 North, Range 5 East, W.M., lying Westerly of the right of way of Burlington Northern, Inc., successor to Northern Pacific railway Company, Except the West 450 feet thereof.

All situated in King County, Washington.

EXHIBIT B

(To be attached)

EXHIBIT VII
List of Cities

Algona
Auburn
Beaux Arts
Bellevue
Black Diamond
Bothell
Burien
Carnation
Clyde Hill
Covington
Des Moines
Duvall
Federal Way
Hunts Point
Issaquah
Kenmore
Kirkland
Lake Forest Park
Maple Valley
Medina
Mercer Island
Milton
Newcastle
Normandy Park
North Bend
Pacific
Redmond
Renton
Sammamish
Sea Tac
Seattle
Shoreline
Skykomish
Snoqualmie
Tukwila
Woodinville
Yarrow Point

A G E N D A I T E M

SUBJECT: Des Moines
Chamber use of Big Catch Plaza for
Holiday Happenings on Dec. 14-16
and 21-22, 2002

ATTACHMENTS:
Draft Resolution No. 02-260

AGENDA OF: November 21, 2002

DEPT. OF ORIGIN: Parks, Recreation &
Senior Services

DATE SUBMITTED: November 14, 2002

CLEARANCES:

[] Parks, Recreation & Senior
Services

[X] Legal *WMM*

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL *AT*

Purpose and Recommendation:

Administration recommends approval of a resolution to provide use of Big Catch Plaza to the Des Moines Chamber of Commerce for the 1st annual Holiday Happenings.

Motion: "To approve Draft Resolution No. 02-260."

Background:

The City of Des Moines and the Des Moines Chamber of Commerce have worked together for many years to provide special events for the Des Moines community. The attached Draft Resolution authorizes the Des Moines Chamber of Commerce use of the Big Catch Plaza as the location of the Holiday Happenings festivities in December 2002.

Discussion:

The Des Moines Chamber of Commerce would like to provide Holiday Happenings events at Big Catch Plaza on December 14th (10am-8pm), 15th (10am-8pm) and 16th (10am-6pm) and December 21-22 (10am-8pm), 2002. Events would include a holiday carousel, pictures with Santa, sleigh rides and refreshments (coffee, cocoa, etc). Events would have a nominal fee to pay for Holiday Happenings expenses. The Des Moines Chamber of Commerce agrees to the conditions for use as specified in the Draft Resolution and will provide adequate insurance coverage to cover event liability. Holiday Happenings would be promoted in conjunction with the City of Des Moines Parks & Recreation Department's other holiday events.

Alternatives:

None provided

Financial Impact:

Financial impact would be in-kind support of city equipment such as use of the city's special event trailer and sound system, equipment delivery, and use of electrical power available at the site. The Chamber of Commerce will provide event security, carousel set-up and 220 electrical requirements.

Recommendation/Conclusion:

Staff recommends approval of Draft Resolution 02-260 to provide usage of Big Catch Plaza to Des Moines Chamber of Commerce as proposed.

Concurrence:

Parks, Recreation and Senior Services staff and Des Moines Chamber of Commerce agree to work together to provide the Holiday Happenings event for the Des Moines community.

PARKS AND RECREATION DIRECTOR'S FIRST DRAFT 11/14/02

DRAFT RESOLUTION NO. 02-260

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, granting permission to the Greater Des Moines Chamber of Commerce to use the City's Big Catch Plaza for a holiday carousel and community activities.

WHEREAS, the Greater Des Moines Chamber of Commerce has requested the permission of the City Council to use property at the Big Catch Plaza and the special event trailer and sound system for the purpose of holiday carousel rides and community activities from December 14-16th and December 21-22, 2002, and

WHEREAS, the City Council finds that events of this nature tend to publicize the City of Des Moines and enhance the quality of life of the City of Des Moines in numerous ways; now therefore,

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

Sec. 1. The Greater Des Moines Chamber of Commerce ("Chamber") is granted permission to use the Big Catch Plaza from December 14th (10am-8pm), 15th (10am-8pm) and 16th (10am-6pm) and December 21-22 (10am-8pm), 2002, for the purpose of holiday carousel rides and community activities.

Sec. 2. The Chamber shall purchase liability insurance in a form acceptable to the City of Des Moines in the amount of two million dollars (\$2,000,000) and shall name the City of Des Moines as a named additional insured. Proof of such insurance must be delivered to the City at least two days prior to the event.

Sec. 3. The Chamber shall be responsible for the security of the carousel and all other event related equipment located at the Park throughout the duration of the Holiday Happenings event.

Sec. 4. The Chamber shall be responsible for securing written authorization and satisfying requirements from the King County Health District for any proposed food services in conjunction with the Holiday Happenings event.

Sec. 5. The Chamber shall be responsible for providing 220 single phase 60 amp power needed to power the carousel and

Resolution No. _____
Page 2 of 2

may access 110 power available at the Park for other community activities. Electrical codes and public safety measures shall be followed regarding the use of Big Catch Plaza power sources, and portable power cords or generators in conjunction with the Holiday Happenings event.

Sec. 6. The Chamber shall defend and hold the City of Des Moines harmless from any liability which may result from the conduct of this event or its activities.

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:
Public hearing regarding Year 2003 Budget and
adoption of Year 2003 Budget

ATTACHMENTS:
Draft Ordinance No. 02-246
Appendix A

FOR AGENDA OF: November 14, 2002 AND
CONTINUED TO November 21, 2002

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: November 12, 2002

CLEARANCES:

☐ Finance *pl*

☐ Legal *[Signature]*

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *AT*

Purpose and Recommendation

Conduct public hearing regarding Year 2003 Budget.

Suggested motion:

"To move Draft Ordinance No. 02-246 to a second reading on November 21, 2002."

Background

The budget has been discussed over the last several months. At the November 14th Council meeting, Council will provide final policy direction. The 2003 budget is summarized in Appendix A.

Recommendation

It is recommended that the City Council move Draft Ordinance No. 02-246 to a second reading on November 21, 2002.

CITY ATTORNEY'S FIRST DRAFT, 11/05/02

DRAFT ORDINANCE NO. 02-246

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON adopting the final budget for the City of Des Moines, Washington, for the fiscal year ending December 31, 2003, in summary form, ratifying and confirming revenues and expenditures previously implemented for fiscal year 2002, as such revenues and expenditures form the basis for development of the budget for fiscal year 2003, approving revenues and expenditures for fiscal year 2003, and temporarily suspending the effect of any ordinance, code provision or other City requirement with which the fund adjustments and transfers proposed by the City Manager for the 2003 budget might be inconsistent.

WHEREAS, the City Manager for the City of Des Moines has prepared and submitted a preliminary budget for the fiscal year ending December 31, 2003 to the City Council and has filed this budget with the Finance Director, and

WHEREAS, the City Council finds that the City Manager's proposed budget for fiscal year 2003 reflects revenues and expenditures that are intended to ensure provision of vital municipal services at acceptable levels, and

WHEREAS, the City Council finds that the City Manager's proposed budget for fiscal year 2003 appropriately relies upon anticipated year-end balances derived from revenues and expenditures previously approved and authorized by the City Council as part of the City's budget for fiscal year 2002, and

WHEREAS, the City Council finds that the fund adjustments and transfers proposed by the City Manager for fiscal year 2003 are necessary and in the public's interest, and

WHEREAS, by motion regularly passed, the Des Moines City Council scheduled a public hearing for November 14, 2002, to take public comment with respect to the proposed 2003 budget, and

WHEREAS, notice of the public hearing was given to the public in accordance with law and a public hearing was held on the 14th day of November, 2002, and all persons wishing to be heard were heard; now therefore,

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

Sec. 1. The findings set forth in the preamble to this ordinance are hereby adopted and incorporated by reference.

Sec. 2. Based on the findings adopted herein, the City Council temporarily suspends the effect of any ordinance, code provision or other City requirement with which the fund adjustments and transfers proposed by the City Manager for the 2003 budget might be inconsistent.

Sec. 3. The fund adjustments and transfers proposed by the City Manager for fiscal year 2003, which are incorporated in the preliminary budget for fiscal year 2003, are hereby authorized and approved by the City Council.

Sec. 4. Because the City's budget for fiscal year 2003 relies upon anticipated year-end fund balances or shortages derived from revenues collected and expenditures incurred in fiscal year 2002, the City Council hereby ratifies and confirms all revenues, from whatever source derived, and expenditures incurred by the City to the extent such revenues and expenditures are in accordance with the City's budget for fiscal year 2002 or any subsequent budget amendments formally approved by the City Council.

Sec. 5. The City Council hereby adopts, affirms and approves any and all revenues, from whatever source derived, and expenditures as referenced in the attached budget for fiscal year 2003.

Sec. 6. The final budget for the City of Des Moines' fiscal year 2003 is hereby adopted and approved in summary form as set forth in the attached Appendix "A", which is by this reference incorporated herein.

Sec 7. Severability - Construction.

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

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

Ordinance No. _____
Page 3 of ____

Sec 8. Effective date. This ordinance shall take effect and be in full force (5) five days after its passage, approval and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this 14th day of November, 2002 and signed in authentication thereof this 14th day of November, 2002.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

ORDINANCE NO. 02-246
APPENDIX A

2003 BUDGET		Ending Fund		Total	Revenue	Beginning Fund Balance	Total
		Expenditure	Balance				
001	General Fund	12,438,908	1,090,293	13,529,201	13,235,918	293,283	13,529,201
101	Street Fund	815,297	404,691	1,219,988	818,000	401,988	1,219,988
102	Arterial Street Fund	8,171,366	1,564,619	9,735,985	8,030,469	1,705,516	9,735,985
104	Revenue Stabilization Fund	-	1,491,212	1,491,212	29,500	1,461,712	1,491,212
105	Airport Defense Fund	172,070	100	172,170	154,000	18,170	172,170
106	Facility Repair and Replacement Fund	80,000	163,647	243,647	64,752	178,895	243,647
107	Police Drug Seizure Fund	20,000	-	20,000	20,000	-	20,000
150	Grant Control Fund	146,936		146,936	146,936	-	146,936
211	1995 GO Bond - Police Facility	562,675	3,847	566,522	562,675	3,847	566,522
212	LID Fund	51,656	-	51,656	51,656	-	51,656
216	1997 GO Bond - City Hall Remodel	133,343	10,585	143,928	133,343	10,585	143,928
218	1998 GO Park Land Acquisition	168,643	-	168,643	168,643	-	168,643
220	Debt Service Fund	25,640	-	25,640	25,640	-	25,640
310	Municipal Capital Improvements	1,322,215	127,055	1,449,270	1,261,066	188,204	1,449,270
401	Marina Revenue Fund	3,036,082	383,058	3,419,140	2,869,915	549,225	3,419,140
404	Marina Depreciation & Improvement	3,009,320	2,544,122	5,553,442	985,850	4,567,592	5,553,442
450	Surface Water Operations Fund	1,225,000	100,000	1,325,000	1,225,000	100,000	1,325,000
451	Surface Water Capital Fund	4,188,747	1,889,117	6,077,864	4,932,415	1,145,449	6,077,864
500	Equip Rental Operations	277,053	145,201	422,254	273,880	148,374	422,254
501	Equip Rental Replacement	-	927,829	927,829	16,000	911,829	927,829
510	Computer Equipment Operations Fund	149,603	16,195	165,798	136,300	29,498	165,798
511	Computer Equipment Capital Fund	15,000	56,439	71,439	1,200	70,239	71,439
520	Self-Insurance Fund	407,948	78,320	486,268	397,999	88,269	486,268
530	Unemployment Insurance Fund	20,000	264,058	284,058	25,500	258,558	284,058
TOTAL		36,437,502	11,260,388	47,697,890	35,566,657	12,131,233	47,697,890

A G E N D A I T E M

SUBJECT:

*Draft Ordinance No. 02-186
Dangerous Fences*

DATE SUBMITTED: October 29, 2002

AGENDA OF: November 21, 2002

DEPT OF ORIGIN: Community Dev.

ATTACHMENTS:

1. Draft Ordinance No 02-186

CLEARANCES:☒ COMM DEV☒ LEGAL

APPROVED BY THE CITY MANAGER FOR
SUBMITTAL: _____

PURPOSE AND RECOMMENDATION:

The attached ordinance proposes to regulate razor wire and other dangerous fencing. Motions consistent with staff recommendation are provided below:

Motion 1:	"I move to suspend City Council Rule #26(b)."
Motion 2:	"I move to adopt Draft Ordinance No. 02-186."

BACKGROUND:

At the July 25, 2002 regular meeting, the City Council heard a citizen's concern regarding the dangers of razor wire to the safety of people, pets, and wildlife. Based on this testimony, the Council directed staff to prepare a draft ordinance regulating razor wire fencing.

DISCUSSION:

Razor wire, which is most often used as a security measure, is very sharp and can easily harm anything that comes into contact with it. There are other methods of securing property that are not as hazardous, such as 6' fences with straight strands of barbed wire located on top of the fences, security lighting, and security cameras.

In addition to razor wire, Staff has determined that there is also a need for additional regulations for other types of dangerous fencing, including barbed and electric wire. In review of our current zoning code it was discovered that there are no regulations for dangerous fences. The proposed ordinance is intended to add the necessary guidelines as a new section of the zoning code, briefly described below.

- Prohibit the use of razor wire, except as provided in subsection (6) of the proposed ordinance.

- Restrict electric fencing to zones containing grazing animals.
- Regulate the number of strands of barbed wire.
- Regulate the height of barbed wire fences.

To help alleviate the current problem the draft ordinance also states that all existing fences must be brought into compliance with this new section within 60 days of adoption by the City Council.

ALTERNATIVES:

The City Council may:

1. Suspend Council Rule 26(b) and adopt the draft ordinance as written.
2. Adopt the draft ordinance as written after a second reading.
3. Suspend the Council Rule 26(b) and adopt the draft ordinance with amendments by the City Council.
4. Adopt the draft ordinance with amendments by the City Council after a second reading.
5. Do not adopt the draft ordinance.

FINANCIAL IMPACT:

Property owners of dangerous fences that are in violation of this proposed ordinance would be required to remove dangerous portions of the fence at their own cost. It is anticipated that the cost of removal of razor wire and similar materials will be insignificant, however, installing a new type of security system will vary depending on the security needs of the site. The property owners will be encouraged to contact the Police Department for a security survey. A security survey is a free service offered by the city to help people determine the best way to protect their property.

There will be no financial impact to the City of Des Moines.

RECOMMENDATION/CONCLUSION:

Administration recommends that the Council adopt the draft ordinance as written.

CONCURRENCE:

The following departments have been involved in the draft ordinance:

- Community Development Department
- Legal Department
- Police Department

The Police Department has expressed concerns about a total ban on razor wire due to security issues. Community Development and the Police Department will work together to develop other options using the types of fencing allowed within the ordinance.

DRAFT ORDINANCE NO. 02-186

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to dangerous fences; adding new sections to chapters 18.04 and 18.40 DMMC.

WHEREAS, there is razor wire and barbed wire fencing located within the City, and

WHEREAS, citizens of Des Moines have voiced concern over the presence of razor wire fencing, and

WHEREAS, coiled barbed wire fencing poses a similar threat, and

WHEREAS, razor wire and materials of similar design pose a danger to wildlife and domestic pets, and

WHEREAS, razor wire and coiled barbed wire also create a safety hazard for human beings, and

WHEREAS, existing regulations do not address dangerous fences, and

WHEREAS, an environmental checklist for this ordinance was prepared and was reviewed by the responsible SEPA official of the City of Des Moines, and a Determination of Non-Significance was issued on October 23, 2002 under the State Environmental Policy Act, RCW 43.21C, (SEPA) and the Administrative Guideline and local ordinance adopted to implement SEPA, and

WHEREAS, by motion regularly passed, the Des Moines City Council scheduled a public hearing for _____, 200__, to consider the textual code amendments contained in this ordinance, and

WHEREAS, notice of the public hearing was given to the public in accordance with law and a public hearing was held on the ____ day of _____, 200__ and all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that the amendments contained in this ordinance are appropriate and necessary for the preservation of the public health and welfare; now therefore,

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

NEW SECTION. Sec. 1. Three new sections are added to chapter 18.04 to read as follows:

(1) "Barbed wire" means twisted wires armed with barbs or sharp points.

(2) "Dangerous fence" means a fence which is designed to be able to or is likely to inflict injury or harm. The term includes, but is not limited to, fences constructed of or including barbed wire or razor wire.

(3) "Razor wire" means tense steel coil around which a tape of razor sharp spikes are attached; also called concertina wire.

NEW SECTION. Sec. 2. A new section is added to chapter 18.40 to read as follows:

Dangerous Fences

Dangerous fences are subject to the following restrictions:

(1) Fences containing razor wire, coiled barbed wire, or material(s) of similar design are prohibited in all zones, except that the Community Development Director may approve such dangerous fences for jails, detention facilities and other methods of court-ordered personal confinement, through the building permit process. Only those fences to be used for the purposes set forth in this paragraph will be allowed under such permit.

(2) Electric fences are not permitted in the city except when used to contain grazing animals in an area zoned to allow such a use. Electric fences must be set back at least five (5) feet from the property line and/or must be enclosed by additional fencing or other barriers which prevent access to the electric fence by small children on the adjacent property.

(3) A barbed wire fence may be a maximum of 5' in height and may contain four (4) strands of taut parallel barbed wire.

(4) A non-dangerous fence or wall may incorporate a maximum of three (3) strands of parallel barbed wire a maximum of 2' in height on top of the fence, so long as the orientation is either straight up or angled in toward the enclosure. If such fence is not located within 10 feet of the marginal line of any sidewalk or pedestrian way, the orientation of the barbed wire strands may be angled out toward the exterior of the enclosure. No portion of the fence may overhang any property line.

(5) In residential zones, all permitted dangerous fences shall comply with height and setback restrictions for all fences as set forth in DMMC 18.40.150. For properties where both codes apply, the more restrictive code shall prevail.

(6) All fences not in compliance with this section shall, within sixty (60) days of notification from the City, be removed by the owner or, upon failure to remove the fence, the Community Development Director is empowered to cause the removal of the fence, the cost of which shall be billed to the owner.

NEW SECTION. Sec. 3. Severability - Construction.

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

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

NEW SECTION. Sec. 4. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____

DRAFTORD:U:\CELESTE\ORDINANCES\RAZORWIRE

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:
Year 2003-2008 Capital Improvement Plan

ATTACHMENTS:
Draft Resolution No. 02-247
Project Summary

FOR AGENDA OF: November 21, 2002

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: November 12, 2002

CLEARANCES:

☐ Finance 

☐ Legal 

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

Suggested motion:

"I move to adopt draft Resolution 02-247 approving the City of Des Moines 2003-2008 Capital Improvement Plan".

Background

The Capital Improvement Plan provides a multi-year list of proposed major capital expenditures and associated operating costs for the City. The Growth Management Act of 1990 requires communities to adopt comprehensive plans to guide the orderly development of growth. Also, the Plan focuses the community and Council's attention on prioritizing projects, given the competing needs for projects.

The 2003-2008 Capital Improvement Plan reflects capital projects of the Municipal Capital Improvement, Arterial Streets, Surface Water Management, and Marina Depreciation and Improvement funds.

Recommendation

It is recommended that the City Council adopt Draft Resolution No. 02-247, approving the City of Des Moines 2003-2008 Capital Improvement Plan.

CITY ATTORNEY'S FIRST DRAFT 11/07/02

DRAFT RESOLUTION NO. 02-247

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, relating to capital improvement planning, adopting the 2003-2008 City of Des Moines Capital Improvement Plan, and superseding Resolution No. 919.

WHEREAS, the City Council of the City of Des Moines adopted the 2002-2007 Capital Improvement Plan by Resolution No. 919, and

WHEREAS, the City Council finds it to be in the public interest to adopt the 2003-2008 Capital Improvement Plan; now therefore,

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

Sec. 1. The City of Des Moines Capital Improvement Plan 2003-2008 is adopted by reference, as a guide for future capital improvement projects and policies.

Sec. 2. The City Manager is directed to submit to the City Council, for approval or adoption, annual updates to the Des Moines Capital Improvement Plan at least once a year.

Sec. 3. The City Manager is directed to submit to the City Council, for approval or adoption, amendments to specific projects contained in the Capital Improvement Plan when any project exceeds or will exceed budgetary authorization.

Sec. 4. The City Manager is directed to submit to the City Council, for approval, significant changes to the scope of any project contained in the Capital Improvement Plan as adopted in this resolution. Determinations regarding what constitutes a significant change in a CIP project shall rest with the City Manager, provided in all circumstances that the provisions of Sec. 3 are enforced. Finally, three City Councilmembers may determine a significant change has occurred or is proposed to occur with respect to any project contained in the CIP, which determination shall bring the matter before the full City Council for approval or authorization.

Sec. 5. Any new capital project meeting the criteria for inclusion in the CIP shall not be authorized without review and amendment to the 2003-2008 Capital Improvement Plan by the City Council.

Sec. 6. Resolution No. 919 is hereby superseded.

Resolution No. ____
Page 2 of 2

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

DRAFTRES/02-247