



Executive Session – 7:00 p.m. Litigation

AGENDA
REGULAR MEETING DES MOINES CITY COUNCIL
July 31, 2003 - 7:30 p.m.

CALL TO ORDER - Mayor Steenrod

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

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

BOARD & COMMITTEE REPORTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORTS

Traffic Unit Update - Status Report

CONSENT CALENDAR*

1. Motion is to approve the minutes of July 10 and 17, 2003.
2. Motion is to approve the Contract with Lakeridge Paving Company in the amount up to \$31,980.00 plus tax and authorize the City Manager to sign the contract substantially in the form as submitted. And to authorize the City Manager to approve change orders not to exceed 10% of the total contract amount.
3. Motion is to enter into an agreement with the City of Kent for their participation in the construction and maintenance of the Joint Use Stormwater Detention/Treatment Facility improvements for the Pacific Highway South Redevelopment Project and to authorize the City Manager to sign said agreement substantially in the form as submitted.
4. Pacific Highway Property Acquisition – Petersen
5. Pacific Highway Property Acquisition – Conger

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

PUBLIC HEARING

Draft Ordinance No. 03-032 Comcast Cable TV Franchise - 1st Reading

SUMMARY: The purpose of this agenda item is provide a public hearing, and City Council deliberation, on Comcast's proposal to renew its franchise for cable TV service. A public hearing is required before final action may be taken on the renewal. The Draft Ordinance will grant a six year franchise agreement.

OLD BUSINESS

NEW BUSINESS

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

SUMMARY: The purpose of this agenda item is for the Ad Hoc Parks, Recreation & Senior Services Master Plan Citizens Committee to transmit the revised Draft Master Plan including: policies, projects, funding options and implementation strategies to the City Council for final review, and to set the date for a Public Hearing on September 11, 2003.

2. Interlocal Agreement Off-Leash Dog Area at Grandview Park

SUMMARY: The Ad Hoc Des Moines Parks, Recreation & Senior Services Master Plan Citizens Committee and Administration recommends entering into a one year Interlocal Agreement with South King County cities and King County. The purpose of the Interlocal is for promoting and facilitating the development and operation of a regional off-leash dog area. There is a one time cost of \$1,463 and a maximum of sixteen hours of personnel time and sixteen hours of equipment and tool use for the purpose of necessary maintenance or for mutually agreed capital construction projects, and/or special maintenance or restoration projects.

3. Draft Ordinance No. 02-126 Graffiti

SUMMARY:

NEXT MEETING DATE - Regular Meeting August 14, 2003 (The August 7th Study Session is Canceled)

ADJOURNMENT

A G E N D A I T E M

SUBJECT: Public Hearing: Renewal of
Cable TV Franchise.

AGENDA OF: July 31, 2003

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: July 24, 2003

ATTACHMENTS:

1. Franchise Table of Contents.
2. Draft Ordinance No. 03-032.
3. Summary of legislative history.
4. Meeting minutes.
5. City of Burien RFP.

CLEARANCES:

[X] LEGAL

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL

Purpose and Recommendation:

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

Administration recommends enactment of Draft Ordinance No. 03-032. A motion consistent with Administration's recommendation is provided below:

"I move to suspend Council Rule 26(b) to allow enactment of Draft Ordinance No. 03-032 on first reading."

"I move to enact Draft Ordinance No. 03-032 granting Comcast a six year renewal for a cable television franchise."

Background:

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

The previous franchise (Ordinance No. 844) expired in April of 2000. Several Ordinances extended that franchise through 2002 (see Attachment 3). Administration and Comcast (and its predecessors) have been negotiating the terms of a renewal since the 4th Quarter of 1999. Early in the negotiation process, an ad hoc committee of the

City Council (Councilmembers Sheckler, Towe, and Kaplan) provided policy direction to staff regarding franchise issues.

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

As summarized in meeting minutes of the July 17, 2003 meeting, the City Council reviewed the draft franchise and directed that a public hearing be scheduled. This meeting provides the required public hearing.

Discussion:

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

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

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

At the July 17, 2003 meeting, the City Council requested additional information regarding the cost of upgrading the PEG (Public Education and Government) system. The improvements will include new lighting and audio/visual systems within the Council Chambers. Also, a new character generator will provide a more useful and attractive medium for electronic text messages. Lon Hurd of 3-H Communications has advised that \$140,000 will be sufficient for the necessary upgrades. Mr. Hurd has been involved in several similar projects for other communities. He has provided the scope of Burien's recent upgrade, which had a budget of \$110,000. This information is provided as Attachment 5.

Alternatives:

Conduct the public hearing and then:

1. Approve the draft franchise renewal as written.
2. Approve the draft franchise renewal as amended by the City Council.
3. Direct changes to the draft franchise renewal for Council review at a future meeting.

Financial Impact:

The franchise has several financial implications. Those include:

- \$10,000 paid to the City to (partially) offset costs related to evaluation of the franchise renewal.
- \$140,000 paid to the City for upgrades to the public, education, and government (PEG) broadcast system. These funds will be used to update the character generator, and upgrades to the lighting, video, audio, and projection systems within the Council Chambers. Cable customers in Des Moines will be assessed a monthly charge to allow Comcast to recoup this expense.
- Continuation of the current five-percent franchise fee. This fee is expected to generate \$265,000 in revenue during 2003. The revenue estimate for 2004 is \$278,000.

Recommendation/Conclusion:

If no new issues are raised during the hearing process, approve the draft franchise.

Concurrence:

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

**Des Moines/Comcast Cable Franchise
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CITY ATTORNEY'S FIRST DRAFT 7/24/03

DRAFT ORDINANCE NO. 03-032

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

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

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

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

WHEREAS, the Operator and the City have agreed to be bound by the conditions hereinafter set forth; now therefore

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

Sec. 1. Definitions.

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

(2) "Abandonment" means the disconnection by the Operator of specific Facilities from the cable system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 2. Franchise granted.

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

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

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

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

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

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

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

Sec. 5. Franchise fee.

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

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

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

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

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

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

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

Sec. 6. Technical standards and safety requirements.

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

(a) Applicable Utility Joint Attachment Practices;

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

(c) City Utility Code Requirements;

(d) City Rights-Of-Way Procedures;

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

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

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

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

Sec. 7. Technical evaluation.

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

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

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

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

(b) Which cable system components were tested;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 11. Relocation or removal.

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

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

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

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

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

Sec. 12. Documentation of location of facilities.

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

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

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

(c) Identification of facilities as aerial or underground.

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

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

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

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

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

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

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

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

Sec. 13. Restoration of improvements. Upon completion of any construction work, the Operator shall promptly repair, but in no event longer than such time as may be established by the City during permit review, any and all public

and private property, improvements, fixtures, structures and facilities which are damaged during the course of construction, restoring the same to their condition before construction commenced.

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

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

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

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

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

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

Sec. 16. Additional ducts and conduits.

(1) If the Operator is constructing underground conduit for its own use, the City may require the Operator to construct excess conduit capacity in the public ways, provided that the City enters into a contract with the Operator consistent with RCW 80.36.150. The contract rates to be charged should recover the incremental costs of the Operator, (calculated as the

difference between what the Operator would have paid for the construction of its conduit and the additional cost only of construction of the excess conduit). If the City makes the additional conduit available to any other entity for the purposes of providing telecommunications service or cable service for hire, sale, or resale to the general public, the rates to be charged, as set forth in the contract with the Operator shall recover at least the fully allocated costs of the Operator. The Operator shall state both contract rates in the contract. The City shall inform the Operator of the use, and any change in use, of the requested conduit and related access structures, if any, to determine the applicable rate to be paid by the City.

(2) The City shall not require that the additional conduit space be connected to the access structure and vaults of the Operator.

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

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

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

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

- (1) Most recent corporate annual report;
- (2) A copy of the 10-K Report, if required;
- (3) The number of homes for which cable is available;
- (4) The number of subscribers with basic service;
- (5) The number of subscribers with expanded basic service;
- (6) The number of subscribers with premium services;
- (7) The number of pay-per-view purchases;
- (8) The number of Installations in the period;
- (9) The number of disconnects in the period;
- (10) Total number of miles of cable in the City;
- (11) Total number and summary of all written complaints received by category, length of time taken to resolve and action taken to provide resolution;
- (12) A list of the current programming;

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

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

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

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

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

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

- (1) Percentage of calls answered within 30 seconds;
- (2) Number of calls received;
- (3) Average handle time;
- (4) Number of calls abandoned by the caller;
- (5) Average speed of answer;
- (6) Percentage of time all lines busy.

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

Sec. 23. Failure to improve customer service.

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

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

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

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

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

Sec. 27. PEG access channels. Upon the effective date of this Franchise, the Operator shall make or continue to

make the following PEG Access Channels available to the City and/or its residents:

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

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

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

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

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

acquire such channel(s) upon demonstrated demand that it will fulfill the conditions of programming usage.

Sec. 28. PEG access capital contribution.

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

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

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

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

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

necessary cable system extension and/or non-standard installation.

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

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

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

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

(4) **Internet alternative.** In lieu of providing the Institutional Network capacity specified above, the City may elect to obtain access to the Internet to accomplish these objectives. In this case the Operator shall provide, without charge, one cable modem per City site listed in Appendix B, or one ethernet card, and any software necessary for access to such service. There shall be no charge for unrestricted usage during business hours. The using facility shall be responsible for the provision, maintenance, updating and replacing as necessary any other hardware such as a personal computers and related equipment required for access to such service, as well as the cost of installing additional outlets if so requested. Further, the

Operator shall not be obligated to provide such service to any using facility unless the using facility agrees, on a form as approved by the City, to take reasonable precautions to prevent any inappropriate or illegal use of such service, and agrees to hold the Operator harmless against and from all claims, demands, costs or liabilities of every kind and nature whatsoever arising out of use of such service within the using facility, including, but not limited to, reasonable attorneys' fees and costs.

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

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

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

Sec. 35. Non-Discrimination. In connection with rates, charges, facilities, rules, regulations and in all Operator's services, programs or activities, and all Operator's hiring and employment made possible by or resulting from this Franchise, there shall be no discrimination by the Operator or by Operator's employees, agents, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, creed, national

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

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

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

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

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

Sec. 39. Continuity of service.

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

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

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

Sec. 41. Non-compliance.

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

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

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

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

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

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

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

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

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

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

(2) That rebuts the alleged violation or noncompliance.

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

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

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

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

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

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

facilities of the Operator in place, the equipment or Facilities shall become that of the City, and the Operator shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such equipment or facilities. None of the foregoing affects or limits the Operator's rights to compensation for an involuntary abandonment of its equipment or facilities under state or federal law.

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

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

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

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

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

Sec. 50. Franchise non-transferable.

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

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

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

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

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

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

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

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

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

Sec. 51. Insurance.

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

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

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

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

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

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

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

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

(d) Workers' compensation within statutory limits.

(3) Each policy shall provide that the insurance shall not be canceled or materially changed so as to be out of

compliance with these requirements without thirty (30) days' written notice first provided to the City. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, the Operator shall provide a replacement policy. The Operator agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the commercial general liability, for at least one (1) year after expiration of this Franchise.

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

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

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

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

(1) The Franchise performance bond shall serve as security for the full and complete performance of Operator's

obligations under this Franchise, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the Operator to comply with the codes, ordinances, rules, regulations or permits of the City.

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

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

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

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

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

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

Sec. 54. General provisions.

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

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

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

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

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

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

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

OPERATOR:

Comcast of Washington IV, Inc.
4020 Auburn Way N.
Auburn, WA 98002
Attn: General Manager

CITY:

City Manager
City of Des Moines
21630 11th Ave. S.
Des Moines, WA 98198

With a copy to:

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

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

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

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

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

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

(12) **Severability.** If any section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

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

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

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

Sec. 58. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

Ordinance No. _____
Page 40 of _____

ATTEST:

City Clerk

Published: _____

Effective Date: _____

DRAFTORD:03-032FinalDraft

Appendix "A"

FCC Customer Service Standards

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

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

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

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

Section 76.309 Customer Service Obligations

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

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

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

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

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

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

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

(1) Cable system office hours and telephone availability-

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

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

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

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

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

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

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

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

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

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

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

(C) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a

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specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

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

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

(3) Communications between cable operators and cable subscribers-

(A) Notifications to subscribers-

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

(i) products and services offered;

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

(iii) installation and service maintenance policies;

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

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

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

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

(B) Billing-

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

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

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

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

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

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

(4) Definitions-

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

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

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

Appendix B

PUBLIC BUILDINGS

City of Des Moines Administrative Offices

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

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

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

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

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

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

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

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

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

Services Annexed to the City of Des Moines

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

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

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

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

Appendix B

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Special Purpose Districts

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

Highline District Schools

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

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

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

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

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

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

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

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

Colleges

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

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

March 22, 1990

- Public Hearing held on draft master ordinance and franchise agreement

April 12, 1990

- Ordinance No. 843 passed establishing the conditions, requirements, obligations, duties of construction, maintenance & operation of a non-exclusive cable communication & distribution system with the City with TCI Cablevision of Washington
- Ordinance No. 844 passed granting a nonexclusive franchise to construction, install & operate, repair, replace & maintain lines, etc.

October 10, 1991

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

July 1, 1993

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

November 18, 1993

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

December 7, 1995

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

December 21, 1995

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

April 10, 1997

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

February 4, 1999

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

August 5, 1999

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

April 13, 2000

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

August 10, 2000

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

November 9, 2000

- Ordinance No. 1274 amending Ord. No. 844 to extend through February 28, 2001 the non-exclusive franchise currently held by AT&T through Ord. No. 844, etc.
- Ordinance No. 1275 amending Title 20 of DMMC to include definitions relating to provision of cable television services & establishing the conditions, requirements, obligations, duties of construction, maintenance & operation of cable franchises within the City, etc. . . . **AND** repealing Ord. No. 843.

April 12, 2001

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

August 9, 2001

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

February 28, 2002

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

July 11, 2002

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

EXCERPT DES MOINES CITY COUNCIL MINUTES July 17, 2003

Draft Ordinance No. 03-032 Comcast Cable TV Franchise - Briefing

City Manager Piasecki introduced the City's consultant for working on the franchise agreement, Lon Hurd of 3-H Cable Communications Consultants.

Assistant City Manager Loch advised that given Federal restraints on Cable TV service, staff has worked to negotiate the most-favorable terms possible. He highlighted some of the items contained in Council's packet as follows:

- Six year franchise term with possible two year extension.
- \$10,000 paid to the City to (partially) offset costs related to evaluation of the franchise renewal.
- \$140,000 paid to the City for upgrades to the public, education, and government broadcast system. These funds will be used to update the character generator, and upgrades to the light, video, audio and projection systems within the Council Chambers. Cable customers in Des Moines will be assessed a monthly charge to allow Comcast to recoup this expense.

MOTION was made by Councilmember Sheckler, seconded by Councilmember White, to schedule a public hearing at the July 31, 2003 City Council meeting regarding renewal of Comcast's non-exclusive cable TV franchise.

Upon questioning by Council, Assistant City Manager Loch advised that the improvements to the Council Chambers will require seeking a contractor, Council's review and input, and then a final contract brought to Council for approval.

Mayor Pro Tem Benjamin questioned what dollar amount might be passed on to cable customers to pay back the \$140,000. Mr. Hurd advised that Comcast believes this will amount to about a twenty-five cent increase on the average monthly cable bill.

Councilmember Sheckler commented that he has some concerns about passing the \$140,000 off on the cable customers, but overall feels the agreement is good.

Mayor Steenrod voice the opinion that the \$140,000 should not be tied into this agreement since it had not been demonstrated that improvement costs would not exceed \$140,000.

Assistant City Manager Loch advised that the first draft of the franchise agreement called for \$120,000 about three years ago, and the \$140,000 is due to inflation, and was negotiated with Comcast.

VOTE ON MOTION: Motion passed unanimously.

REQUEST FOR BIDS

Provision of Video Production Equipment

The City of Burien has determined it is in the best interest of the City to develop a Government Access channel as outlined in the Cable Television Franchise Agreement with AT&T Broadband.. In association with the development of these capabilities the city has specified a list of equipment that will be purchased and installed in the existing City Hall that will allow for live along with video tape playback of City Council Meetings and other programming of interest to the Citizens of the City of Burien.

Proposals to provide this equipment must be submitted using the attached proposal sheets by no later than 2:00 PM on September 6th 2002, to:

By regular mail:

City of Burien
Attn: Jan Hubbard, City Clerk
415 SW 150th Street
Burien, WA 98166-1973

By hand delivery:

City of Burien
Attn: Jan Hubbard, City Clerk
415 SW 150th Street
Burien, WA 98166

DESCRIPTION OF EQUIPMENT

Equipment List attached as Appendix “A”

PREPARATION OF PROPOSALS

In order for a Proposal to be considered complete and responsive, the Proposal must include the following items:

- Completed Proposal Forms (Tables 1, 2, and 3), provided in this Request for Proposal
- Evidence of automobile and general liability insurance of not less than \$1,000,000 per occurrence/aggregate for personal injury and/or property damage

Bidders must submit bids for all Equipment specified in Appendix “A” of this Request for Proposal. A system narrative has also been attached as appendix “B” for further clarification. The omission or deletion of any bid item will be considered non-responsive and shall be cause for rejection of the bid.

The City shall not be responsible for any costs incurred by the Bidder in preparing and submitting its bid/response to this Request for Proposal.

Before submitting a bid, each Bidder shall carefully read this Request for Proposal. The Bidder's cost proposal shall include all costs necessary to provide the equipment as set forth in this Request for Proposal. No allowance of any kind whatsoever will be made to any Bidder because of lack of such examination or knowledge. The submission of a bid shall be conclusive evidence that the Bidder has made such an examination.

SUBMITTING PROPOSALS

Each proposal shall be submitted in a sealed envelope bearing on the outside the name and address of the Bidder and addressed to the City, naming the Project for which the bid is submitted. It shall be the sole responsibility of the Bidder to see that the bid is received by the proper time. Proposals are due by 2:00 PM on September 6th 2002.

ACCEPTANCE OF PROPOSALS

The City reserves the right to reject any and all bids and not make an award. The City reserves to decrease or increase the list of equipment once the bids are received. If the list of equipment

is increased, modifications and additional compensation for the Contractor will be handled through the Discretionary Work Process, described below.

AWARD OF CONTRACT

A performance bond in the amount of 100% of the bid amount will be required from the Bidder who is awarded the contract. The selected bidder must obtain a City of Burien Business License and shall provide copies of all business registrations, business licenses, and contractor's license.

TIME TO COMPLETE

All equipment is to be delivered within 28 (twenty-eight) calendar days of receiving the notice to proceed from the City.

PAYMENT

Final payment for the equipment will be made within 30 (thirty) days of receipt of the invoice, following acceptance of the equipment delivered.

QUESTIONS

Any questions related to this work should be directed to Jan Hubbard, Community Relations & Human Resources Director, , City of Burien, at (206) 248-5504, or Lon Hurd, 3H Communications Consultants, (253) 833-8380.

CITY OF BURIEN

PROPOSED VIDEO PRODUCTION EQUIPMENT - BID RESPONSE

With Projector and Large Monitor Upgrade

ROBOTIC CAMERAS AND LIGHTING

				LOW BID	
QTY	MANUFACTURE	DESCRIPTION	MODEL	TROXELL	VMI
4	Sony	3 Chip CCD Camera	DXC-390	\$ 8,006.28	
3	Sony	14X Zoom Lens	VCL-614WEA	\$ 4,144.32	
1	Rainbow	2.8 - 12mm Manual lens	L212AVCS		\$ 55.00
1	Rainbow	Lens adaptor CS to C	CS/C		\$ 6.00
1	ESI	3 Cam Robotic System	180-R-3-115		\$ 10,928.00
3	ESI	Wall Mount and plate for 115	by description		\$ 621.00
1	Pelco	Camera Wall Mount	EM1450	\$ 28.67	
1	NRG	12 VDC, 10 amp power supply	12120		\$ 298.00
4	Videssence	110 watt CFL fixture w lamps (specify 120V for above)	M110-255BX		\$ 3,416.00
				TOTAL	\$ 27,503.27

CONTROL ROOM AND EDITING

				LOW BID	
QTY	MANUFACTURE	DESCRIPTION	MODEL	TROXELL	VMI
1	Panasonic	Video Switcher	WJMX-50	\$ 5,011.85	
1	Knox	Aux 8X2 Switcher	KNX-V82		
1	Videonics	Character Generator	TM-3000	\$ 605.53	
1	Casablanca	Non-Linear Production System	KRON		\$ 3,106.00
2	JVC	S-VHS VCR with edit	SR-S365U	\$ 2,019.20	
1	JVC	Edit Controller	RM-G800U	\$ 391.94	
2	JVC	Extension Cable for RM-G800U	VC-G8030	\$ 104.08	
2	Sony	8" Color Monitor	PVM8040	\$ 1,068.68	
1	Sony	14" Color Monitor	PVM14M2U	\$ 929.66	
1	Mackie	Audio Mixer	1402	\$ 422.47	
1	Sony	Quad B/W monitors	PVM 4B1U	\$ 1,897.40	
2	Middle Atlantic	Steel rack mount shelf	U2		\$ 62.00
2	Middle Atlantic	Steel rack mount shelf	U1		\$ 48.00
2	Ocean Matrix	Passive 4 x 1 AV Switcher	OMX-9068		\$ 296.00
2	RDL	Video DA	FP-VDA4	\$ 336.64	
1	RDL	Audio DA	RU-DA4D	\$ 161.30	
1	RDL	Power Supply	PS-24U2A	\$ 51.93	
1	FM Systems	Audio AGC	ALM-771		\$ 523.00
1	Wohler	Audio Monitor	AMP1A		\$ 605.00
1	Scando	Pro II Scan Converter	1291	\$ 1,097.12	
1	Scando	Rack Mount	1246	\$ 103.52	
1	Middle Atlantic	Corner Desk	MDV-CNR1		\$ 403.00
2	Middle Atlantic	Side Rack	MDV-R12		\$ 312.00
2	Middle Atlantic	Overbridge	MDV-OB4		\$ 178.00
3	Middle Atlantic	Rack Mount Power Strip	PD-915R		\$ 171.00
				TOTAL	\$ 19,905.32

AUTOMATED PLAYBACK SYSTEM				LOW BID	
QTY	MANUFACTURE	DESCRIPTION	MODEL	TROXELL	VMI
4	JVC	S-VHS VCR	SRV-10U	\$ 945.64	
2	Sony	DVD Player	DVPNS315B	\$ 245.48	
6	Middle Atlantic	Rack Shelf	U2		\$ 186.00
1	Leightronix	PB Controller-8 VCR's	Pro-8	\$ 1,962.85	
4	Leightronix	Interface for VCRs	PRJVIR	\$ 329.28	
2	Leightronix	Interface for DVD players	PRSDVD	\$ 164.64	
1	Middle Atlantic	Steel rack mount shelf	U3		\$ 35.00
				TOTAL	\$ 3,868.89
CHAMBERS PRESENTATION				LOW BID	
QTY	MANUFACTURE	DESCRIPTION	MODEL	TROXELL	VMI
1	Samsung	Document Camera	SDP-900	\$ 2,061.86	
1	Winsted	Equipment Cart	R3406		\$ 424.00
1	JVC	S-VHS VCR	SRV-10U	\$ 236.41	
2	Panasonic	36" Stereo TV/Monitor	CT-36D12D		\$ 1,352.00
2	Premier	Wall Mount for monitor	WSM-3542	\$ 1,639.58	
1	Sanyo	Video Projector, 3000 lumen	PLC-XP30	\$ 4,416.23	
1	Buhl Optical	Long Throw Lens	794MCZ087	\$ 1,294.40	
1	Premier	Ceiling mount for projector	PBM-136L	\$ 179.92	
				TOTAL	\$ 11,604.40
AUDIO SYSTEM				LOW BID	
QTY	MANUFACTURE	DESCRIPTION	MODEL	TROXELL	VMI
10	Shure	18" gooseneck mic w/ switch	MX418S/C	\$ 1,524.80	
1	Alzatex	Queuer System			
		includes:			
1		Nine Station Controller	que115ct1		\$ 625.00
9		Counter Top Station	que201afl		\$ 1,494.00
1		Master Controller	que101pgm		\$ 413.00
1		Power Supply	psa5W120		\$ 55.00
1		PC PS-2 Keyboard	psps2kbd		\$ 34.00
		Chair Persons Control Panel:			
1		QS202A-Q10-MMH-LCD4X20-DS175			\$ 1,584.00
1	Alzatex	TimeKeeper System	PKT01A-BK		\$ 208.00
				TOTAL	\$ 5,937.80

INSTALLATION				
QTY	VENDOR	DESCRIPTION		
1	JW Tel-Tronics, Inc.	Labor and Materials		\$ 30,750.00
		Installation to include all necessary cable, connectors, and additional equipment that might be needed for full integration of system. Installer to provide as built CAD drawings, wire lists, and equipment manuals at end of project. Include up to 8 hours		
			TROXELL TOTAL	\$ 41,381.68
			VMI TOTAL	\$ 27,438.00
			EQUIPMENT SUB TOTAL	\$ 68,819.68
		EQUIPMENT AND INSTALL TOTAL		\$ 99,569.68
			ESTIMATED SALES TAX	\$ 8,762.13
			ESTIMATED SHIPPING	\$ 500.00
			TAPE STOCK, ETC.	\$ 1,000.00
			PROJECT TOTAL	\$ 109,831.81

City of Burien New Video Production Facility

Overview

The City of Burien wishes to install a video production and playback system for use with their government access channel. Production equipment will include a four camera system with remote pan, tilt, and lens control for three of the cameras. The fourth camera will be a fixed wide shot. Television lighting will be added to improve the camera images. Meetings will be recorded on VHS tape. A production switcher and character generator will allow for live presentation and/or tape recording of the meetings. In addition to the cameras, other sources will include a scan-converted image of the PC or document camera in the chambers, and an input from the VCR used in the chambers.

A very basic edit system will allow for simple editing of tapes. For more advanced production of new program material, a Casablanca non-linear system is specified. This system will include the ability to create DVD's for program playback.

The automated playback system will consist of a Leightronix event controller, 4 VHS VCR's and 2 DVD players. The city already owns a PC based info channel system.

At least one and possibly three new 27" or 36" monitor receivers will be mounted in the lobby and chambers. They will be able to display video from the production system, or an off air picture via the cable TV signal.

The City is also considering the installation of new microphones to improve the sound reinforcement system, and queuing and timer systems at the dais.

Installation

Camera control and production equipment will be located in a side room near the chambers. Equipment will be mounted in the specified Middle Atlantic studio furniture. The city will contract separately with an HVAC contractor if additional cooling is needed in the room. The automated playback equipment will be mounted in existing racks in the computer room, which is also next to the chambers. The CPU for the info channel is already mounted in this room. The authoring station for the info channel will be moved to the new production room. The existing mixer and amplifiers for the chambers sound reinforcement system are also in the computer room. A feed from this system will be used as the audio source for recording meetings.

The existing video projector will be mounted overhead in the chambers. As an alternate, the City seeks pricing on a new projector and lens. A new document camera with VGA output will feed the projector and the scan converter in the production room. Auxiliary inputs on the document camera will be used to switch computer video to the projector

and production system. The document camera will be placed on a new equipment cart along with the chambers VCR. An umbilical cable will run from the cart to a connector panel to be provided by the A/V contractor. Control cable shall be pulled to the fixed camera shot position so that pan, tilt, and lens control can be added later as budget permits.

As a separate item, the A/V contractor shall bid on installation of 10 new microphones for the chambers sound reinforcement system. This installation would include pulling new wiring from the floor boxes to the sound mixer and changing out the connectors in the floor boxes for standard 3 pin XLR connectors. The new microphones have built in on/off switches, so that the extra control wiring to the mixer can be eliminated. The old microphones will be rewired for use in recording meetings at the center table. The record feed to the logging recorder will also be re-wired.

Another separate item is the installation of a new Alzatex queuing system for meeting control and a timer system for public presentation. Descriptions of these systems may be found at the Alzatex web site, <http://www.alzatex.com/>

All wiring shall be done in a neat and professional manner. Plenum cable may be needed for cable runs to the production and computer room. All cables shall be clearly labeled at each end with a cable number and to and from descriptions. A cable list shall be provided at the end of the project, along with a CAD system drawing showing all connections. The A/V contractor should plan on providing 8 hours of operations training to City staff.

Electrical

Under separate contract, the City shall have an electrical contractor provide a dedicated 20-amp circuit and two 2-gang outlets in the production room located behind the production furniture. Adequate circuit capacity should be confirmed for the playback equipment in the computer room.

In the chambers, four single gang outlets on a switched dedicated circuit shall be installed in the soffit for television lighting. Each of the four specified CFL lighting fixtures is rated at 110 watts. The fixtures themselves are to be mounted by the A/V contractor. A single gang outlet shall be installed at the projector mount location.

Outlets shall be added if needed for new hanging monitors in the lobby.

The final location of all new electrical outlets will be coordinated with the A/V contractor. Preferably, the new outlets for the production room and the projector should be on the same sub-panel and phase as the existing circuits in the computer room.

See notes to fix

A G E N D A I T E M

do for 2d reading

take out civil violation

FUND?

SUBJECT:
Graffiti Ordinance

AGENDA OF: July 31, 2003

DEPT. OF ORIGIN: Police

DATE SUBMITTED: July 29, 2003

ATTACHMENTS:
Draft Ordinance No. 02-126

CLEARANCES:
☐ LEGAL AA
☐ POLICE KT

APPROVED BY THE CITY MANAGER
FOR SUBMITTAL AT

Purpose and Recommendation:

The purpose of this agenda item is to bring to the City Council the "graffiti ordinance" for review and recommendation.

Recommended Motion:

MOTION: "I move to pass Draft Ordinance No. 02-126 to a second reading on the next available consent calendar."

Background:

On June 27, 2002, the concept of a graffiti ordinance was brought before the City Council with the recommendation that it be sent to the Public Safety and Transportation Committee for review and recommendation. This recommendation was adopted by Council and the matter was remanded to the Public Safety and Transportation Committee. This committee has met and made recommendation to the City Attorney for an ordinance. At the suggestion of Mayor Steenrod, this draft ordinance is now being brought back to the Council.

Discussion:

Over the years, the City of Des Moines has seen a significant increase in the type and location of graffiti. In previous years, graffiti was more prevalent east of 16th Avenue So., mainly in the Pacific Ridge area, and could be attributed with gang sects. In recent years, graffiti has dramatically increased in areas not previously affected. We now have graffiti present within all borders of our City limits.

Where previously the graffiti could be attributed to gang sects, that is no longer the case. Tagging has become equally prevalent and more diverse. There is a definite difference between the two types of graffiti, with the gang graffiti being more territorial as well as more offensive. Taggers tend to attribute their graffiti more towards artist expression.

Within the City of Des Moines, the impact of graffiti on businesses, apartments, condominiums, and single family residences is significant. The sheer cost of removal and repair to areas affected by graffiti could easily be estimated in the tens of thousands of dollars. Recently, the QFC complex on Marine View Drive was the victim of tagging graffiti and the financial impact upon the business to remove the tagging was in the neighborhood of \$3,000.

Graffiti is not only present in the private sector, but equally present on public properties and rights-of-way. This is inclusive of street signs, telephone equipment boxes, power vaults, fencing, bus stops, and light poles.

Currently, the City of Des Moines has no ordinance in place which would specifically address persons involved in tagging, the placement of graffiti, or the possession of tools associated with such, including large amounts of spray paint, wide indelible markers, and acid etch.)

If the Police Department were to apprehend a person in the commission of placing graffiti on a structure, it could only charge them for malicious mischief under RCW. Staff has taken the time to research and locate ordinances from other communities that have experienced similar criminal activities. Graffiti ordinances from the cities of SeaTac, Burien, and Tacoma have proven to be beneficial and effective within their communities. Staff feels that not one of these ordinances would effectively meet our needs. A combination of these ordinances would better address Des Moines' problems at hand.

Alternatives:

The other alternative would be to not adopt a graffiti ordinance which would specifically address persons involved in tagging, the placement of graffiti, or the possession of tools associated with such. The Police Department would continue to investigate and apprehend individuals who have placed graffiti on a structure, and charge them with malicious mischief under RCW.

Recommendation/Conclusion:

Staff believes this ordinance will give the Police Department and court specific laws and better direction when investigating, arresting and charging individuals who place graffiti on structures. We will be providing an effective, long-term solution to more effectively address the graffiti issue. Staff recommends that Draft Ordinance No. 02-126 be passed to a second reading for enactment on the next available consent calendar.

CITY ATTORNEY'S FIRST DRAFT 07/25/03

DRAFT ORDINANCE NO. 02-126

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, establishing new graffiti misdemeanors; requiring the removal of graffiti in order to protect the public health, safety, and welfare; declaring that property may become a nuisance owing to the failure of responsible parties to remove graffiti after having been requested to do so by the City; establishing certain violations of this ordinance as a civil violation and designating the civil violation process as the legal process to enforce voluntary or involuntary clean-up of graffiti and the recovery of public clean-up expenses; and adding a new chapter to Title 5, and new sections to Chapter 9.72, of the Des Moines Municipal Code.

WHEREAS, graffiti is criminal vandalism defacing public and private property without permission of the owner, costing citizens, businesses, and the City thousands of dollars annually to repair, and

WHEREAS, graffiti can be a powerful visual symbol of disorder which erodes public safety, reduces the attractive physical qualities of neighborhoods, and can contribute to a downward spiral of blight and decay, lessening property values, business viability, and ultimately tax revenues, and

WHEREAS, enactment of specific ordinances defining criminal misconduct related to graffiti, and establishing criminal penalties for such misconduct, can provide police with more complete enforcement tools to reduce graffiti, and

WHEREAS, reducing graffiti requires a comprehensive strategy that includes both increased efforts to apprehend and hold accountable those responsible for such vandalism, and the prompt removal of graffiti as soon as reasonably possible, and

WHEREAS, there is substantial evidence that the prompt removal of graffiti is an effective prevention strategy which discourages its return while the failure to promptly remove graffiti increases the likelihood that more graffiti will occur on the same site and on other nearby property, and

WHEREAS, the City and many property owners commit resources and energy to diligently removing graffiti and the

City supports the efforts of community, business, and school volunteers who work each week to remove graffiti in their neighborhoods and business districts, and

WHEREAS, these combined public and private efforts to reduce graffiti are undermined by those few property owners who fail to cooperate in cleaning graffiti from their property despite requests from their neighbors and the City, and

WHEREAS, the failure to maintain one's property by removing graffiti to a reasonable degree and within a reasonable period of time constitutes a public nuisance for the reasons set forth above, and

WHEREAS, many other jurisdictions across the United States, including Seattle, Burien, SeaTac, Tacoma, Portland, Phoenix, San Diego, San Francisco, and Los Angeles County have adopted graffiti nuisance ordinances and have found them to be a useful tool in reducing graffiti; now therefore,

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

Sec. 1. Definitions.

Handwritten: [Signature]
(1)
(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) "Abate" means to use such means, in such a manner, and to such an extent as is reasonably necessary to remove graffiti from public view.

(3) "Director" means the Director of the Des Moines Community Development Department or his or her designee.

Handwritten: OK
(4) "Graffiti" means unauthorized markings, visible from premises open to the public, that have been placed upon any property through the use of paint, ink, chalk, dye, or any other substance capable of marking property.

(5) "Graffiti nuisance property" means property upon which graffiti has not been abated after the abatement date established pursuant to this ordinance.

(6) "Graffiti vandalism" means the act of intentionally altering, marking, or defacing property through the use of graffiti.

delete
(7) "Hearing Examiner" means the Des Moines Hearing Examiner and the office thereof established pursuant to chapter 18.94 DMMC.

(8) "Marker pen" means a broad tip indelible marker with a tip exceeding four millimeters at its diameter.

(9) "Owner" means any entity or entities having a legal or equitable interest in real or personal property including but not limited to the interest of a tenant or lessee.

OK on
(10) "Premises open to the public" means all public spaces, including but not limited to streets, alleys, sidewalks, parks, and public open space, as well as private property on to which the public is regularly invited or permitted to enter for any purpose.

(11) "Pressurized container" means any can, bottle, spray device, or other mechanism designed to propel liquid that contains ink, paint, dye, or other similar substance which is expelled under pressure, either through the use of aerosol devices, pumps, or similar propulsion devices, and is capable of marking property.

(12) "Property" means any real or personal property and that which is affixed, incidental or appurtenant to real property, including but not limited to any structure, fence, wall, sign, or any separate part thereof, whether permanent or not.

(13) "Responsible party" means an owner, or an entity or person acting as an agent for an owner by agreement, who has authority over the property or is responsible for the property's maintenance or management. Irrespective of any arrangement to the contrary with any other party, each owner shall always be a

responsible party for the purposes of this chapter. There may be more than one responsible party for a particular property.

(14) "Unauthorized" means without the consent of a responsible party.

Sec. 2. Possession with intent.

(1) It is unlawful for any person to possess a pressurized container, marker pen, or any other object capable of defacing property, for the purpose of committing graffiti vandalism.

(2) A violation of or failure to comply with this section is a misdemeanor.

Sec. 3. Minor in possession.

(1) It is unlawful for any individual under the age of 18 (eighteen) years, who is not accompanied by a responsible adult, to possess a pressurized container or marker pen in or upon a public place or private property, without the consent of the owner, lessee, or other person entitled to legal possession thereof.

(2) A violation of or failure to comply with this section is a misdemeanor.

Sec. 4. Graffiti vandalism.

(1) Graffiti vandalism is unlawful.

(2) A violation of or failure to comply with this section is a misdemeanor.

Sec. 5. Graffiti in public view.

(1) All graffiti upon private property, which is in public view, shall be abated by responsible parties within seven

(7) calendar days after notice of the presence of said graffiti. A person will have notice for purposes of this subsection when notice has been provided pursuant to section 7 of this ordinance; when the responsible party has actual knowledge of the presence of graffiti; when the responsible party has information which would lead a reasonable person to be aware of the presence of graffiti; or when the responsible party should reasonably have been aware of the presence of graffiti. This section shall not apply to graffiti that is negligible or minute in character.

(2) A violation of or failure to comply with this section is a civil violation.

Sec. 6. Violation of graffiti nuisance ordinance.

(1) Any property located in the City of Des Moines that becomes a graffiti nuisance property is in violation of this ordinance and is subject to remedy under the civil violation process of Des Moines Municipal Code Chapter 1.28.

(2) Every responsible party who permits a property to become a graffiti nuisance property is in violation of this ordinance and subject to remedy under the civil violation process of Des Moines Municipal Code Chapter 1.28.

Sec. 7. Notice. When the Director or designee determines that a property within the City is a graffiti nuisance property, the Director shall identify a responsible party and send that party an informational letter describing the nature and location of the graffiti and requesting that the graffiti be removed promptly. The letter shall explain the problems caused by the continued presence of graffiti and the need for its prompt removal, describe the resources available to aid in graffiti removal, and give notice that failure to remove graffiti is a violation of City law that may lead to legal action to remove the graffiti at the expense of the responsible party and may subject the responsible party to civil penalties.

Sec. 8. Civil violation. If the graffiti is not promptly abated after the information letter has been sent, the Director or designee shall take remedial action as permitted and required

Ordinance No. ____
Page 6 of ____

under the civil violation process of Des Moines Municipal Code Chapter 1.28.

Sec. 9. Codification. Section 1 and Sections ⁵7 through ⁸9 of this ordinance shall be codified as a new chapter in Title 5 DMMC. Section 1 and Sections 2 through ¹⁴14 of this ordinance shall be codified as new sections of chapter ^{9.72}9.72 DMMC.

Sec. 10. 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. 11. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

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

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

Ordinance No. _____
Page 7 of _____

City Clerk

Published: _____

Effective Date: _____

DRAFTORD:02-126

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Property Acquisition for Pacific
Highway South Project
(Petersen NW - #6)

ATTACHMENTS: Consent Judgment and
Decree of Appropriation

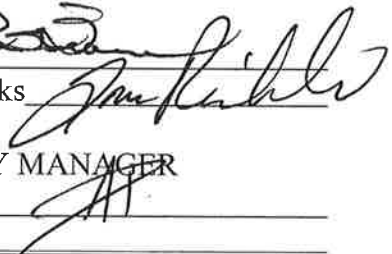
FOR AGENDA OF: July 31, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: July 23, 2003

CLEARANCES:

[X] Legal
[X] Public Works

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

PURPOSE AND RECOMMENDATION

This report is to seek City Council approval for the acquisition of right-of-way property and a temporary construction easement for the Pacific Highway South Improvement Project.

It is recommended that the council:

1. Approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-33625-6 KNT, which provides for acquisition by the City, for \$180,000, of right-of-way property and a temporary construction easement, both of which are necessary for the Pacific Highway South Improvement Project; and
2. Authorize the City's retained counsel to approve and present to the court, for approval and entry, the "Consent Judgment & Decree of Appropriation" substantially in the form as submitted.

SUGGESTED MOTION: "I move to approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-33625-6 KNT and to authorize the City's retained counsel to approve said Judgment and Decree and present it to the court, for approval and entry, substantially in the form as submitted.

BACKGROUND

On May 9, 2002, the City Council, through the exercise of its powers of eminent domain, enacted Ordinance No. 1303 for the acquisition of right-of-way property for the Pacific Highway South Improvement Project and directed the City Attorney to initiate court proceedings to carry out such acquisition. Because ownership of this property involved a city councilmember, outside counsel was retained. This court action is pursuant to such direction and the proposed "Consent Judgment & Decree of Appropriation" is a product of settlement negotiations with the property owners and their attorney.

DISCUSSION

This "Consent Judgment & Decree of Appropriation" provides for the acquisition in fee of a strip of right-of-way, (approx. 2,112 square feet) and a temporary construction easement (over approximately another 6,038 square feet) for a total of \$180,000 including attorney fees and appraisal fees.

ALTERNATIVES

This agreed settlement is based upon the city's most recent appraisal for the land taken, the cost to cure the damages, and expert appraisal and attorney fees. The only alternative is a court trial which, in staff's opinion, would likely result in more cost to the city.

FINANCIAL IMPACT

This is the most efficient and least expensive way for the city to acquire this property and easement.

RECOMMENDATION

The city's retained counsel recommends the approval of this "Consent Judgment and Decree of Appropriation" as the most efficient and cost effective method of acquiring the subject property and easements.

The Honorable Jay V. White

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

CITY OF DES MOINES,

Petitioner,

vs.

PETERSEN NORTHWEST
CORPORATION, a Washington
corporation; GARY W. PETERSEN
and ADELE A. PETERSEN, husband
and wife and the marital
community composed thereof
d/b/a PETE'S TOWING; and all
persons, parties, firms or
corporations unknown, or
unknown owners claiming any
right, title, lien or interest in and
to the property herein described,
and the estate and personal
representative, executor or
executrix of any deceased person
having or claiming an interest
therein,

Respondents.

NO. 02-2-33625-6KNT

CONSENT JUDGMENT AND
DECREE OF APPROPRIATION

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SAMPSON & WILSON, INC., P.S.
1400 Talbot Road So. c Ste. 400
Renton, Washington 98055-4292
King County Facsimile
(425) 235-4800 (425) 235-4838

SUMMARY OF JUDGMENT
(RCW 4.64.030)

Judgment Creditors	Peterson Northwest Corporation; Gary W. Peterson and Adele A. Peterson d/b/a Pete's Towing
Attorneys for Judgment Creditors	Peterson Northwest Corporation & Gary W. Peterson and Adele A. Peterson d/b/a Pete's Towing - Daryl A. Deutsch
Judgment Debtor	City of Des Moines, a Washington Municipal Corporation
Principal Judgment Amount	• Acquisition \$179,250.00
Pre-judgment Interest	None
Post-judgment Interest	None, the Petitioner/City has deposited the amount of the judgment into the registry of the court on or before the date of this judgment
Attorney Fees	\$750.00
Expert Fees	Included above
Total Judgment Amount	\$180,000.00
Real Property Awarded	Described herein
Assessor's Tax Parcel Number(s)	215640-0270-03

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STIPULATED JUDGMENT & DECREE

This matter came before this court by stipulation of the parties upon the petition of the petitioner, City of Des Moines, seeking:

1. A determination of just compensation to be paid in money to the owners and all other persons interested in the subject property for the taking and appropriation of the subject property;
2. A judgment and decree of the Court providing for payment of the just compensation so determined; and
3. A decree of appropriation vesting title to the subject property in the petitioner and adjudging that the City of Des Moines is entitled to possession thereof.

The court has previously entered an adjudication of public use and necessity declaring that the use for which the subject property is sought is a public use and declaring that there is a necessity for such appropriation.

The parties, through their attorneys, have stipulated and approved this Consent Judgment and Decree of Appropriation. The petitioner was represented by their attorney, Duncan C. Wilson. The respondents, Peterson Northwest Corporation; and Gary W. Peterson and Adele A. Peterson d/b/a Pete's Towing, were represented by their attorney, Daryl A. Deutsch.

The petitioner has, on or before the date of this judgment, deposited the full amount of the consent judgment, inclusive of the sum previously paid at the time of immediate use and possession, including attorney and expert witness fees, into the registry of the court.

1 NOW, THEREFORE, in accordance with the parties' stipulation and
2 agreement, it is hereby ORDERED, ADJUDGED and DECREED as follows:

- 3 1. The sum of \$179,250.00 represents the just compensation for the
4 acquisition of property and property rights;
- 5 2. The sum of \$750.00 for attorney fees and expert fees is reasonable;
- 6 3. The petitioner, City of Des Moines, is granted the right to
7 appropriate, use and take the following described property (the
8 subject property):

9 The east 7.0 feet, **containing 2112 square feet**, more
10 or less, of that property as described in instrument
11 recorded under Recording Numbers 6441737, 6441736,
12 6441735 and 6441734 records of King County,
13 Washington.

14 The land referred to is situated in the County of King,
15 State of Washington, and described as follows:

16 PARCEL A:

17 The north 100 feet of the south 330 feet of that portion of
18 the south half of the southeast quarter of the northwest
19 quarter of the southeast quarter of Section 9, Township 22
20 North, Range 4 East, W.M., in King County, Washington,
21 lying westerly of Primary State Highway Number 1,
22 according to deed recorded under Recording Number
23 2014201;

24 (ALSO KNOWN AS that portion of the north 100 feet of the
25 south 300 feet of Tract 13, East Des Moines Five Acre
Tracts, according to the unrecorded plat thereof, lying
westerly of Primary State Highway Number 1).

PARCEL B:

That portion of the south half of the southeast quarter of
the northwest quarter of the southeast quarter of Section
9, Township 22 North, Range 4 East, W.M., in King
County, Washington, lying westerly of Primary State

1 Highway Number 1, as conveyed to the State of
2 Washington by deed recorded under Recording Number
3 2014201; EXCEPT the south 330 feet thereof;

4 (ALSO KNOWN AS that portion of Tract 13, East Des
5 Moines Five Acre Tracts, according to the unrecorded plat
6 thereof, lying westerly of Primary State Highway Number
7 1; EXCEPT the south 300 feet thereof;

8 PARCEL C:

9 The south 100 feet of that portion of the north half of the
10 southeast quarter of the northwest quarter of the
11 southeast quarter of Section 9, Township 22 North, Range
12 4 East, W.M., in King County, Washington, lying westerly
13 of Primary State Highway Number 1;

14 (ALSO KNOWN AS that portion of the south 100 feet of
15 Tract 14, East Des Moines Five Acre Tracts, according to
16 the unrecorded plat thereof, lying westerly of Primary
17 State Highway Number 1);

18 PARCEL D:

19 The north 100 feet of the south 230 feet of that portion of
20 the south half of the southeast quarter of the northwest
21 quarter of the southeast quarter of Section 9, Township 22
22 North, Range 4 East, W.M., in King County, Washington,
23 lying westerly of Primary State Highway Number
24 1; EXCEPT the west 70 feet thereof;

25 (ALSO KNOWN AS the north 100 feet of the south 200 feet
of that portion of Tract 13, lying westerly of Primary State
Highway Number 1; EXCEPT the west 70 feet thereof).

All identified as tax parcel number 215640-0270-03.

4. All of the right, title and interest in and to the above described property shall be and is hereby vested in the petitioner, City of Des Moines, in fee simple absolute.
5. The petitioner, City of Des Moines, is also awarded and granted a temporary construction easement over the

1 following described property (the easement property):

2 The west 20 feet of the east 27 feet, containing 6038
3 square feet, more or less, of that property as described in
4 instrument recorded under Recording Numbers 6441737,
5 6441736, 6441735 and 6441734 records of King County,
6 Washington.

6 6. The terms of the temporary construction easement are as follows:

- 7 a. The easement shall allow the City, its contractors, employees,
8 agents, successors and assigns, the right of ingress and
9 egress to enter upon the land subject to the temporary
10 easement as required to complete the construction work on
11 the subject property, to place personnel and equipment to the
12 extent necessary to complete the construction work on or
13 adjacent to the subject property, and to reconstruct roadway
14 access;
- 15 b. The City shall leave the property in as good condition as
16 existed on the day construction commences. This shall include
17 the timely removal of any and all debris, rubbish or
18 combustible material resulting from construction activities;
- 19 c. The easement shall remain in force during construction and
20 until such time as the street improvements have been
21 accepted for operation and maintenance by the City, but not
22 later than January 1, 2005;
- 23 d. The City, its agents and assigns, will notify the respondent of
24 its construction schedule, and will, to the full extent possible,
25 schedule the construction activity so as to minimize any
inconvenience to the property it being understood that
respondent may use a portion of the remaining property for
parking and that respondent's access to said property shall
remain open at all times and not be materially impaired;
- e. The City shall indemnify and hold the respondent harmless
against and from all liability for losses, damages and expenses
on account of damage to property or injury to persons
resulting from or arising out of the easement rights.

7. All other claims, counterclaims and causes of action alleged herein

1 shall be and are hereby dismissed with prejudice.

2
3 DONE IN OPEN COURT this ____ day of _____, 2003

4
5
6 _____
Judge/Court Commissioner

7 Presented by:

8
9 _____
Duncan C. Wilson WSBA # 12883
Attorney for Petitioner
10 City of Des Moines

11 Stipulated for Entry,
12 Agreed to as to form and content; and
13 Notice of Presentation Waived by:

14
15 _____
Daryl A. Deutsch, WSBA # 11003
Attorney for Respondents
16 Peterson Northwest Corporation &
17 Gary W. Peterson and Adele A. Peterson

SETTLEMENT AGREEMENT

This Agreement dated for reference purposes this _____ day of _____, 2003, between **THE CITY OF DES MOINES** (the "City"), and **PETERSEN NORTHWEST CORPORATION**, a Washington Corporation ("Petersen"), is made with reference to the following facts:

- A. The City has filed a Petition in Eminent Domain under King County Superior Court No. 02-2-33625-6 KNT so that it may appropriate certain real property (the "Subject Property") owned by Petersen for the purpose of widening and improving adjacent Pacific Highway South.
- B. The remainder of the Petersen property (the "Remainder Property") is improved with several buildings including the building used for service garage/office purposes located adjacent to the highway (the "Petersen Building"). Petersen maintains that the condemnation of the Subject Property will damage the Remainder Property and the Petersen Building.
- B. The parties, with the assistance of a mediator at Judicial Dispute Resolution, have agreed to resolve all issues related to the condemnation litigation.

Based upon the foregoing, and the mutual covenants and conditions herein, the parties hereby agree as follows:

I. JUST COMPENSATION

1.1. The City will pay the sum of One Hundred Eighty Thousand and 00/100 Dollars (\$180,000.00) as total Just Compensation in this case. The Just Compensation includes compensation for all the property appropriated in fee, the Temporary Construction Easement, damages to the Remainder Property including the Petersen Building, the sign removal and replacement cost, the value of the pavement and landscaping to be lost, and any claim for litigation costs and professional fees.

1.2. Petersen acknowledges that on March 19, 2003, the City deposited into the court registry the sum of Forty Nine Thousand Seven Hundred Two and 00/100 Dollars (\$49,702.00) for possession and use of the Subject Property. The amount paid for possession and use shall be a credit against the Just Compensation. The balance owing of One Hundred Thirty Thousand Two Hundred Ninety Eight and 00/100 Dollars (130,298.00) shall be deposited into the registry of the court within fourteen (14) days after the City (the City Council) has approved the terms of this agreement.

1.3. It will be the responsibility of Petersen, and/or other parties with an interest in the Subject Property, to obtain an order providing for the disbursement of the funds from the court registry.

1.4. The appropriation of the property shall be pursuant to the provisions of a Consent

Judgment and Decree of Appropriation in the form attached as Exhibit No.1.

2. ACCESS, DESIGN AND CONSTRUCTION ISSUES

2.1 The City will pay and/or waive the fees for any permits that may be required in conjunction with Petersen's (i) removal of the pole sign which is located in the vicinity of the north boundary of the Subject Property, and (ii) the installation of a replacement sign.

2.2 The sidewalk along the entire frontage of the Remainder Property along Pacific Highway South will be no wider than six (6) feet (except for two locations where the sidewalk will be of sufficient additional width to permit the installation of light fixtures). The location and dimensions of the sidewalk and light fixture turnouts shall be as set forth on the CH2MHILL drawing (the "CH2MHILL Plan" dated June 4, 2003 attached as Ex. No. 2), except that the twelve (12) foot wide sidewalk area depicted thereon shall be reduced to six (6) feet.

2.3 Curb cuts permitting vehicular access to the Remainder Property will be constructed on its frontage with Pacific Highway South as follows:

(i) A twenty (20) foot wide driveway curb cut at the southern end of the Remainder Property. This driveway shall be used for exit purposes only so that the southeast corner of the Remainder Property (the "South Parking Area") can be used for angle parking.

(ii) A 35 foot wide driveway in the middle of the Remainder Property as depicted on the "CH2MHILL Plan".

(iii) A 35 foot wide driveway with the southerly line of said driveway being the extension of the northerly line of the Petersen Building.

Each driveway will have six (6) foot wide aprons extending both north and south. The most northerly driveway will also have on the north side thereof an additional fourteen (14) foot gradually tapered mountable curb.

2.4 Petersen, or Petersen's successors, so long as the Remainder Property and/or the Petersen Building continue it's existing use, shall have the right to use the property west of the sidewalk for transitory parking and internal access/circulation adjacent to the Petersen Building, and for internal access/circulation and permanent parking in the South parking Area. Petersen shall be deemed to have a license from the City to use the property for such purpose to the extent it is a portion of the property being appropriated by the City. Petersen maintains that prior to the condemnation such use of the property was a lawful, although perhaps non-conforming, use. Either party, or their successors, shall have the right to raise all issues regarding the legality of the continued use of said property for parking and internal circulation/access in the event of a change in use.

3. MISCELLANEOUS

This agreement shall be binding upon the heirs, successors and assigns of the parties

herein.

CITY OF DES MOINES

by: _____
Printed Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney

PETERSEN NORTHWEST CORP.
a Washington Corporation

by: _____
Gary W. Petersen, President
Dated: _____

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Property Acquisition for Pacific
Highway South Project
(DM Veterinary – Dr. Conger - #7)

ATTACHMENTS: Consent Judgment and
Decree of Appropriation

FOR AGENDA OF: July 31, 2003

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: July 23, 2003

CLEARANCES:

☒ Legal

☒ Public Works

APPROVED BY CITY MANAGER

FOR SUBMITTAL: AT

PURPOSE AND RECOMMENDATION

This report is to seek City Council approval for the acquisition of right-of-way property and a temporary construction easement for the Pacific Highway South Improvement Project.

It is recommended that the Council:

1. Approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19389-6 KNT, which provides for acquisition by the City, for \$44,150.00, of right-of-way property and a temporary construction easement, both of which are necessary for the Pacific Highway South Improvement Project; and
2. Authorize the City's retained counsel to approve and present to the court, for approval and entry, the "Consent Judgment & Decree of Appropriation" substantially in the form as submitted.

SUGGESTED MOTION: "I move to approve the "Consent Judgment & Decree of Appropriation" in King County Superior Court Cause No. 02-2-19389-6 KNT and to authorize the City's counsel to approve said Judgment and Decree and present it to the court, for approval and entry, substantially in the form as submitted.

BACKGROUND

On April 11, 2002, the City Council, through the exercise of its powers of eminent domain, enacted Ordinance No. 1302 for the acquisition of right-of-way property for the Pacific Highway South Improvement Project and directed the City Attorney to initiate court proceedings to carry out such acquisition. This court action is pursuant to such direction and the proposed "Consent Judgment & Decree of Appropriation" is a product of settlement negotiations with the property owners and their attorney.

DISCUSSION

This "Consent Judgment & Decree of Appropriation" provides for the acquisition in fee of a strip of right-of-way, (approximately 537 square feet) and a temporary construction easement (over approximately another 4,768 square feet) for a total of \$44,150.00, including attorney fees and appraisal fees.

ALTERNATIVES

This agreed settlement is based upon the city's most recent appraisal for the land taken, the cost to cure the damages, and expert appraisal and attorney fees. The only alternative is a court trial which, in staff's opinion, would likely result in more cost to the City.

FINANCIAL IMPACT

This is the most efficient and least expensive way for the City to acquire this property and easement.

RECOMMENDATION

The City's counsel recommends the approval of this "Consent Judgment and Decree of Appropriation" as the most efficient and cost effective method of acquiring the subject property and easements.

**SUPERIOR COURT OF WASHINGTON
COUNTY OF KING**

City of Des Moines, a Municipal Corporation,
Petitioner,
vs.
Mary E. Conger, et al,
Respondents

Case No: 02-2-19389-6 KNT

**Consent Judgment and
Decree of Appropriation**

SUMMARY OF JUDGMENT
(RCW 4.64.030)

Judgment Creditor	Mary E. Conger, a single person
Attorney for Judgment Creditor	Daryl A. Deutsch (WSBA # 11003)
Judgment Debtor	City of Des Moines, a Washington Municipal Corporation
Principal Judgment Amount	\$43,400.00
Pre-judgment Interest	None
Post-judgment Interest	None, the Petitioner/City has previously deposited \$40,834.00 into the registry of the court and will deposit the balance of \$3,316.00 on or before the date of this judgment
Attorney Fees	None, included in Principal Judgment Amount
Expert Fees	\$750.00
Total Judgment Amount	\$44,150.00
Real Property Awarded	Portion of property recorded under King County recording no. 20000201001209
Assessor's Tax Parcel Number	2156400259

STIPULATED JUDGMENT & DECREE

This matter came before this court by stipulation of the parties upon the petition of the petitioner, City of Des Moines, seeking:

1. A determination of just compensation to be paid in money to the owners and all other persons interested in the subject property for the taking and appropriation of the subject property;

2. A judgment and decree of the Court providing for payment of the just compensation so determined; and
3. A decree of appropriation vesting title to the subject property in the petitioner and adjudging that the City of Des Moines is entitled to possession thereof.

The court has previously entered an adjudication of public use and necessity declaring that the use for which the subject property is sought is a public use and declaring that there is a necessity for such appropriation.

The parties, through their attorneys, have stipulated and approved this Consent Judgment and Decree of Appropriation. The petitioner was represented by the City Attorney for the City of Des Moines. The respondent was represented by her attorney, Daryl A. Deutsch.

The petitioner has, on or before the date of this judgment, deposited the full amount of the consent judgment, including attorney and expert witness fees, into the registry of the court.

NOW, THEREFORE, in accordance with the parties' stipulation and agreement, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The sum of Forty Four Thousand One Hundred Fifty and 00/100 (\$44,150.00) Dollars, an amount which includes a statutory evaluation fee of \$750.00, represents the just compensation for the subject property;
2. The petitioner, City of Des Moines, is granted the right to appropriate, use and take the following described property (the subject property):

A portion of that property as described in instrument recorded under Recording Number 20000201001209 records of King County, Washington, being described as follows: (the "subject property")

Beginning at the northeast corner of the above said parcel, being 50.00 feet west of the center line of Pacific Hwy South SR(99) from which a radius point bears North 89°10'36" East; thence parallel with and 50.00 feet west of said center line along a 5779.58-foot radius curve to the left with a central angle of 0°59'34" an arc distance of 100.13 feet to the southeast corner of said property; thence along the south line of said property North 88°24'42" West a distance of 26.82 feet; thence North 36°45'22" East a distance of 41.49 feet to a point 51.000 feet west of said centerline and on a non-tangent curve from which a radius point bears North 88°31'16" East; thence parallel with and 51.00 feet west of said centerline along 5780.58-foot radius curve to the right with a central angle of 0°39'21" an arc distance of 66.16 feet to the north line of said property; thence along said north line South 88°24'42" East a distance of 1.00 foot to the Point of Beginning, **containing 537 square feet**, more or less.

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3. All of the right, title and interest in and to the property described in paragraph 2, above, shall be and is hereby vested in the petitioner, City of Des Moines, in fee simple absolute.
 4. The petitioner, City of Des Moines, is also awarded and granted a temporary construction easement over the following described property (the easement property):

A portion of that property described in instrument recorded under Recording Number 20000201001209 records of King County, Washington, as follows:

Commencing at the northeast corner of the above said parcel, being 50.00 feet west of the center line of Pacific Hwy South SR(99); thence along the north line of said property North 88° 24' 42" West a distance of 1.00 foot to a point 51.00 feet west of said center line and the Point of Beginning from which a radius point bears North 89° 10' 37" East; thence parallel with and 51.00 feet west of said center line along a 5780.58 foot radius curve to the left with a central angle of 0° 39' 21" an arc distance of 66.16 feet; thence South 36° 45' 22" West a distance of 41.49 feet to the south line of said property; thence along the south line of said property North 88° 24' 42" West a distance of 91.22 feet; thence North 1° 35' 18" East a distance of 15.00 feet; thence South 88° 24' 42" East a distance of 62.64 feet; thence North 36° 45' 22" East a distance of 23.29 feet to a point on a non-tangent curve from which a radius point bears North 88° 32' 35" East; thence parallel with and 90.00 feet west of said center line along a 5819.58 foot radius curve to the right with a central angle of 0° 39' 01" an arc distance of 66.04 feet to the north line of said property; thence along said north line South 88° 24' 42" East a distance of 39.03 feet to the Point of Beginning, **containing 4768 square feet**, more or less.

5. The terms of the temporary construction easement are as follows:
 - a. The easement shall allow the City, its contractors, employees, agents, successors and assigns, the right of ingress and egress to enter upon the land subject to the temporary easement as required to complete the construction work on the property, to place personnel and equipment to the extent necessary to complete the construction work on the property, and to reconstruct roadway access;
 - b. The City shall leave the property in as good condition as existed on the day construction commences. This shall include the timely removal of any and all debris, rubbish or combustible material resulting from construction activities;
 - c. The easement shall remain in force during construction and until such time as the street improvements have been accepted for operation and maintenance by the City, but not later than January 1, 2005;

- 1 d. The City, its agents and assigns, will notify the respondent of its construction
2 schedule, and will, to the full extent possible, schedule the construction activity
3 so as to minimize any inconvenience to the property;
- 4 e. The City shall indemnify and hold respondent harmless from all liability for
5 losses, damages and expenses on account of damage to property or injury to
6 persons resulting from or arising out of the easement rights.
- 7 6. The City, in the course of its project, at its sole cost and expense, shall also undertake the
8 following:
- 9 a. It shall clear and pave the northerly landscaping strip that is adjacent to the
10 existing parking area.
- 11 b. It shall perform all work on and adjacent to respondent's property in accordance
12 with the plans for the Pacific Highway South Redevelopment Project, including
13 construction and location of the driveways as depicted on the Paving and Grading
14 Plan dated April 2003 (also known as sheet 53 of 194 of the plans).
- 15 c. The driveway aisle from S. 220th St. to the parking area on respondent's property
16 shall be constructed and paved to no less than 24' minimum width, and in
17 accordance with the other applicable requirements for driveway curb cuts and
18 driveway aisles under the City Code.
- 19 d. The City shall remove the two large trees (cedar tree and maple tree) located in
20 the vicinity of the west boundary of the S. 220th St. driveway/or driveway aisle.
- 21 7. All other claims, counterclaims and causes of action alleged herein shall be and are
22 hereby dismissed with prejudice.

23 DONE IN OPEN COURT this ____ day of _____, 2003

24 _____
25 Judge/Court Commissioner

26 Presented by:

27 _____
28 Richard S. Brown (WSBA # 1985)
29 Assistant City Attorney
30 City of Des Moines

Stipulated for Entry,
Agreed as to form and content; and
Notice of Presentation Waived by:

Daryl A. Deutsch, (WSBA # 11003)
Attorney for Respondents
Consent Judgment &
Decree of Appropriation - 4

Office of the Des Moines City Attorney
21630 11th Ave. South, Suite C
Des Moines WA 98198
Tel: 206-870-6553

Amendment to City Council Agenda Item
July 31, 2003 at 7:30 p.m.

New Business Item #1
Final Draft 2003 Parks, Recreation and Senior Services Master Plan

Amended Purpose:

The purpose of the agenda item is for the Ad Hoc Parks, Recreation and Senior Services Master Plan Citizens Committee to transmit the revised Draft Master Plan including: policies, projects, funding options and implementation strategies to City Council for final review and acceptance, and to forward it to the Planning Agency for review under DMMC 4.28.040, and later adoption by the City Council as an amendment to the City's Comprehensive Plan - Type VI land use action.

Suggested Motion:

"I move to accept the Parks, Recreation and Senior Services Master Plan, and to forward it to the Planning Agency for review and recommendation under DMMC 4.28.040 as to adoption by the City Council of the Parks, Recreation and Senior Services Master Plan as a Type VI land use action amending the City's Comprehensive Plan."

**2003 Parks, Recreation and Senior Services
Master Plan
Priority Projects Funding Plan**

CIP PROJECTS APPROVED 2004-2008		2004	2005	2006	2007	2008	2009	2004-2008 MCI Notes
	Steven J. Underwood Memorial Park Phase --1B Community Center	\$160,512						MCI
	Steven J. Underwood Memorial Park Phase --II Parks Play Equipment Repairs & Replacement	\$78,410	\$658,720	\$360,000	\$72,420	\$6,643,440		Bond Issue, Other ? Other?
TOTAL PARKS & RECREATION MCI PROJECTS		\$238,922	\$1,020,650	\$505,016	\$72,420	\$6,703,980		MCI, CDBG, IAC Grants \$8,540,888
2004-2008 MCI Park Revenues Budgeted:								
	Park In Lieu Fees	\$55,000	\$50,000	\$50,000		\$100,000		\$255,000 Park In Lieu Fees
	REET	\$118,922	\$96,930	\$125,016	\$62,420	\$60,440		\$463,728 REET
	CDBG (Project Specific)	\$65,000	\$65,000					\$130,000 CDBG (Project Specific)
	GRANTS (Project Specific)		\$250,000	\$120,000	\$10,000			\$380,000 GRANTS (Project Specific)
	OTHER REVENUE/To be Determined		\$558,720	\$210,000		\$6,543,440		\$7,312,160 To Be Determined
TOTAL CIP FUNDS AVAILABLE		\$238,922	\$1,020,650	\$605,016	\$72,420	\$6,703,980		\$8,540,888 Adopted MCI

ITEM #	PRIORITY 1- URGENT MASTER PLAN PROJECTS	2004	2005	2006	2007	2008	2009	Project Notes
1.a	Activity Center Acoustics, Walks & Landscaping	\$39,000						Reprogrammed Funds Request
1.b	Activity Center Sidewalk to 216th & Patio		\$56,672					Reprogrammed Funds Request
2.a	Beach Park Master Plan	\$75,000			\$68,200			Reprogrammed Funds Request
2.c	Beach Park (Play Area, Paths, Picnic Shelter, Restroom Repair)							MCI Funded Project
3.a	Midway Park Play Area Improvements	\$81,000						MCI Funded Project
3.b	Midway Park Expansion	\$62,200						Reprogrammed Funds Request
4.a	Underwood Park Phase IB- 1 Field & Restrooms	\$160,400						MCI Funded Project
4.b	Alternate IB Lighting for 1 field	\$160,000						MCI (IAC Grant Funding Request)
4.c	Underwood Phase II Soccer Field \$1,079,085		\$539,543	\$539,543				Reprogrammed Funds Request
	(Additional Ballfield Lights \$300,000)		\$300,000					MCI (IAC Grant Funding Request)
Sub Total - Urgent Projects Expenditures		\$577,600	\$896,215	\$539,543	\$68,200	\$0	\$0	\$2,081,558
Proposed Urgent Project Revenues:								
Reprogrammed from Approved 2004-2008 Park Projects-								
	Park In Lieu Fees	\$55,000	\$50,000	\$50,000				\$155,000 Park In Lieu Fees
	REET	\$118,922	\$96,930	\$125,016	\$62,420			\$403,288 REET
	CDBG (Project Specific)	\$65,000	\$65,000					\$130,000 CDBG (Project Specific)
	New Project Funding-							
	Add Grants/Donations (Project Specific)	\$160,000	\$300,000	\$100,000	\$10,000			\$570,000 Grants (Project Specific)
Sub Total- Urgent Project Revenues		\$398,922	\$511,930	\$275,016	\$72,420			\$1,258,288 2004-2009 Total
Additional Reprogrammed MCI/Other Funds Needed		\$178,678	\$384,285	\$264,527	-\$4,220			\$823,270 MCI Reprogrammed

**2003 Parks, Recreation and Senior Services
Master Plan
Priority Projects Funding Plan**

ITEM #	PRIORITY 1- OTHER MASTER PLAN PROJECTS	2004	2005	2006	2007	2008	2009	Project Notes
2.b.	Beach Park Restoration Project							
5.	Field House Park Improvements			\$78,570		\$200,000	\$300,000	Reprogrammed Funds Request
6.	Cecil Powell Park Improvements			\$41,680				MCI Funded Project
7.a	Parkside Park Play Area Improvements			\$66,100				MCI Funded Project
7.b	Parkside Park Walks & Sports court							Reprogrammed Funds Request
8.	Wootton Park Improvements				\$81,150			MCI Funded Project
9.	Kiddle Park Improvements				\$42,770			MCI Funded Project
10.	Westwood Park Improvements					\$27,949		Reprogrammed Funds Request
11.	Water Tower Park Improvements					\$2,600		Reprogrammed Funds Request
12.a	Zenith Park Play Equipment					1,000		MCI Funded Project
13.	Community Center (deferred to 2015)					\$71,000		Voted Bond- Ad Hoc Postponed
Sub Total - Other Priority 1 Projects Expenditures		\$0	\$0	\$186,350	\$123,920	\$302,549	\$300,000	\$912,819 2004-2009 Total
	Proposed Other Project Revenues:							
	Reprogram from Approved 2004-2008 Park Projects-							
	Park In Lieu Fees				\$50,000	\$50,000		\$100,000 Park In Lieu Fees
	REET				\$10,000	\$60,440		\$60,440 REET
	CDBG (Project Specific)							
	Grants/Donations (Project Specific)							\$10,000 Grants (Project Specific)
	New Project Funding-							
	New 2009 MCI Funds						\$300,000	\$300,000 New MCI
	Park In Lieu Fees							
Sub Total - Other Priority 1 Project Revenues		\$0	\$0	\$0	\$60,000	\$110,440	\$300,000	\$470,440
Additional Reprogrammed MCI/Other Funds Needed				\$186,350	\$63,920	\$192,109	\$0	\$442,379 MCI Reprogram/Other

ITEM #	OTHER PRIORITY MASTER PLAN PROJECTS	2004	2005	2006	2007	2008	2009	Project Notes
14.	Regional Aquatics Facility- priority 1	\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	
12.b	Zenith Park Additions- priority 3						\$261,464	
15.	Des Moines Creek Trail - Phase II- priority 1						\$200,000	
16.a	East Woodmont Park- priority 2						\$300,000	
16.b	East Woodmont Park- priority 2						\$447,126	
17.a	Pacific Ridge Park- priority 2						\$200,000	
17.b	Pacific Ridge Park- priority 2						\$229,477	
Sub Total - Other Projects Expenditures		\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	\$1,713,067	\$2,088,067 2004-2009 Total
Sub Total - Other Projects Revenues (To be Determined)		\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	\$1,713,067	\$2,088,067
Additional MCI/Other Funds Needed		\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	\$1,713,067	\$2,088,067 MCI/Other

**2003 Parks, Recreation and Senior Services
Master Plan
Priority Projects Funding Plan**

2004-2009 Master Plan Project Expenditure Overview:		2004	2005	2006	2007	2008	2009	Project Expenditure Notes	
TOTAL URGENT PRIORITY 1 PROJECTS		\$577,600	\$896,215	\$539,543	\$68,200	\$0	\$0	\$2,081,558	2004-2009 Total
TOTAL PRIORITY 1- OTHER MASTER PLAN PROJECTS		\$0	\$0	\$186,350	\$123,920	\$302,549	\$300,000	\$912,819	2004-2009 Total
TOTAL OTHER PRIORITY MASTER PLAN PROJECTS		\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	\$1,713,067	\$2,088,067	2004-2009 Total
TOTAL ALL PROJECTS (#1-17)		\$652,600	\$971,215	\$800,893	\$267,120	\$377,549	\$2,013,067	\$5,082,444	2004-2009 Total

2004-2009 Proposed Project Funding Sources:		2004	2005	2006	2007	2008	2009	Project Funding Source Notes	
Urgent Priority One Project Revenues- From Above		\$398,922	\$511,930	\$275,016	\$72,420	\$110,440	\$300,000	\$1,258,288	2004-2009 Total
Other Priority One Project Revenues- From Above					\$60,000			\$470,440	2004-2009 Total
Funds Reprogrammed from Arterial Streets			\$50,000	\$200,000	\$31,250	\$668,965		\$950,215	2004-2009 Total
Use of Unreserved Fund Balance		\$109,537	\$4,496	\$166,810	\$443,349	\$878		\$725,070	2004-2009 Total
Total Proposed Funds		\$510,463	\$568,431	\$643,832	\$607,019	\$780,283	\$300,000	\$3,410,028	2004-2009 Total
Total Expense All Projects		\$652,600	\$971,215	\$800,893	\$267,120	\$377,549	\$2,013,067	\$5,082,444	2004-2009 Total
Remaining Funds Needed		-\$142,137	-\$402,784	-\$157,061	\$339,899	\$402,734	-\$1,713,067	-\$1,672,416	2004-2009 Total Needed
Levy Lid Lift Options:		2004	2005	2006	2007	2008	2009	Levy Lid Lift Notes	
\$.05 Levy Lid Lift Revenues		\$105,792	\$106,850	\$107,918	\$108,998	\$110,088	\$111,188	\$650,834	2004-2009 Total
\$.10 Levy Lid Lift Revenues		\$211,585	\$213,701	\$215,838	\$217,996	\$220,176	\$222,378	\$1,301,674	2004-2009 Total
\$.15 Levy Lid Lift Revenues		\$317,377	\$320,551	\$323,756	\$326,994	\$330,264	\$333,566	\$1,952,508	2004-2009 Total
\$.20 Levy Lid Lift Revenues		\$423,170	\$427,402	\$431,676	\$435,992	\$440,352	\$444,756	\$2,603,348	2004-2009 Total

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Interlocal Agreement for construction of South King County off leash dog area

ATTACHMENTS:

A) Draft Interlocal Agreement between cities of Auburn, Burien, Des Moines, Federal Way, Kent, Renton, SeaTac, and Tukwila and King County regarding development of a Regional Off-Leash Dog Area

FOR AGENDA OF: July 31, 2003

DEPT. OF ORIGIN: Park and Recreation

DATE SUBMITTED: July 22, 2003

CLEARANCES:

[x] Parks, Recreation and Senior Services

[x] Legal

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

Purpose and Recommendation

The Ad Hoc Des Moines Parks, Recreation and Senior Services Master Plan Citizens Committee and Administration recommends entering into an one year Interlocal Agreement with South King County Cities and King County for the purpose of promoting and facilitating the development and operation of a regional off-leash dog area at a one time cost of \$1,463 and a maximum of sixteen (16) hours of personnel time (paid staff and/or volunteer time) and sixteen (16) hours of equipment and tool use for the purpose of necessary maintenance or for mutually agreed capital construction projects and/or special maintenance or restoration projects.

Suggested Motion

"I move to enter into an Interlocal Agreement City of Auburn, City of Burien, City of Des Moines, City of Federal Way, City of Kent, City of Renton, City of Tukwila, City of SeaTac, and King County for the purpose of promoting and facilitating the development and operation of a regional off-leash dog area and further authorize the City Manager to sign the Agreement substantially in the form as submitted."

Background

South King County Cities are being asked to support the development of a regional off-leash park in South King County to serve Auburn, Burien, Des Moines, Federal Way, Kent, Renton, Tukwila, SeaTac and unincorporated King County. South King County cities have been meeting since January 2001 in response to public demand for an off-leash site in south King County. Many of the cities have had requests from citizens for a local facility, and King County has had requests for a south regional area facility.

A Task Force was established to discuss the need and level of public interest for off-leash areas in their respective community, criteria for site selection and development, funding options, management concerns, and the future of off-leash planning. Task Force members investigated potential sites, compatibility with existing uses, and funding sources. The Task Force completed a feasibility study and cost analysis in 2002 to identify development and annual operating expenses and each entity's share/contribution to the park. Member cities and King County will contribute one-time capital development funds.

Grandview Park was identified by all involved in the planning as the best location for an off-leash site to serve the urban population. Grandview Park is located between SeaTac, Kent, and Des Moines, just east of I-5 and Military Road.

Discussion

Des Moines Animal Control and park staffs receive numerous inquiries regarding where Des Moines' dog park is located and complaints that Des Moines has no off-leash area. For the most part, citizens abide by city regulations to keep pets on a leash. However, a growing number of pet owners allow dogs to run free in our parks, waterfront facilities and on public tidelands. Without the resources to enforce animal leash laws in parks and with no alternative location for off-leash activities, pet owners are less likely to comply with these safety and environmental regulations. Dog off-leash area advocates are beginning to organize throughout the county and are making their interests known.

The issue was also discussed in length by the Ad Hoc Parks, Recreation and Senior Services Master Plan Citizens Committee and along with staff recommends that it is a priority for Des Moines to collaborate with other south King County cities to collectively develop and operate a regional off-leash park facility.

Alternative

King County holds the deed to Grandview Park, located within the city limits of SeaTac, subject to a right of reversion to the United States if the property ceases to be used as a public park. The County has closed the Park to public use due to financial difficulties. SeaTac has previously declined to accept ownership of the Park due to similar financial difficulties. The Park is now subject to right of reversion unless it is reopened to public park uses. SeaTac will agree to assume ownership of the Park for use as an Off Leash Area with sub-regional cooperation and if Serve Our Dog Areas (S.O.D.A.), a Washington non-profit corporation enters into an agreement with SeaTac for development and operation of the off-leash dog area at Grandview Park. If these conditions are not met the Interlocal Agreement will become null and void.

Financial Impact

City Council action is needed to enter into an Interlocal agreement with other governmental agencies committing to a contribution of funds to pay a portion of park costs. The amount of contribution to be made by each government entity is sixteen hours maintenance and/or volunteer hours and a one time capital contribution based on each entity's per capita population. Des Moines financial responsibility would be \$1,463 based on 2000 population of 29,267. Funds would come from the 2003 Parks, Recreation and Senior Services General Fund Budget.

Cost Share Agreement

Task Force City	Population (2000 Census)	Cost (x .05)
Auburn	40,314	\$2,016
Burien	31,881	\$1,594
Des Moines	29,267	\$1,463
Federal Way	83,259	\$4,163
Kent	79,524	\$3,976
Renton	50,052	\$2,503
SeaTac	25,496	\$1,275
Tukwila	17,181	\$ 859
Cities	356,974	\$17,849
King County		\$ 17,848
TOTAL		\$35,697

Recommendation/Concurrence

The Ad Hoc Parks, Recreation and Senior Services Master Plan Citizens Committee along with Animal Control and Parks staff recommends that it is a priority for Des Moines to collaborate with other south King County cities to collectively assist with the development a regional off-leash dog park to be operated by a private non-profit organization.

AGREEMENT REGARDING DEVELOPMENT AND OPERATION OF A GRANDVIEW PARK OFF-LEASH DOG AREA

THIS AGREEMENT is made and entered into, effective as of the date of the last signature affixed to any counter part hereof, by and between the following Washington municipal corporations: City of Auburn ("Auburn"), City of Burien ("Burien"), City of Des Moines ("Des Moines"), City of Federal Way ("Federal Way"), City of Kent ("Kent"), City of Renton ("Renton"), City of Tukwila ("Tukwila"), City of SeaTac ("SeaTac"), collectively referred to herein as the "Cities", and King County (the "County"). The Cities and County may also be referred to herein individually as a "Party" or collectively as the "Parties".

1. **PURPOSE.** The Parties have participated as members of an Off-Leash Task Force for the purpose of promoting and facilitating the development and operation of a regional off-leash dog area (hereinafter referred to as the "OLA") for public use in South King County at Grandview Park within SeaTac. The purpose of this Agreement is to provide for the said development and operation of the OLA.

2. **CONDITION PRECEDENT.** The Parties acknowledge that the County holds the deed to Grandview Park, located within the city limits of SeaTac, subject to a right of reversion to the United States if the property ceases to be used as a public park. The County has closed the Park to public use due to financial difficulties. SeaTac has declined to accept ownership of the Park due to similar financial difficulties. The Park is now subject to the said reversion unless it be reopened to public park uses. Accordingly, notwithstanding any contrary provision of this Agreement, the same shall not become effective or enforceable until the County provides a deed placing ownership of the Grandview Park in SeaTac.

The funding and other obligations of this Agreement shall be null and void unless Serve Our Dog Areas (S.O.D.A.), a Washington non-profit corporation enters into an agreement with SeaTac for development and operation of the off-leash dog area at Grandview Park, generally in the form of the July 11, 2003 draft prepared by SeaTac.

3. **AUTHORITY.** This Agreement is entered into by the Cities and the County pursuant to authority of RCW 39.34.080 which provides that public agencies may contract among themselves for performance of any governmental activity which each is authorized by law to perform, such as public parks and park activities.

4. **PROPERTY DESCRIPTION.** The Grandview Park, which is coterminous with the off-leash dog area, is legally described in Exhibit A, and is depicted on Exhibit B, attached hereto and incorporated herein by this reference.

5. **TERM OF AGREEMENT.** This Agreement shall be effective as of the effective date of the companion Agreement for Development and Operation of an Off-Leash Dog Area at Grandview Park as described at Section 2, above. This Agreement shall then

continue for the term of twelve (12) months. The Parties hereto shall have the option to renew this Agreement for a second term of five (5) years, or such other term as may be identical to the extension or term of a new Agreement between SeaTac and S.O.D.A.

6. **FUNDING.** The Parties hereby promise and agree to provide the cash contributions itemized on Exhibit C hereto, which is incorporated herein by this reference. Such funds shall be paid by the Parties to Kent which shall be the Parties' fiscal agent pursuant to Section 9, below.

7. **LIABILITY.** The Parties expressly provide that no liability shall attach to any party by reason of entering into this Agreement, except as expressly provided herein, and that the benefits and responsibilities provided by this Agreement shall not establish any special relationship or third-party benefit to any person or entity not a Party to this Agreement.

8. **INDEMNIFICATION.** Each party agrees to be responsible for any and all claims, damages, or other liabilities including costs of defense and attorneys' fees arising out of the acts or omissions of its officers, employees, volunteers, and/or agents in the performance of the obligations of each party under this Agreement. The provisions of this Section shall survive the expiration or termination of this Agreement.

9. **FISCAL AGENT.** Kent shall be responsible for accepting, retaining, and disbursing all of the Parties' funds contributed pursuant to this Agreement. In disbursing funds to S.O.D.A., or directly to vendors and material suppliers, Kent shall coordinate with SeaTac as to the propriety of such disbursements pursuant to the Agreement between SeaTac and S.O.D.A. and actual improvements contracted or constructed at Grandview Park.

10. **SUPERVISION OF OPERATIONS.** SeaTac shall enter into an Agreement with S.O.D.A. for development, operation, and maintenance of the off-leash dog area at Grandview Park. SeaTac shall also be responsible for oversight and supervision of all development, operations, and maintenance performed by S.O.D.A. pursuant to the said Agreement and shall, upon request of any Party hereto, provide written information as to any and all such activities.

11. **MAINTENANCE OBLIGATION.** The Cities hereby agree to each provide a maximum of sixteen (16) hours of personnel time and sixteen (16) hours of equipment and tool use for the purpose of necessary maintenance beyond the capabilities of S.O.D.A., or for mutually agreed capital construction projects and/or special maintenance or restoration projects. Personnel time may include paid staff and/or volunteer time. All City staff and volunteers who operate power equipment pursuant to this Section shall be trained and certified in the safe operation of such equipment.

12. **DESIGNATED REPRESENTATIVES.** Each Party shall initially be represented by their respective Directors of Parks and Recreation, or equivalent, for the purpose of mutually discussing and resolving all matters arising pursuant to this Agreement or development, operation, and maintenance of the OLA. Any unresolved disagreements in regard to interpretation or effect of this Agreement or in regard to development, operation, and maintenance of the OLA shall be submitted to the jurisdiction of the King County Superior Court at Kent, Washington. The Parties may, from time to time, appoint or reappoint representatives, by written notice to all other Parties.

13. **AUDITS AND INSPECTIONS.** Any and all records and documents with respect to matters governed by this Agreement shall be subject, at all times, to inspection, review or audit by any Party to this Agreement.

IN WITNESS WHEREOF THE Parties hereto have executed this Agreement on the dates indicated below.

CITY OF AUBURN

CITY OF KENT

By: _____

By: _____

Mayor

Mayor

Date: _____

Date: _____

Approved as to Form:

Approved as to Form:

City Attorney

City Attorney

CITY OF BURien

CITY OF RENTON

By: _____

By: _____

City Manager

Mayor

Date: _____

Date: _____

Approved as to Form:

Approved as to Form:

City Attorney

City Attorney

CITY OF DES MOINES

By: _____

City Manager

Date: _____

Approved as to Form:

City Attorney

CITY OF FEDERAL WAY

By: _____

City Manager

Date: _____

Approved as to Form:

City Attorney

CITY OF TUKWILA

By: _____

Mayor

Date: _____

Approved as to Form:

City Attorney

CITY OF SEATAC

By: _____

City Manager

Date: _____

Approved as to Form:

City Attorney

KING COUNTY

By: _____

Title: _____

Date: _____

Approved as to Form:

Deputy Prosecuting Attorney

STATE OF WASHINGTON)

)ss.

COUNTY OF KING)

On this _____ day of _____, 2003, before me personally appeared _____
_____ and _____ to me known
to be _____ and _____
of the corporation/individual that executed the within and foregoing instrument, and
acknowledged said instrument to be free and voluntary act and deed of said corporation, for the
uses and purposes therein mentioned, and on oath stated that they were authorized to executed
said instrument and that the seal affixed is the corporate seal of said corporation.

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

NOTARY PUBLIC for the State of Washington

My commission expires _____

NOTICES SHALL BE DELIVERED TO:

NOTICES SHALL BE DELIVERED TO:

Lori Flemm, City of Kent
Parks, Recreation & Community Service
220 Fourth Avenue South
Kent, WA 98032-5895
(253) 856-5110, FAX (253) 856-6050

EXHIBIT A

Legal Description:

A parcel of land in the NW $\frac{1}{4}$ of Section 15, Township 22 North, Range 4 East, Willamette Meridian, King County, Washington, described as follows:

Beginning at the northwest corner of the W $\frac{1}{2}$ of the NE $\frac{1}{4}$ NW $\frac{1}{4}$; thence Easterly in the north line thereof 663.60 feet to the northeast corner of said W $\frac{1}{2}$; Thence southerly along the east line thereof to the northwest corner of the west 275 feet of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15; thence easterly in the north line thereof 275 feet; thence southerly to the southeast corner of said west 275 feet of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$; thence westerly along the south line thereof to a point which is 879.74 feet east of the southwest corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$; thence South $40^{\circ} 21' W.$ 203.85 feet; Thence South $0^{\circ} 57' E.$ 93.0 feet; thence South $75^{\circ} 00' W.$ 167.4 feet; thence south $20^{\circ} 00' E.$ 32.72 feet; thence South $88^{\circ} 28' W.$ to the west line of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15; thence southerly along said west line 294 feet; thence westerly 190 feet along the south line of the north 57 feet of the south 758 feet of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15; thence northerly 57 feet in a line parallel with the east line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$; thence westerly 20 feet in a line parallel with the north line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$; thence northerly 171 feet in a line parallel with the east line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$; thence westerly 20 feet in a line parallel with the north line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$; thence northerly 171 feet in a line parallel with the east line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$; thence westerly 71 feet in a line parallel with the north line of said SW $\frac{1}{4}$ NW $\frac{1}{4}$; thence northerly 220 feet to a point in the north line of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15, 301 feet westerly of the NE corner thereof; thence westerly in said north line 66 feet; thence northwesterly 230 feet, more or less, to the south line of the north 1090 feet of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15 at a point 373 feet west of the east line of said NW $\frac{1}{4}$ NW $\frac{1}{4}$; thence westerly in said south line 15.29 feet; thence northerly to a point in the south line of the north 987 feet of said NW $\frac{1}{4}$ NW $\frac{1}{4}$, 391.00 feet west of the east line thereof; thence westerly in said south line 44 feet; thence northerly 176.56 feet to a point which is 60 feet south and 433.60 feet west of the intersection of the east line of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ and the south line of the north 751 feet thereof; thence westerly 63.28 feet in a line parallel with the south line of said North 751 feet of said NW $\frac{1}{4}$ NW $\frac{1}{4}$; thence northerly to a point in the south line of the north 430 feet of said NW $\frac{1}{4}$ NW $\frac{1}{4}$, which is 505 feet westerly of the east line of the said NW $\frac{1}{4}$ NW $\frac{1}{4}$; thence easterly in said south line 13.73 feet; thence northerly to a point in the south line of the north 339 feet of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ which is 493.56 feet westerly of the east line of the said NW $\frac{1}{4}$ NW $\frac{1}{4}$; thence westerly in said south line 185 feet; thence northerly to a point in the south line of the north 240 feet of said NW $\frac{1}{4}$ NW $\frac{1}{4}$ which is 682 feet westerly of the east line of the said NW $\frac{1}{4}$ NW $\frac{1}{4}$; thence westerly in said south line to a point in the center line of Old Military Road; thence northerly in said center line to a point in the north line of the south 60 feet of said north 240 feet of NW $\frac{1}{4}$ NW $\frac{1}{4}$; thence easterly in said north line to a point in the west line of the east 113 feet of said NW $\frac{1}{4}$ NW $\frac{1}{4}$; thence southerly in said west line to a point in the said south line of the north 240 feet of said NW $\frac{1}{4}$ NW $\frac{1}{4}$; thence easterly in said south line 113 feet to the east line of said NW $\frac{1}{4}$ NW $\frac{1}{4}$; thence northerly 240 feet in said east line to the point of beginning.

EXCEPT the following described parcels thereof conveyed to Kent School District No. 415 by the United States of America by Quitclaim Deed dated February 1, 1965 described as:

The west 120 feet of the north 648.09 feet of the west $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 15, TSP 22 N, R 4 E, W.M., King County, Washington; and

The south 60 feet, except the east 113 feet thereof, of that portion of the north 240 feet of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 15, TSP 22 N, R 4 E, W.M., King County, Washington, lying easterly of the center line of the Old Military Road, less roads; and

That portion of the south 99 feet of the north 339 feet of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 15, TSP 22N, R 4 E, W.M., King County, Washington, lying easterly of the center line of Old Military Road, said parcel being described as that part lying easterly of a line beginning at a point in the north line thereof which is 497.00 feet west of the northeast corner and running thence southeasterly to the south line thereof at a point which is 493.56 feet west of the southeast corner; and

That portion of the south 99 feet of the north 438 feet of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 15, TSP 22 N, R 4 E, W.M., King County, Washington, lying easterly of the center line of Old Military Road, said parcel being described as that part lying easterly of a line beginning at a point in the north line thereof which is 493.56 feet west of the northeast corner and running thence southeasterly to the south line thereof at a point which is 491.27 feet west of the southeast corner; and

That portion of the south 1.00 acre of the north 480 feet of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 15, TSP 22 N, R 4 E, W.M., King County, Washington, lying easterly of the center line of Old Military Road, said parcel being described as that part lying easterly of a line beginning at a point in the north line thereof which is 505.00 feet west of the northeast corner and running thence southeasterly to the south line thereof at a point which is 503.79 feet west of the southeast corner; and

That portion of the south 65 feet of the north 545 feet of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 15, TSP 22 N, R 4 E, W.M., King County, Washington, lying easterly of the center line of Old Military Road, said parcel being described as that part lying easterly of a line beginning at a point in the north line thereof which is 503.79 feet west of the northeast corner and running thence southeasterly to the south line thereof at a point which is 502.12 feet west of the southeast corner; and

That portion of the south 103 feet of the north 648 feet of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 15, TSP 22 N, R 4 E, W.M., King County, Washington, lying easterly of the center line of Old Military Road, said parcel being described as that part lying easterly of a line beginning at a point in the north line thereof which is 502.12 feet west of the northeast corner and running thence southeasterly to the south line thereof at a point which is 499.50 feet west of the southeast corner; and

That portion of the south 99 feet of the north 339 feet of the NW ¼ of the NW ¼ of Section 15, TSP 22 N, R 4 E, W.M., King County, Washington, lying easterly of the center line of Old Military Road, said parcel being described as the westerly 185.00 feet of the part lying easterly of a line beginning at a point in the north line thereof which is 682.00 feet west of the northeast corner and running thence southeasterly to the south line thereof at a point which is 678.56 feet west of the southeast corner.

TOGETHER WITH all right, title and interest the United States of America may have in the banks, beds and waters of any streams or lakes opposite to or bordering upon said lands, and in any alleys, roads, streets, ways, strips, gores, railroad rights of way and irrigation ditch or canal rights of way crossing, abutting or adjoining said lands and in any means of ingress or egress appurtenant to said lands.

TOGETHER WITH the right of joint use of existing roads over a parcel of land described in Quitclaim Deed dated February 1, 1965 from United States of America to Kent School District No. 415.

TOGETHER WITH Government-owned improvements located thereon.

SUBJECT TO:

Reservations in the United States Patent and to Existing easements for public streets, alleys, roads and highways, public utilities, railroads and pipelines.

Reservations of roadway easement over that portion of parcel adjoining Old Logging Road contained in Deed dated January 23, 1951, executed by the Midway Corporation, a Washington Corporation, to Edgar Allen, a single man recorded January 26, 1951, under Auditor's Field No. 4103463, records of King County, Washington.

Easement for electric transmission line granted by instrument dated January 27, 1955, executed by Midway Corporation, a Washington Corporation to Puget Sound Power and Light Company, a Massachusetts Corporation, recorded January 31, 1955 under Auditor's File No. 4534889 records of King County, Washington.

Easement No. DA(s) 45-108-eng-771 dated June 4, 1962 from Department of the Army to the State of Washington, State Highway Commission for a buried drainage pipeline across the access road.

All easements, liens, reservations, exceptions or interests of record or now existing on the premises above described.

EXHIBIT C**Off-Leash Area Development
Cost Share Agreement****Option B: King County portion is 50% $\$35,697 \div 2 = \$17,848$**

Task Force City	Population (2000 Census)	Cost (x .05)
Auburn	40,314	\$2,016
Burien	31,881	\$1,594
Des Moines	29,267	\$1,463
Federal Way	83,259	\$4,163
Kent	79,524	\$3,976
Renton	50,052	\$2,503
SeaTac	25,496	\$1,275
Tukwila	17,181	\$ 859
Cities	356,974	\$17,849
King County		\$ 17,848
TOTAL		\$35,697

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

July 17, 2003

The regular meeting of the Des Moines City Council was called to order at 7:39 p.m. by Mayor Steenrod in the Council Chambers, 21630 11th Avenue South, Suite B.

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

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Dan Sherman and Susan White. Absent: Councilmember Scott Thomasson (vacation). Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, Assistant City Attorney Richard Brown, Harbormaster Joe Dusenbury, Public Works Director Tim Heydon, Assistant City Engineer Maiya Andrews, Finance Director Paula Henderson, Parks & Recreation Director Patrice Thorell and City Clerk Denis Staab.

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

COMMENTS FROM THE PUBLIC

Rick Edwards, 909 South 278th

Mr. Edwards spoke about the bad economy citing budget cuts effecting school programs as an example. He stated that there must be accountability of how government is using taxes. He stated that the process for his gate issue has become excessive in staff time expended and dollars spent, when common sense and good judgment should prevail. He noted that the City has hired outside counsel at \$200-\$300 an hour. He suggested that common sense and good judgment should prevail.

Ethel Bell, 24833 13th Avenue South

Ms. Bell addressed Council as a representative of Des Moines Senior Activity Center, requesting that the Council free up the funds raised by senior citizens in April and May to purchase a divider wall for the center as recommended under Old Business Item 1 on this evenings agenda. She stated that while seniors are pleased with the new facility, the divider wall will help to reduce the noise level for multiple programs that use the building at the same time. She presented the Clerk with a petition signed by users of the Senior Activity Center lunch program requesting that the funds be released.

Roger Snyder, 23438 26th Avenue South

Mr. Snyder thanked Council for providing a place for seniors to meet and socialize. As a member of the group who meet to play bridge at the activity center, Mr. Snyder advised that the noise level at the new Senior Center is really high. He noted that money was donated by the bridge players to help pay for a sliding partition to cut down the noise. He requested Council approve and release the funds to install the partition. He presented the Clerk with a petition signed by the Des Moines duplicate bridge players.

Denny Burham, 26826 15th Avenue South

Mr. Burham complained about the terrible quality of the video broadcasts of Council meetings on the City's government cable channel. He also noted that the audio is bad. He advised that lots of citizens are unable to attend Council meetings in person. He requested that the City upgrade the quality so citizens can see the Councilmembers and understand what is being said.

V. Staab Bergin, 21628 28th Avenue South

Ms. Bergin addressed Council about the crime level in her neighborhood, dirty streets, graffiti on electrical boxes, cars parked illegally in bike lanes, prostitution and illegal use of fireworks. She also complained about drinking at the Des Moines Marina.

BOARD & COMMITTEE REPORTS

Public Safety and Transportation Committee

Mayor Pro Tem Benjamin announced that in regards to the Marine View Drive pedestrian issues the following treatments will be conducted:

- Stencils will be painted on the sidewalk encouraging pedestrians to make themselves more visible to traffic. The stencils have an outline of life-size footprints that read "Stand Here to be Seen"
- Small education signs will be posted on the curb near the crosswalk to give pedestrians tips on how to most effectively and safely cross the road.

He further advised that a pedestrian study will be done along the Street during good-weather conditions during July August.

Mason's Des Moines Lodge #245 Fishing Trip

Mayor Pro Tem Benjamin reported attending the recent fishing trip where 96 year old Cleo McCord pulled in a 41 pound King Salmon.

Response to Comments From the Public at the June 26th Council Meeting

In response to Mr. Ed Pina's comments at the June 26, 2003 Council meeting, Mayor Pro Tem Benjamin read into the record "The Supreme court of the State of Washington, In the Matter of the Recall Charges Against City of Des Moines Mayor Donald Wasson, Councilmember Richard Benjamin, Councilmember Gary Peterson and Councilmember Maggie Steenrod, En Banc".

[ED NOTE: Complete text attached to these minutes.]

Follow-up on Citizen Requests

In response to Councilmember Sherman's request for status on recent citizen requests, City Manager Piasecki noted the following:

- *Fish Scale & Board to Record Biggest Catch of the Day at the Marina* - Has been purchased, but not yet installed.
- *Waterland Music Stage Turned to Project toward Water, Away From Residences* - Have not met with Chamber yet, will be meeting with Director tomorrow.
- *Gates on Private Streets* - Issue was scheduled for July 31st Council meeting, however the City Attorney has advised Council should take no action until current court case is settled.

Municipal Facilities Committee

Mayor Steenrod announced that the Committee will be meeting on Tuesday at 3 p.m. and will be discussing the Marina Master Plan.

PRESIDING OFFICER'S REPORT

Council Video Recordings

Mayor Steenrod noted that the poor audio/visual quality of the Council meetings is not the fault of the City's Video Operator, but the darkness of the Council Chambers and the poor acoustics. She advised that it is a Council priority to remedy the situation as soon as funds are available.

Waterland Festival

Mayor Steenrod reminded everyone that the Waterland Festival begins next week and there will be no Council meeting on Thursday, July 24th.

ADMINISTRATION REPORTS

Steven J. Underwood Memorial Park

City Manager Piasecki invited everyone to attend the dedication and grand opening ceremonies of the Park on Friday, July 25th at 5 p.m.

Comcast Cable TV Franchise

City Manager Piasecki advised that the Draft Comcast Cable TV Franchise that Council will be hold a public hearing on later this month, provides for funds to upgrade the City's government channel, including upgrades for the video taping of Council meetings.

Des Moines Memorial Drive - Flag Triangle

City Manager Piasecki noted that numerous complaints have been received regarding the need to paint the Flag pole. He stated that some funds have been found to allow painting of the Flag pole by the end of summer, and next year the plan is to install proper new night lighting.

10th Avenue South Culvert Project

City Manager Piasecki reported that the project is underway and that 10th Avenue South will be blocked to traffic. He stated that the project should be completed by October or early November.

Grass Fire - Parkside Park

City Manager Piasecki stated that a fire at the Park burned about 1,000 square feet of grass. He noted that the actual cause has not been determined.

CONSENT CALENDAR was read by City Clerk Staab.

- ~~1. Motion is to approve the minutes from the special and regular meetings of June 26 and the special meeting of July 7, 2003. [ED NOTE: Item removed by Mayor Steenrod.]~~
2. Motion is to purchase a permanent slope easement of 9,157 square feet from Robert G. and Anna M. Bjorneby in the amount of \$14,021.00 plus closing costs and to authorize the City Manager to sign the Purchase and Sale Agreement substantially in the form as submitted.
- ~~3. Motion is to enter into an agreement with the City of Kent for their participation in the construction and maintenance of the Joint Use Stormwater Detention/Treatment Facility improvements for the Pacific Highway South Redevelopment Project and to authorize the City Manager to sign said agreement substantially in the form as submitted. [ED NOTE: Item removed by Councilmember Sherman.]~~
4. Motion is to confirm Mayor Steenrod's appointment of Debbie Hickman to a vacant position on the Des Moines' Human Services Advisory Board, term to expire December 31, 2003.

5. ~~Motion~~ is to approve the agreement with Moffatt & Nichol Engineers to provide consulting and preliminary design services for the Dry Stack Boat Storage Project in the Marina, in the amount of \$58,422, plus a budget of \$6,000 for architectural renderings, plus a contingency of \$2,920, for a total authorization of \$67,342 and authorize the City Manager to sign the agreement substantially in the form as submitted. [ED NOTE: Item removed by Mayor Pro Tem Benjamin.]

6. Draft Ordinance No. 03-193 **[ASSIGNED ORDINANCE NO. 1325]** - Title: An Ordinance of the City of Des Moines, Washington related to monetary penalties for civil infractions, and amending DMMC 1.24.190.

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

Councilmember Sherman requested that Consent Item #3 be removed.

Mayor Pro Tem Benjamin requested that Consent Item #5 be removed.

Mayor Steenrod requested that Consent Item #1 be removed.

Councilmember Petersen noted that he is recusing himself from voting on Consent Item #2.

In reference to Item #6, Mayor Steenrod advised that due to increased assessments by the State, the City must increase its portion of the penalties for non-traffic violations, or the State will receive all of the revenue and the City will receive nothing.

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

Executive Session

At 8:20 p.m. Mayor Steenrod announced that the City Council will convene into an Executive Session for approximately 15 minutes to discuss real estate matters, about which public knowledge might have an adverse impact on price to the detriment of the City.

At 8:40 p.m. City Manager Piasecki announced that the Executive Session will last approximately 5 minutes more.

No formal Action was taken.

At 8:46 p.m. Council reconvened into open session.

REMOVED CONSENT ITEMS

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

Councilmember Sherman questioned page 3, Item 5 of the agreement as to whether the City would have any say should Kent elected to contract or transfer maintenance responsibilities.

Public Works Director Heydon suggested language be added to the agreement to ensure that Des Moines would have the opportunity to review and approve of any procurement process or bidding that would be involved in such action on Kent's part.

Mayor Steenrod expressed concern over visibility of the pond from the road.

Public Works Director Heydon stated that the grade is quite steep with natural vegetation and that the pond will not be visible to traffic on Kent-Des Moines Road.

Assistant City Engineer Andrews further advised that since this area is a wetland, it will be planted with natural plantings and carefully monitored and maintained. She also advised that this is the best site to place the pond.

City Manager Piasecki assured the Council that it is Des Moines responsibility to ensure the integrity of the wetland area is maintained.

Mayor Pro Tem Benjamin stated that he has toured the City's detention/retention pond sites and is confident that City staff has chosen the right place, as it is a natural setting and very low lying.

City Manager Piasecki noted that staff will prepare language to address the concerns raised by Councilmember Sherman and bring the item back to Council for final approval.

MOTION was made by councilmember Sherman, seconded by Councilmember White, to place the item on the Consent Calendar for the July 31, 2003 meeting. Motion passed unanimously.

Item #5. Consulting & Preliminary Design Services for the Dry Stack Boat Storage Project in the Marina

Mayor Pro Tem Benjamin advised that he objects to this project stating that the dry stack storage will create noise and pollution to the neighboring condominiums and that he feels that there is better uses that this valuable land could be used for.

Mayor Steenrod reminded Council that the decision to move forward with the dry stack boat storage project will be made after Council has the opportunity to review the preliminary designs.

MOTION was made by Councilmember Sheckler, seconded by Councilmember White, to approve the agreement with Moffatt & Nichol Engineers to provide consulting and preliminary design services for the Dry Stack Boat Storage Project in the Marina, in the amount of \$58,422, plus a budget of \$6,000 for architectural renderings, plus a contingency of \$2,920, for a total authorization of \$67,342 and authorize the City Manager to sign the agreement substantially in the form as submitted. Motion passed 5 to 1 with Mayor Pro Tem Benjamin voting NO.

Item #1. Minutes from the special and regular meetings of June 26 and the special meeting of July 7, 2003

Mayor Steenrod advised that she had some notes from the regular meetings of June 26th and July 7th that she felt should be included in the minutes.

City Manager Piasecki suggested that the Mayor contact the City Clerk regarding the changes and that the minutes will be placed on the July 31, 2003 meeting consent calendar for approval.

MOTION was made by Councilmember Sherman, seconded by Councilmember White and approved unanimously, to approve the special meeting minutes of June 26, 2003.

OLD BUSINESS

Draft Ordinance No. 03-177 [ASSIGNED ORDINANCE NO. 1326] Amending 2003 Budget to Re-program MCI Funds

Finance Director Henderson informed Council that the purpose of this agenda item is to request Council's approval of Draft Ordinance No. 03-177 amending the 2003 budget by amending the Municipal Capital Improvements Fund to include additional appropriations of \$529,423. She advised that this adjustment allows for the funding of the following projects:

- Activity Center Room Divider System - \$8,000
- Steven J. Underwood Memorial Sports Park Phase I - \$211,988
- Activity Center - \$284,367

She further noted that this reduces the funding for the Eden Software Upgrade by \$4,486 and Transfer-out to Fund 216 in the amount of \$19,864; and provides for \$49,418 in additional funding for new projects and will increase the Municipal Capital Improvement Fund ending balance by \$12,111.

MOTION was made by Councilmember Sherman, seconded by Councilmember White, to suspend Council Rule 26(b) in order to take final action on Draft Ordinance No. 03-177 on first reading.

Upon questioning by Council, City Manager Piasecki noted that the funds raised by the seniors for the room divider at the Activity Center have been placed in the General Fund and it requires Council to give budget authority to expend these funds.

VOTE ON MOTION: Motion passed unanimously.

MOTION was made by Councilmember Sherman, seconded by Councilmember Sheckler and passed unanimously, to approve Draft Ordinance No. 03-177.

Cingular Wireless Lease Agreement - Des Moines Field House Park

Parks and Recreation Director Thorell introduced Liz Carrasguro, representing Cingular Wireless. She proceeded to note that staff has revised the lease agreement as per Council's direction when the lease was reviewed earlier this year. She advised that the term of the lease has been reduced to five years, with options to renegotiate the lease fee for additional five year terms. She reminded Council that Cingular must have the lease from the City prior to the Conditional Use Process which will be heard at a Public Hearing before the Hearing Examiner. She further advised of the following:

- Cingular is agreeable to furnishing a co-location pole
- Cingular is agreeable to reviewing the fee (market rate) every five years
- Cingular will maintain the pole to City's specifications and standards
- Pole height has been reduced to meet City's code

Ms. Carrasguro used a view foil to show a rendering of what the pole will look like and its location near the corner of South 219th and 11th Avenue South. She advised the main goal is for improved service for customers along the Marine View Drive corridor.

Parks and Recreation Director Thorell pointed out that the placement of the cell tower and ballfield lighting system at the new location will allow the City to expand the stadium ballfield's

outfield as identified in the proposed Park Master Plan. Also the area around the facility will be re-graded and improved so that usable park space is enhanced.

Mayor Pro Tem Benjamin did not feel that the language on page 5, 15 (c) contained specific enough language to ensure co-location. Ms. Carrasguro advised that Cingular is agreeable to stronger wordage to ensure this is what is intended.

MOTION was made by Councilmember Sherman, seconded by Councilmember Sheckler and passed unanimously, to approve the Lease of a location in Des Moines Field House Park for installation of a wireless antenna tower and an equipment storage area to Cingular Wireless LLC and to authorize the City Manager to sign the Lease substantially in the form as submitted with the understanding that the tower is encouraged to have the largest number of co-users as possible.

9:50 p.m. Mayor Steenrod called for a 5 minute break.

Mayor Steenrod expressed appreciation that all items Council had brought up when the agreement was first reviewed, had been addressed by staff and Cingular.

NEW BUSINESS

Draft Resolution No. 03-181 [ASSIGNED RESOLUTION NO. 959] - Sole Source Procurement for a Floating Breakwater System for the Redondo Boat Launch & Draft Resolution No. 03-193 [ASSIGNED RESOLUTION NO. 960] - Sole Source Procurement an Anchoring System for the Floating Breakwater at the Redondo Boat Launch

Assistant City Manager Loch stated that the purpose of these Agenda items is to seek Council approval for sole source purchasing. First item is a floating breakwater system for the Redondo Boat Launching Ramp, as part of the Boat Launch Improvement Project. It was noted that State law allows for this type of purchase when the item is clearly and legitimately limited to a sole source supplier. He advised that the WhisprWave offers a unique solution to the wave protection problem at Redondo. It is made of durable polyethylene modules. He noted that the WhisprWave is the only breakwater system on the market that meetings the requirements of the project, and it's installation is entirely separate from the rest of the project's scope of work. He stated that staff recommends this purchase for the following reasons:

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

In conclusion, Assistant City Manager Loch advised that installation is scheduled for September.

MOTION was made by Councilmember White, seconded by Councilmember Sherman, to adopt Draft Resolution No. 03-181, waiving the state competitive bidding requirements and allowing the City to enter into a sole source purchase from Wave Dispersion Technologies, Inc. of a WhisprWave floating breakwater, with a purchase price of \$186,700, plus Washington State Sales Tax. Motion passed unanimously.

For the second item, Assistant City Manager Loch informed Council that to keep the breakwater on location at all tidal stages and in varying wind conditions, the Project Engineers have specified an anchoring system that uses Helix anchors and Seaflex anchor connectors. It has been determined that these items are specialized products that are essentially available from one source. In conclusion he noted staff recommends purchasing the Helix Anchors and the Seaflex Anchor Connectors because:

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

MOTION was made by Mayor Pro Tem Benjamin, seconded by Councilmember Sherman, to adopt Draft Resolution No. 03-193, waiving the state competitive bidding requirements and allowing the City to enter into a sole-source purchase form Helix Mooring Systems, Inc. for 20 Helixanchors and 20 SeaFlex connectors for \$96,740.

Upon questioning by Council, Harbormaster Dusenbury stated that should the auger run into a very large rock, they may have to relocate, however he advised that the geo report was very positive.

VOTE ON MOTION: Motion passed unanimously.

Agreement with Comcast Regarding the Pacific Highway South Redevelopment Project

Assistant City Engineer Andrews informed Council that Comcast has agreed to participate in their costs for the utility undergrounding improvements along Pacific Highway South for a total amount of \$161,000 as part of the Pacific Highway South Redevelopment Project. She noted that the City's contractor will install the necessary conduit and vault system furnished by Comcast, and Comcast will be responsible for installing their own wiring within the system and making all wiring connections. She advised Council that the City's contractor is anxious to get started and staff recommends approval of this agreement.

MOTION was made by Councilmember Sherman, seconded by Councilmember White to enter into the joint trench agreement with Comcast for their participation in costs for the utility undergrounding improvements of the Pacific Highway South Redevelopment Project and further to authorize the City Manager to sign said agreement substantially in the form as submitted. Motion passed unanimously.

Draft Ordinance No. 03-032 Comcast Cable TV Franchise - Briefing

City Manager Piasecki introduced the City's consultant for working on the franchise agreement, Lon Hurd of 3-H Cable Communications Consultants.

Assistant City Manager Loch advised that given Federal restraints on Cable TV service, staff has worked to negotiate the most-favorable terms possible. He highlighted some of the items contained in Council's packet as follows:

- Six year franchise term with possible two year extension.
- \$10,000 paid to the City to (partially) offset costs related to evaluation of the franchise renewal.
- \$140,000 paid to the City for upgrades to the public, education, and government broadcast system. These funds will be used to update the character generator, and upgrades to the light, video, audio and projection systems within the Council Chambers. Cable customers in Des Moines will be assessed a monthly charge to allow Comcast to recoup this expense.

MOTION was made by Councilmember Sheckler, seconded by Councilmember White, to schedule a public hearing at the July 31, 2003 City Council meeting regarding renewal of Comcast's non-exclusive cable TV franchise.

Upon questioning by Council, Assistant City Manager Loch advised that the improvements to the Council Chambers will require seeking a contractor, Council's review and input, and then a final contract brought to Council for approval.

Mayor Pro Tem Benjamin questioned what dollar amount might be passed on to cable customers to pay back the \$140,000. Mr. Hurd advised that Comcast believes this will amount to about a twenty-five cent increase on the average monthly cable bill.

Councilmember Sheckler commented that he has some concerns about passing the \$140,000 off on the cable customers, but overall feels the agreement is good.

Mayor Steenrod voice the opinion that the \$140,000 should not be tied into this agreement since it had not been demonstrated that improvement costs would not exceed \$140,000.

Assistant City Manager Loch advised that the first draft of the franchise agreement called for \$120,000 about three years ago, and the \$140,000 is due to inflation, and was negotiated with Comcast.

VOTE ON MOTION: Motion passed unanimously.

NEXT MEETING DATE - Regular Meeting July 31, 2003

ADJOURNMENT

At 10:28 p.m. **MOTION** was made by Councilmember Sherman, seconded by Mayor Pro Tem Benjamin and passed unanimously, to adjourn.

Respectfully submitted,

Denis Staab
City Clerk

DATE JUL 10 2003

Alexander, C.J.
CHIEF JUSTICE

FILE

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SUPREME COURT, STATE OF WASHINGTON

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PLEADING FILE

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE MATTER OF THE RECALL
CHARGES AGAINST CITY OF DES

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No. 73036-9

MOINES MAYOR DONALD WASSON,
COUNCILMEMBER RICHARD
BENJAMIN, COUNCILMEMBER GARY
PETERSON AND COUNCILMEMBER

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EN BANC

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MAGGIE STEENROD.)

Filed Jul 10 2003

PER CURIAM - This case involves a recall petition alleging various violations against the Des Moines Mayor and three councilmembers (councilmembers). The trial court found the charges legally and factually insufficient. We affirm on the ground that the petition fails to satisfy the specificity requirements of RCW 29.82.0 10.

FACTS

Eduardo Pina initiated a recall petition against Des Moines Mayor Donald Wasson, Councilmember Richard Benjamin, Councilmember Gary Peterson and Councilmember Maggie Steenrod, alleging four violations.

First, Pina generally alleges that the councilmembers violated the notice requirements of the Open Public Meetings Act (OPMA), chapter 42.30 RCW, when they held a special meeting on March 13, 2002. To support his allegation, Pina attached a videotape of the meeting and a six-page amended complaint concerning a separate civil lawsuit filed against the councilmembers.

Second, Pina generally contends the councilmembers violated the conflict of interest laws when they directed the city attorney to withdraw a motion for reconsideration at the July 11 2002, regular meeting. Since the councilmembers were once a named party to the lawsuit, Pina says it was improper for them to take action upon the issue. To support his allegation, Pina provided a videotape of the meeting.'

Third, Pina generally alleges Councilmember Peterson violated the conflict . of interest laws when he engaged in matters having a potential effect on his personal tow truck business. He claims that Peterson has a potential pecuniary interest in some council matters. To support his allegation, Pina attached a fourpage complaint against Peterson concerning a separate civil lawsuit filed against

"The petition also refers to an Exhibit C. The record on appeal does not contain this exhibit. Although it likely has something to do with the council minutes (Clerk's Papers at 68), we elect not to make a presumption.

him. The complaint comes from a citizen's group lawsuit, alleging similar misconduct as challenged by Pina in his petition.

Finally, Pina generally alleges that the councilmembers violated the OPMA when they met and signed a letter on July 12, 2002, directing the city attorney to hire outside counsel to represent them. To support his allegation, Pina attached a copy of the letter to his petition.

The prosecutor drafted the ballot synopses after receiving additional information from petitioner's counsel. The petitioner did not sign the additional information or verify under oath that he believed the charges to be true and that he had knowledge of the facts as required by RCW 29.82.0 10.

The trial court found that the charges were factually insufficient, legally insufficient, or both, for several reasons: (1) It determined that the charges pertaining to the city attorney's termination, the promotion of the assistant city attorney, and the legal defense of the councilmembers were legally insufficient because the officials were acting within their lawful discretionary authority and the petition failed to identify the specific legal violations; (2) it found that the charge relating to improper notice at the March 13, 2002, special meeting was factually insufficient because the legally required notice was given and all councilmembers attended; (3) it determined that the charges were factually insufficient

because they failed to show that the councilmembers intended to violate the law; and (4) it found. that the charges failed to satisfy RCW 29.82.010 because the petitioner failed to satisfy the, specificity requirements, failed to sign the charges forming the bases for the recall, and failed to verify under oath that he believed the facts to be true and had some knowledge of the facts.

ISSUE

Are the alleged charges factually sufficient in terms of the specificity required under RCW 29.82.010?

ANALYSIS

The sufficiency of a recall petition is reviewed de novo. *Teaford v. Howard*, 104 Wn.2d 580, 590, 707 P.2d 1327 (1985). An elected official can only be recalled for cause. *Chandler v. Otto*, 103 Wn.2d 268, 274, 693 P.2d 71 (1984). To satisfy this requirement, a petition must be both factually and legally sufficient. *Id.* This inquiry is determined from the face of the petition. *In re the Recall of Zufelt*, 112 Wn.2d 906, 914, 774 P.2d 1223 (1989).

Factual sufficiency means the facts must establish a prima facie case of misfeasance, malfeasance, or violation of the oath of office (quantitative prong). *Cole v. Webster*, 103 Wn.2d 280, 285, 692 P.2d 799 (1984). The facts must also be stated in concise language and provide a detailed description that includes the

date, location and nature of each allegation (qualitative prong). RCW 29.82.010; *Chandler*, 103 Wn.2d at 274. This precision and detail is required to enable the electorate and a challenged official to make informed decisions. *Chandler*, 103 Wn.2d at 274. Although there is no requirement that the petitioner have firsthand knowledge of the facts, he or she must have some knowledge of the facts underlying the charges. *In re the Recall of Ackerson*, 143 Wn.2d 366, 372, 20 P.3d 930 (2001). A simple belief that the charges are true is insufficient. *Id.* Furthermore, when a charge concerns a violation of the OPMA, the facts must show that the official intended to violate the OPMA. *In re the Recall of Anderson*, 131 Wn.2d 92, 95, 929 P.2d 410 (1997).

Legal sufficiency means the charge must define substantial conduct clearly amounting to misfeasance, malfeasance or a violation of the oath of office. *Id.* Legal sufficiency is not satisfied: when there is a legal justification for the challenged official's conduct. *In. re the Recall of Wade*, 115 Wn.2d 544, 549, 799 P.2d 1179 (1990): As such, lawful discretionary acts are not a- sufficient legal basis for a recall: *Chandler*, 103 Wn.2d at 274.

A reviewing court does not have the authority to look at the truthfulness of a charge or to question the underlying motivation. *Cole*, 103 Wn.2d at 288. Instead, a reviewing court must consider whether, accepting the allegations as

true, the charges on their face support the conclusion that the officer abused his or her position. *Teaford*, 104 Wn.2d at 586.

On the face of his petition, Pina makes general statements as to the violations without citing specific legal authority. He then attempts to support his allegations by providing videos, complaints from other lawsuits and a copy of a letter. Although the attachments may contain some relevant information, a significant amount of the information is irrelevant. Pina fails to parse out the relevant from irrelevant information in order to clearly identify the legal violations and the facts that support those violations as required by RCW 29.82.010. The petition must provide a concise statement of the legal violations and a detailed description of the acts to inform the electorate and the official being charged. *Chandler*, 103 Wn.2d at 274. Pina's petition fails to satisfy this specificity requirement. If a petitioner chooses to refer to attached information, he or she must reasonably identify the information in such a manner to satisfy the specificity requirements of RCW 29.82.010. A general reference to sources containing relevant and irrelevant information is insufficient.

Pina's failure to satisfy the specificity requirements was also observed by the prosecutor tasked with developing the ballot synopses. The prosecutor initially rejected the petition because it did not contain a concise statement of the

No. 73036-9

charges. The petitioner's counsel then sent a letter to the prosecutor containing revised recall charges with additional facts. This letter, however, did not satisfy the petition requirements of RCW 29.82.010. Furthermore, the petitioner did not sign the letter, affirm or adopt the revised charges, or verify under oath that he believed the revised charges to be true as required by statute. Despite these formal deficiencies, the prosecutor drafted the ballot synopses. The prosecutor should have rejected the additional information because it did not remedy the original deficiencies and Pina did not file an amended petition.

Because Pina's petition does not satisfy the qualitative prong of the factual sufficiency analysis, we do not need to reach the other elements of the analysis. *See Zufelt*, 112 Wn.2d at 914 (a petition failing either the factual or legal sufficiency review is insufficient).

CONCLUSION

We affirm the trial court's decision to dismiss with prejudice because the petition does not satisfy the specificity requirements of RCW 29.82.010.

PRELIMINARY
REGULAR MEETING DES MOINES CITY COUNCIL

MINUTES

July 10, 2003

The regular meeting of the Des Moines City Council was called to order at 7:08 p.m. by Mayor Steenrod in the City Council Chambers, 21630 11th Avenue South, Suite B.

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

ROLL CALL - Present: Mayor Maggie Steenrod, Mayor Pro Tem Richard Benjamin, Councilmembers Gary Petersen, Bob Sheckler, Dan Sherman, Scott Thomasson and Susan White. Also present were City Manager Tony Piasecki, Assistant City Manager Corbitt Loch, City Attorney Linda Marousek, Assistant City Attorney Richard Brown, Public Works Director Tim Heydon, Assistant City Engineer Maiya Andrews, Finance Director Paula Henderson, Community Development Director Judith Kilgore, and Deputy City Clerk Angela Chaufy.

City Manager Piasecki noted that a motion to excuse Councilmember Petersen from the June 26, 2003 meeting would be in order.

MOTION was made by Mayor Pro Tem Benjamin, seconded by Councilmember Sherman and passed unanimously to excuse Councilmember Petersen from the June 26, 2003 meeting.

COMMENTS FROM THE PUBLIC

John Carroll, 24832 11th Avenue South

Mr. Carroll asked Council to approve the purchase of a divider wall for the Activity Center. He said that the money for the divider had been donated to the City through the "Raise the Sail" campaign and the "Way Off Broadway" event. Approval of the divider had been scheduled for the June 26, 2003 Council meeting but had not been addressed.

Councilmember White voiced support for Mr. Carroll's request. She recommended that the item be placed on the July 17, 2003 agenda.

Councilmember Sheckler agreed with Councilmember White and said that he would also like to see the driveway to the Activity Center paved.

City Manager Piasecki noted that Council would have an opportunity to place the item on a future agenda later in the meeting.

Brenda Anders-Larson, 2115 South 250th, Kent

Ms. Anders-Larson stated that she would like her neighborhood to annex to the City of Des Moines. As Waterland Festival Volunteer Coordinator, Waterland Pub Chair, and Bingo Chair, Ms. Anders-Larson invited Council to attend the Festival and to volunteer at the event. Individuals interested in volunteering should contact the Chamber of Commerce. Ms. Anders-Larson announced that the Waterland Festival would be conducted July 23-27, 2003.

Bob Pond, 23116 30th Avenue South

Due to the risk of damage to property and people, Mr. Pond asked Council to vote for a ban on all fireworks. He noted that the police have a difficult time differentiating between legal and illegal fireworks and said that several other cities have banned their use. Mr. Pond stated that the problem of Woodhaven Apartments was being addressed. Upon questioning, Mr. Pond clarified that he was not opposed to professional firework displays.

City Manager Piasecki briefly defined legal and illegal fireworks. He said that a report concerning fireworks' related incidents would be included in his monthly report to Council.

Mayor Steenrod asked City Manager Piasecki to also obtain information regarding firework related incidents from the fire department.

Councilmember Sherman, Sheckler and White agreed that the subject should be placed on a future agenda.

Georgie Nupen, 24816 12th Avenue South

Ms. Nupen complimented Council on the Activity Center. She said that the Senior Center participants were anxiously awaiting the installation of the divider walls in order to improve the building's acoustics. Ms. Nupen thanked Council for the facility.

Steve Zielinski, Sound Vista Mobile Home Park (Owner), 22018 28th Avenue South

Mr. Zielinski urged Council to approve Draft Ordinance No. 02-177, Revision of Mobile Home Park Regulations.

Ed Pina, 24219 7th Avenue South

As Co-President of the "Des Moines-Yes" Committee, Mr. Pina reported that the Supreme Court had ruled to uphold Judge Doherty's September 25, 2002 decision regarding the recall effort. The Supreme Court ruling stated that the charges needed to be more specific. Mr. Pina said that the committee would refile the recall petition with more specific charges listed.

Gary Hisel, 23003 Marine View Drive South, #B103

Mr. Hisel questioned which city services would be shortchanged in order to fund the fight against the third runway. He asked Council to set aside their vendetta against the Port of Seattle and to stop fighting.

BOARD & COMMITTEE REPORTS

Port of Seattle Meeting

Councilmember Sheckler announced that the ACC cities and the Highline School District had met with the Port of Seattle to discuss the concerns of the surrounding cities. The Port of Seattle representatives will address the concerns during a meeting scheduled for September 2003.

Army Corp of Engineers 404 Permit

Councilmember Sheckler reported that the State of Washington Attorney General's Office had issued an Amicus Curiae brief stating that the Army Corp of Engineers should have included all of the sixteen conditions identified by the state's Pollution Control Hearings Board in the Port of Seattle's 404 Permit for the third runway.

Sale of Waterland Buttons

Councilmember Thomasson announced that Waterland buttons were being sold in the City Hall courtyard.

Chamber of Commerce

Mayor Pro Tem Benjamin announced that the Chamber of Commerce's Economic Development Committee had met. Additional volunteers were needed for the Waterland Festival. Mayor Pro Tem Benjamin announced that the Chamber was sponsoring a fishing derby on August 2, 2003.

Public Safety and Transportation

Mayor Pro Tem Benjamin reported that the committee had been working with the police to develop ordinances to aid policing efforts in the Pacific Ridge area.

Upon questioning from Mayor Pro Tem Benjamin, City Manager Piasecki informed Council that the application period for the Chief of Police position would close August 11, 2003. He expected the appointment to the position to occur in mid to late September 2003.

Mount Rainier Swimming Pool Update

Mayor Pro Tem Benjamin noted that the Highline School District and the cities of SeaTac, Normandy Park and Des Moines had an interlocal agreement to support Mount Rainier Pool in order to keep it open through 2003. He explained that the Highline School District and King County had an agreement stating that in 2014 the pool would revert to the school district from the County in good working order. The two parties were now discussing their differences in opinion concerning that agreement.

City Manager Piasecki explained that the Highline School District's position was that the county or any other owner of the pool had an obligation to keep the pool open. School district representatives said that the district would not have the money to demolish or maintain the pool. Until the issue was resolved between the County and school district, any efforts to continue to keep the pool open beyond the one-year extension were out of the cities' control. City Manager Piasecki noted that King Aquatics and Northwest Center had expressed an interest in assuming or running the pool.

SR 509 Committee

Councilmember Petersen reported that the SR 509 Committee would meet later this month.

Human Services Advisory Committee

Councilmember White thanked the Human Services Advisory Committee for their work on the Community Service Directory. She noted that one applicant had applied for the vacant board position. Councilmember White stressed the importance of filling the vacancy in a timely manner.

Southwest Economic Initiative Advisory Committee

Councilmember White reported that the committee had met to discuss a business center. She thanked Community Development Director Kilgore for her contributions to the committee.

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

Due to the change in leadership at the Chamber of Commerce and their efforts to work with the City, Councilmember White said that she had decided to support Draft Resolution No. 03-176.

Finance and Economic Development Committee

Stating that Council had not acted upon the actions of the Finance and Economic Development Committee, Councilmember White requested that the subject of disbanding the Finance and Economic Development Committee be placed on a future agenda. She said that Councilmembers Sherman and Sheckler concurred.

PRESIDING OFFICER'S REPORT

Economic Development Committee

Mayor Steenrod informed Council that the Chamber of Commerce, Port of Seattle, and City of Des Moines had joined together to publish a brochure for people considering doing business in Des Moines. The brochure was available at the Chamber of Commerce office.

Finance and Economic Development Committee

Mayor Steenrod reported that several people had informed her of their difficulties in getting their permits processed. Through discussion, a lack of communication was identified as the key problem. Mayor Steenrod asked Community Development Director Kilgore to present the outcome of those discussions.

Community Development Director Kilgore displayed a new coversheet for the permit packets. The coversheet would explain the process, list specific items to be inspected, and provide a checklist. A pre-construction meeting would also be offered to permit applicants.

Mayor Steenrod complimented the Community Development Department on their efforts to develop the coversheet.

ADMINISTRATION REPORTS

Neighborhood Meetings

City Manager Piasecki announced that a Neighborhood Meeting would be conducted on July 15, 2003 at Wooton Park, followed by a Concert in the Park. In August, a Neighborhood Meeting for businesses would be conducted. Representatives from businesses, City staff, the Chamber of Commerce, utilities, the Small Business Development Center, and other agencies would be available to address concerns and questions.

Steven J. Underwood Memorial Park Opening Ceremony

City Manager Piasecki invited everyone to attend the opening ceremony for the Steven J. Underwood Memorial Park scheduled for July 25, 2003 at 5:00 p.m.

Steven J. Underwood Memorial Golf Tournament

City Manager Piasecki announced that the Second Annual Steven J. Underwood Memorial Golf Tournament would be held July 11, 2003.

CONSENT CALENDAR was read by Deputy City Clerk Chaufty.

1. 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 #90155 through #90273 & electronic fund transfers in the total amount of \$422,071.92

Payroll fund transfers in the total amount of \$367,279.99

2. Motion is to authorize the City Manager to approve all vouchers for payment of the following claims during the period of July 4, 2003 through August 6, 2003:
 - a. All vouchers for payment of payroll checks, including Marina payroll, and
 - b. All vouchers for payment of claims and Marina checks, provided that all vouchers and checks approved by the City Manager in accordance with this motion shall be presented at the August 14, 2003 Council Meeting.
3. Motion is to approve the surplusing of the items on the list of surplus property dated July 1, 2003 and provided with this agenda item as Attachment 1. The City Manager is authorized to dispose of the surplus property by public auction, as solid waste, or by donation to a public agency or charitable organization.
4. Two motions regarding the 2003 Arterial Maintenance Program:
 - A. Motion is to award the construction contract for the 2003 Arterial Maintenance Program to Central Oregon Pavers, Inc. in the amount of \$299,587.07 and to authorize the City Manager to sign said contract substantially in the form as submitted, plus authorize the City Manager or his designee to approve change orders up to an amount of 10% of the contract amount.
 - B. Motion is to supplement the current contract for professional engineering services for the 2003 Arterial Maintenance Program with KPG to include construction management services in the amount of \$36,038.00 bringing the total to \$72,910.12, plus a 10% contingency and to authorize the City Manager to sign said supplement substantially in the form as submitted.
5. Motion is to approve the Consent Judgment & Decree of Appropriation in King County Superior Court Cause No. 02-2-33626-4 KNT and to authorize the City's retained counsel to approve said Judgment and Decree and present it to the court, for approval and entry, substantially in the form as submitted.
6. This item has been removed by Administration.
7. Motion is to enter into the attached agreement with King County Metro for their participation in costs for the transit related improvements of the Pacific Highway South Redevelopment Project and to authorize the City Manager to sign said agreement substantially in the form as submitted.

Mayor Steenrod and Councilmember Petersen recused themselves from Item No. 5.

In regard to Item No. 4, Councilmember Sherman noted that the chip sealing process would allow the City to resurface the streets using a less expensive method.

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

At 8:02 p.m., Mayor Steenrod declared an eight minute break.

PUBLIC HEARING CONTINUED

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

Assistant City Attorney Brown requested that Council continue the public hearing to the August 14, 2003 meeting in order to allow proper follow-up to one of the protest letters. The property owner needed to be allowed the opportunity to present expert testimony to Council showing that his property did not benefit from the LID.

MOTION was made by Councilmember Sheckler, seconded by Councilmember Sherman and passed unanimously to continue the public hearing to the August 14, 2003 meeting.

Upon questioning from Mayor Pro Tem Benjamin, Mayor Steenrod said that public comment had been taken at the prior meeting and would not be permitted at this meeting.

Councilmember Thomasson said that he thought the public hearing had been continued so that Council could continue to hear public testimony.

As the subject qualified as a quasi-judicial matter, City Attorney Marousek advised Council to not discuss the subject off the record.

OLD BUSINESS

Draft Ordinance No. 03-177 Amending 2003 Budget to Re-program MCI Funds

City Manager Piasecki introduced the subject.

MOTION was made by Councilmember Sheckler, seconded by Councilmember Sherman and passed unanimously to place Draft Ordinance No. 03-177 on the July 17, 2003 agenda.

Draft Resolution No. 03-176 [Assigned Res. No. 958] Authorizing 2003 Waterland Festival Beer Garden

MOTION was made by Councilmember Sheckler, seconded by Councilmember Thomasson, and passed unanimously to take the item off the table.

As Mayor Pro Tem Benjamin said that he was not comfortable with the city being in the beer business, he recommended that the city's share of the proceeds be put into a special fund for the Mount Rainier Pool.

MOTION was made by Mayor Pro Tem Benjamin and seconded by Councilmember Petersen to amend the draft resolution to provide for the City's share of the net proceeds from the Beer Garden to be contributed to the Mount Rainier Pool Fund which the city is maintaining to keep the pool open.

Councilmember Thomasson said that the purpose of collecting one third of the proceeds was to fund the police security required by the Beer Garden.

Councilmember Sheckler concurred with Councilmember Thomasson. He said that he was not opposed to the pool but felt it was important to offset the city's security costs for the Beer Garden.

Councilmember White suggested that Council not amend the proposed resolution at this time but revisit the issue next year.

Mayor Pro Tem Benjamin spoke in support of the amending motion. He said that the Mount Rainier Pool was a meaningful cause and the action would be productive for the community. He said that there was no increase in police costs from last year to this year.

VOTE ON AMENDING MOTION: Motion failed, 3-4, with Councilmembers Sheckler, Sherman, Thomasson, and White opposed.

Councilmember Sherman said that he would not support the main motion as he felt that patrons should visit local pubs and support local businesses. He also said that he was not comfortable with the police costs associated with the Beer Garden.

VOTE ON MAIN MOTION: Motion passed, 5-2, with Mayor Pro Tem Benjamin and Councilmember Sherman opposed.

Draft Ordinance No. 02-177 [Assigned Ord. No. 1324] Revision of Mobile Home Park Regulations

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sheckler to remove the item from the table.

At 8:33 p.m., Mayor Pro Tem Benjamin left the Council Chambers.

VOTE ON MOTION: Motion passed, 5-1, with Councilmember Sherman opposed and Mayor Pro Tem Benjamin not present to participate in the vote.

At 8:34 p.m., Mayor Pro Tem Benjamin returned to the Council Chambers.

VOTE ON MAIN MOTION: Motion passed, 6-1, with Councilmember Sherman opposed.

Wood/Harbinger, Inc. Agreement

Harbormaster Dusenbury introduced Peter Lekhakul from Wood/Harbinger Inc. He displayed a map of the marina and described the scope of the proposed project. As the dock decking would need to be removed to install the electrical wiring, the fire suppression system would be installed at the same time. Harbormaster Dusenbury described the fire suppression pipes. He explained that "N" dock would be done this year while the work on "K", "L", and "M" docks would be done over the next three years, one dock per year.

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sheckler to approve the agreement with Wood/Harbinger, Inc., providing design and engineering services for Phase 1 of the upgrades to the Electric Power Distribution Project for "N" dock and the fire suppression system on "K", "L", "M" and "N" docks in the amount of \$81,995, plus a 5% contingency; and authorize the City manager to sign the agreement in substantially the form as approved by the City Attorney.

In response to Mayor Steenrod's questioning, Harbormaster Dusenbury explained that the fire suppression system cost approximately \$15,000 per dock. Fire suppression systems would be installed on the other docks as funding became available.

City Manager Piasecki confirmed that there was money in the budget to do the project.

VOTE ON MOTION: Motion passed unanimously.

Use of Pedestrian Overpass Crossing Over Public Air Space

Public Works Director Heydon explained that the following changes had been made to the original document as a result of Council's comments at the June 26, 2003 meeting:

1. Language was added stating that the new agreement supersedes the original 1983 agreement.
2. Language was added clarifying that the City Manager would negotiate the renewal fee after the five-year period as he does with other city fees.
3. The skybridge was to be used solely as a pedestrian passage with the exception of the two existing heating/cooling units.
4. The language clarified that the buildings on both sides of the skybridge shall remain in one ownership.
5. Finance and Public Works staff were evaluating ways to insure that the future fees are collected at the appropriate five-year intervals.
6. The owner agreed to pay the past amounts due for the ten years from 1993 to 2003. This amount is equal to \$500.

MOTION was made by Councilmember Sherman and seconded by Councilmember White to approve an agreement between the City of Des Moines and William and Caryl Reese regulating the construction and use of a pedestrian overpass crossing over public air space dated 2003 and to authorize the City Manager to sign the agreement substantially in the form as attached.

In response to Mayor Steenrod's questioning, Public Works Director Heydon explained that if a seismic event occurred, the owner would be required to secure an engineer to inspect the skybridge for safety.

VOTE ON MOTION: Motion passed unanimously.

NEW BUSINESS

Draft Resolution No. 03-157 Beck Kombol Easement Request

Community Development Director Kilgore displayed an aerial photo of the area. She noted that this project qualified as a Type One land use issue. She said that the engineering, SEPA, and Community Development reviews had been completed and staff recommended approval of the easement request. Community Development Director Kilgore said that the easement would provide a gentler transition from the street to the Parkside Wetlands and would provide a thickened edge to the west side of the street. She introduced Kelly Castell, Project Manager with Duncanson and Company.

Ms. Castell explained that the easement would allow the developer to avoid constructing a retaining wall on the west side of the project. She said that a ten foot easement was sufficient but the city had felt that a twenty foot easement would be better.

MOTION was made by Councilmember Sheckler and seconded by Mayor Pro Tem Benjamin to adopt Draft Resolution No. 03-157 authorizing the City Manager to sign a temporary easement for street side slopes.

Councilmember Thomasson strongly opposed the motion. He said that he considered the request to be a gift of public funds as the city would be giving city property for public use. The developer would receive the cost savings and convenience while the city would receive nothing in return. Councilmember Thomasson said that the street could be built lower to reduce the slope. He noted that the land in question had been purchased as conservancy park to buffer the wetlands.

In response to Councilmember Sherman's questioning, Community Development Director Kilgore said the easement would provide the following benefits to the city:

- An additional ninety feet of curb, gutter, and sidewalk would be constructed.
- 26th Avenue South would be opened.
- Future plans to develop the Parkside Wetlands into an interpretive wetland area would be aided.
- The development of fourteen new duplexes would bring additional money into the city.
- A transition area into the park would be provided.
- A through-connection from South 244th Street to South 246th Street would be developed.

Councilmember Thomasson said that most of the benefits would occur without the approval of the easement. He stated that it was not necessary to impact the park.

Community Development Director Kilgore explained that staff requested the twenty foot easement to improve safety. She said that the easement landscaping requirements would be identified during the permitting process.

At 9:10 p.m., Mayor Steenrod declared a seven-minute break.

MOTION was made by Councilmember Sheckler and seconded by Councilmember White to continue to subject to the August 14, 2003 meeting.

Ms. Castell and Community Development Director Kilgore confirmed that approval of the motion would delay the project.

Councilmember Thomasson suggested that Council table the issue until later in the meeting. He mentioned that he would not be at the July 17, 2003 meeting.

Substitute motion was accepted by Councilmember Sheckler and seconded by Councilmember White to table the subject until later in the meeting.

VOTE ON MOTION: Motion passed, 6-1, with Mayor Pro Tem Benjamin opposed.

Pacific Highway South Project - Award of Bid

Assistant City Engineer Andrews informed Council that the Pacific Highway South Project had been readvertised. All of the bids received were under the engineer's estimate. She explained that the project included the widening of the roadway to seven lanes with curbs, gutters, sidewalks, undergrounding of utilities, landscaping and gateway treatments. Construction was scheduled to begin later this month and the project would be completed in early 2005. Assistant City Engineer Andrews said that staff was still negotiating the utility agreements.

MOTION was made by Councilmember Sheckler and seconded by Mayor Pro Tem Benjamin to award the construction contract for the Pacific Highway South Improvement Project to Ceccanti, Inc., in the amount of \$10,678,380.95 and further to authorize the City Manager to sign said contract substantially in the form as submitted, plus authorize the City Manager or his designee to approve change orders up to an amount of 15% of the contract amount.

Councilmember Thomasson said that he understood the need for a contingency but preferred a lower percentage. He noted that there would be several meetings available for Council to approve additional funds if necessary.

Assistant City Engineer Andrews identified driveway locations and utilities as outstanding issues.

Public Works Director Heydon said that staff wished to react quickly to conditions and minimize the affects of construction on local businesses.

Mayor Pro Tem Benjamin noted that the bid and requested change order amount was collectively equal to the original bid and its contingency.

Councilmember Sherman voiced concern about the glare created by the sail. He said that using several different sail colors might prove distracting to the drivers.

Mayor Steenrod voiced agreement with Councilmember Thomasson's comments regarding the 15% change order request. She questioned the proposed contractor's ability to perform the work for the listed bid amount.

Assistant City Engineer Andrews informed Council that the City of Kent had been very impressed by the contractor's work and project management skills.

Councilmember Thomasson stated his preference for the change order amount to be set at 5%. Staff could then provide periodic reports and request an additional 5%.

City Manager Piasecki confirmed that the status of the contingency amount would be provided in his monthly report. He said that staff would be comfortable with the amount being set at 10%.

MOTION was made by Councilmember Thomasson to amend the change order amount to 10%.

Councilmember Sheckler and Mayor Pro Tem Benjamin **accepted the motion** as a **friendly amendment**.

Councilmember Thomasson said he would support the motion with the proviso that staff kept Council informed of the change order status.

VOTE ON MAIN MOTION: Motion passed unanimously.

Redondo Boat Launch - Award of Bid

MOTION was made by Councilmember White and seconded by Councilmember Sherman to award the construction contract for the Redondo Boat Launch Improvements to Ohno Construction, in the amount of \$843,962.60 and further to authorize the City Manager to sign said contract substantially in the form provided in the construction documents, plus authorize the City Manager or his designee to approve change orders up to an amount of 10% of the contract amount.

In order to keep the project within the scope of the budget, City Manager Piasecki said that Council would need to change the change order amount from 10% to 1%.

Assistant City Manager Loch said that, ultimately, additional funding would be needed for the project.

Councilmember White and Councilmember Sherman **accepted** changing the 10% to 1% **as a friendly amendment**.

Councilmember Thomasson noted that the issue was not a cash flow problem but a budget issue. He said that the project would likely go over budget and Council would need to deal with it later.

Mayor Steenrod agreed with Councilmember Thomasson. As it was a visible project, she stated her preference for a 10% contingency.

Councilmember White and Councilmember Sherman agreed to **change their motion** back to 10%.

City Manager Piasecki said that he would provide a status report of the project as part of his monthly report to Council.

VOTE ON MOTION: Motion passed unanimously.

Easement for Fiber-Optic Cable Through City-owned Tidelands

Assistant City Manager Loch stated that Comcast has requested an easement for a fiber-optic cable through the tidelands owned by the City of Des Moines. An electrical cable owned by Puget Sound Energy was currently in the area but not activated. The cable would be buried three to five feet deep in the beach area. Assistant City Manager Loch displayed an aerial view of the area.

Councilmember Sheckler said that he hoped to see Comcast cooperate in the undergrounding of utilities in the Pacific Highway South improvement project.

MOTION was made by Councilmember Sheckler and seconded by Councilmember White to approve the easement for Comcast's fiber-optic cable and to authorize the City Manager to sign the easement substantially in the form as provided.

City Attorney Marousek introduced Hans Hechtman, Director of Government Relations for Comcast. She informed Council that the Pacific Highway South agreement for undergrounding of overhead cable lines was not yet written but terms had been discussed.

Mayor Steenrod and Councilmember Sherman said that they wanted security that Comcast would cooperate on the Pacific Highway South project prior to approval of the tidelands easement.

Councilmember Thomasson commented that the form of the easement was written more like a lease. He noted that a legal description was not attached.

Regarding compensation for any renewal of the easement, Assistant City Manager Loch said that Comcast preferred a locked in rate but staff recommended that a future Council should determine the rate based upon information and condition that existed at that time.

Councilmember Thomasson suggested that the renewals be subject to complete negotiation of the agreement.

Mr. Hechtman said that Comcast would need the fiber-optic cable beyond thirty years. In regard to the Pacific Highway South project, Mr. Hechtman said that Comcast was committed to participate in the project at the same level AT&T had agreed to participate in it last year.

City Attorney Marousek and Mr. Hechtman concurred that tentative agreement had been reached on the following items:

- Comcast would contribute approximately \$161,000 toward the cost of a joint trench for undergrounding the utilities.
- Comcast would accept the plans submitted by AT&T as Comcast's plans.

For the Highway project, Mr. Hechtman said that a memorandum of understanding identifying the responsibilities of both parties would be developed and signed.

City Attorney Marousek clarified that Comcast had negotiated with the city for an easement across the tidelands in order to apply for the necessary permits. The Shoreline Permit process was a separate matter and Council should remain unbiased.

Mr. Hechtman displayed a sample of the cable and explained its burial process. He introduced Terry Davis and Ik Icard.

In response to Councilmember Thomasson's questioning regarding the lack of a legal description for the requested easement, Assistant City Manager Loch explained that a preliminary legal description had been submitted. It requested a three-foot wide easement with access rights. The legal description would be looked at in more detail once Council provided direction to staff. He explained that the environmental impacts would be studied and mitigated through the permitting process and SEPA.

VOTE ON MOTION: Motion passed unanimously.

Draft Resolution No. 03-109 - Amend Council Rules 5, 9, 10 and 20

MOTION was made by Councilmember Thomasson and seconded by Councilmember Sherman to place Draft Resolution No. 03-109, amending Council Rules 5, 9, 10, and 20 of the Des Moines City Council Rules of Procedure on the August 14, 2003 agenda.

Mayor Steenrod said that she would reserve her comments for the August 14, 2003 meeting.

Councilmember Sheckler noted that the city had a Council/City Manager form of government and the appointment to the position of Mayor was a privilege. As the privilege had been abused on several occasions, Councilmember Sheckler said that the issue was being addressed through the proposed resolution.

Councilmember Sherman encouraged Council to consider the proposed resolution with an open mind. He said that it would bring the Council rules into compliance with state law and protect both the majority and minority. He asked Council to consider the item in terms of providing a greater protection for all.

VOTE ON MOTION: Motion passed unanimously.

Draft Resolution No. 03-157 Beck Kombol Easement Request, Continued

Community Development Director Kilgore informed Council that the Engineering Department had required an extension of the radius of the intersection at South 244th Street and 26th Avenue South. This requirement caused the development's sidewalk to be shifted 7.5 feet west. Through the easement, the developer was trying to gain back that area. If the radius requirement was removed, the need for the easement would be eliminated.

As right-of-way would be created on city property, Councilmember Thomasson questioned whether fifty feet of right-of-way was required.

Public Works Director Heydon explained that a house that was not part of the development had already been constructed in the area.

Ms. Castell informed Council that the developers had met a year ago with the Engineering Department to discuss the project. Based upon the direction provided in those meetings, they had moved forward. In March 2003, the easement had been requested.

At 10:28 p.m., **MOTION** was made by Mayor Steenrod and seconded by Mayor Pro Tem Benjamin to extend the meeting ten minutes. *(Editor's Note: A vote on this motion was not conducted prior to the meeting's expiration.)*

Mayor Steenrod recommended that Council meet July 31, 2003 to further consider the easement request.

Councilmember Sheckler and Mayor Pro Tem Benjamin **agreed to amend their previous motion** to table the issue to July 31, 2003. *(Editor's Note: Action had already been taken on the previous motion. Council treated the proposal for amendment as an original motion.)*

As Councilmember Thomasson was not available on that date, Mayor Pro Tem Benjamin suggested that Councilmember Thomasson participate via conference call.

VOTE ON MOTION: Motion passed unanimously.

NEXT MEETING DATE - Regular Meeting July 17, 2003

ADJOURNMENT

The meeting expired at 10:30 p.m.

Respectfully submitted,

Angela M. Chaufty
Deputy City Clerk

Action Items from 7/10/03 Council Meeting

- Potential Fireworks Ban
Include a report of firework related incidents, including those handled by the fire department, in the City Manager's Monthly Report.
Place the subject on a future Council agenda.
- Potential Elimination of the Finance and Economic Development Committee
Place the subject on a future Council agenda.
- Pacific Highway South Project
Include a change order status report in the City Manager's Monthly Report.
- Redondo Boat Launch
Include a status report of the project in the City Manager's Monthly Report.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Steven J. Underwood
Memorial Park Phase One-
Parking Lot Paving Contract

FOR AGENDA OF: July 31, 2003

DEPT. OF ORIGIN: Parks, Recreation and
Senior Services

DATE SUBMITTED: July 24, 2003

ATTACHMENTS:

- A. Draft Contract between the City of Des Moines and Lakeridge Paving Company
- B. Parking Lot Paving Bid Tabulation

CLEARANCES:

[x] Parks & Recreation Director
[x] City Attorney

APPROVED BY CITY MANAGER

FOR SUBMITTAL:

Purpose and Recommendation:

The purpose of this agenda item is to award a Small Works Project for the installation of parking lot pavement at Steven J. Underwood Memorial Park.

Motion: "I move to approve the Contract with Lakeridge Paving Company in the amount of up to \$31,980.00 plus tax and authorize the City Manager to sign the contract, substantially in the form as submitted. And to authorize City Manager to approve change orders not to exceed 10% of the total contract amount."

Background:

The Steven J. Underwood Memorial Park Phase One construction is now near completion. Funding for the project came from the City's Municipal Capital Improvement Fund, Washington State Interagency Committee for Outdoor Recreation Local Parks Grant Fund and Paul Allen Youth Athletic Fields Grant Fund, King County Real Estate Excise Tax Fund and King County Youth Sports Facilities Grant Fund. Park land was acquired in 1998 and design and construction has been completed in phases over the past three years.

Phase One construction was awarded to general contractor Specialized Landscaping Inc., in 2002. The project included site earthwork, erosion control, installation of water, sanitary and storm utilities needed for two softball fields and parking lot, and infrastructure to provide for water, sewer and storm detention for full build out of the park. Although the parking lot paving work was part of Specialized Landscaping Inc.'s original bid, the asphalt paving and striping portion of the parking lot work was recently removed from the contract for public convenience. The Steven J. Underwood Memorial Park Parking Lot Paving Project was then advertised for bid to contractors on the City's Small Works Roster with a public bid opening on Tuesday, July 8, 2003 at 9:00 a.m. The two paving companies submitted bids for the work.

In the 2003 Capital Improvement Program, City Council approved funding for Steven J. Underwood Memorial Park Phase I-B to build a third ballfield and restrooms at the park. The third field is currently under construction by Grants Landscaping to be completed in mid-July. Phase I-B restroom construction is scheduled in 2004 when additional capital funding is available for the project.

Discussion:

Construction contractor Specialized Landscaping Inc. (SLI) was awarded the bid for Steven J. Underwood Memorial Park Phase I as identified in the Background Section above in 2002. By the end of 2002, SLI had completed all project elements except the parking lot paving and striping work and project punch list items required for project acceptance and completion. Since that time, the city and contractor have been in negotiations to resolve disagreements regarding project change orders and delays. The contractor agreed to finish remaining project punch list items and to remove the parking lot paving portion of the bid to allow the city to complete the parking lot paving project at its convenience. This agreement with SLI allows the city to pave the parking lot after the completion of the third ballfield (Phase I-B) currently under construction by Grants Landscaping to avoid parking lot pavement destruction caused by large construction vehicles and equipment. The Parking Lot Paving Project has been timed to begin after third field completion and the removal of construction equipment from the site. The Parking Lot Paving Small Works project consists of asphalt paving of approximately 41,000 SF over existing compacted base course. Work is to be done per Washington State Department of Transportation specifications and includes striping 92 parking spaces.

The city received bids by paving contractors for the work (see Attachment C Parking Lot Paving Bid Tabulation) and Lakeridge Paving Company submitted the lowest and best bid for the project. Upon completion of the parking lot, the Interagency Committee for Outdoor Recreation will release the final portion (approximately \$20,000) of the Paul Allen Youth Athletic Fields Grant awarded to the Phase One project in 2001.

Alternatives:

None Provided

Financial Impact:

The Parking Lot Paving Project is budgeted as part of the Steven J. Underwood Memorial Park Phase One scope of work in the 2002 Capital Improvement Plan and is part of the IAC Paul Allen Youth Athletics Facilities Grant project awarded in 2001. City council voted at its meeting on July 17 to reauthorized funds for Steven J. Underwood Memorial Park in the amount of \$211,988. This project is funded within that appropriation. The engineer's estimate for this portion of the Phase One project is \$35,000.

Recommendation/Conclusion:

Staff recommends approval of the Parking Lot Paving Project contract with Lakeridge Paving Company.

Concurrence

The Steven J. Underwood Memorial Park Phase One Project was authorized in the 2003 Capital Improvement Program as approved by City Council. Plans were reviewed, approved and permitted by city permitting personnel from Community Development and Public Works Departments.

SECTION 2 - CONTRACT DOCUMENTS

**STEVEN J. UNDERWOOD MEMORIAL PARK
PARKING LOT PAVING PROJECT**

CONTRACT CHECKLIST

THE FOLLOWING FORMS ARE TO BE EXECUTED AFTER THE CONTRACT IS AWARDED:

(a) Agreement

This agreement to be executed by the successful bidder. Four (4) copies are required.

(b) Performance and Payment Bond

To be executed by the successful bidder and his surety company. Four (4) copies are required.

(c) Certificate of Insurance

All insurance certificates must show thirty (30) days cancellation notice by certified mail and Hold Harmless Statement. Insurance certificates are required for the prime contractor and all subcontractors prior to commencement of any work.

(d) Progress Schedule

Prior to beginning any work on site, a progress schedule, either in the form of a C.P.M. or Bar Chart, shall be submitted showing: (1) each element of work; (2) dates each element of work will be accomplished; and (3) materials order and delivery dates.

(e) Department of Labor and Industries Fees

The Contractor is responsible for all fees relating to the processing of the Department of Labor and Industries: (1) Intent to Pay Prevailing Wages, (2) Certificate of Prevailing Wages Paid.

PROPOSED AGREEMENT

(This document is a proposed form of agreement. It is subject to revision by agreement of both parties, following award of the bid, and prior to execution of the final contract.)

STEVEN J. UNDERWOOD MEMORIAL PARK PARKING LOT PAVING PROJECT

THIS AGREEMENT made and entered into this _____ day of _____, 20____, by and between The City of Des Moines, Washington, hereinafter called the "Owner", and _____, hereinafter called the "Contractor".

WITNESSED that the Owner and the Contractor for the hereinafter established consideration agree as follows:

- I. The work to be performed under this Contract shall be known as the Owner's "STEVEN J. UNDERWOOD MEMORIAL PARK PARKING LOT PAVING PROJECT".
The Contract shall be performed and completed under the supervision of and subject to the approval of the Owner or its authorized representative. The Contractor agrees to furnish all materials, tools, labor, equipment and other incidentals, and to perform all services and work as described in this Agreement and the contract documents, which consist of this Agreement and the following items, which are by this reference incorporated herein:

Exhibit A: Bid Documents
Exhibit B: Contract Documents
Exhibit C: General Conditions
Exhibit D: General Special Provisions & Technical Specifications
Appendix A: Prevailing Wages
Appendix B: Contract Plans

Standard Specifications for Road, Bridge and Municipal Construction, 2002, including the Division 1 APWA Supplement, prepared by the Washington State Department of Transportation and the American Public Works Association – Washington State Chapter.

- II. In consideration for the complete and faithful performance of the Contract, the Contractor shall be paid in accordance with the unit prices and/or lump sum prices set forth in the Bid Proposal. Payment shall be made for the actual quantities of work performed at the unit prices set forth in the bid. Actual quantities may be more or less than the estimated quantities set forth in the bid, for purposes of comparing bids, and the Contractor shall make no claim for anticipated profits for any decreases in the quantities. Quantities may be increased or decreased by the Owner.

IN WITNESS THEREOF, four (4) identical counterparts of this Agreement, each of which shall be deemed an original thereof, have been duly executed by the parties herein named, on the day and year first above written.

CITY OF DES MOINES, WASHINGTON
(Owner)

By: _____
Anthony Piasecki, City Manager

By direction of the Des Moines City Council

At an open public meeting on _____, 2003.

ATTEST:

This _____ day of _____, 20____

City Clerk

APPROVED AS TO FORM:

Linda A. Marousek, City Attorney

Contractor

By:

Title: _____

Address: _____

(Corporate Seal)

ATTEST: (If Corporation):

Title: _____
WITNESS (If individual or partnership)

GENERAL CONDITIONS

G-1. CONTRACT DOCUMENTS

The intent of these documents is to include all labor, material, appliances, transportation, utilities, and services necessary for the proper execution of the work and the terms and conditions of payment therefore. The documents are to be considered as one, and whatever is called for by one shall be binding as if called for by all of them.

G-2. MATERIALS, APPLIANCES, EMPLOYEES

The Contractor shall provide and pay for all labor, materials, tools, transportation, utilities, bonds, permits, insurance, and all other things necessary to properly and safely complete the work, unless otherwise provided in the Technical Provisions. Unless otherwise specified, all materials shall be new, and both materials and workmanship shall be of good quality. The Contractor shall only utilize workmen and subcontractors who are experienced and skilled in their trade.

G-3. ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. He shall defend any and all suits or claims for infringement of any patent or copyrights and shall save the Owner harmless from loss on account thereof.

G-4. PROTECTION OF WORK AND PUBLIC

The Contractor shall be responsible for any damage or claims resulting from her/his act or negligence while performing the work under this Contract. Materials delivered and work performed as well as adjacent property and the general public shall be adequately protected.

G-5. INSPECTION AND DEFECTIVE WORK

The Contractor shall permit and facilitate inspection of the work by the Owner and his agents and public authorities at all times. Any work which does not conform with the requirements of the Contract shall be repaired or replaced to the satisfaction of the Engineers. Any defects due to faulty materials or workmanship which become apparent within one (1) year from the date of final acceptance by the Owner shall be repaired or replaced unless otherwise provided in the Special Conditions.

G-6. CHANGES IN THE WORK

During the period when this Contract is in force, the Owner may find it necessary or advisable to make additions to, deductions from, or other changes in the nature of the work. No change shall be made without the prior written approval of the Owner establishing the nature of the change and compensation therefore. All changes involving an increase in the contract amount or time of completion will require a written Change Order.

G-7. FAILURE TO PERFORM THE WORK

In the event the Contractor should fail or refuse to prosecute the work properly, or fail to perform any provision of the Contract, the Owner may, after ten (10) days written notice to the Contractor, without prejudice to any other remedy he may have, make good the deficiencies and may deduct the cost thereof from the payment due or which thereafter may become due the Contractor, or, at his option, may terminate the Contract and take possession of all materials, tools, facilities, and appliances which may be on the site of the work and finish the work by such means which, in his opinion, are the most expeditious, and at the expense of the Contractor, shall be liable to the Owner for any excess costs or other damages occasioned by the Owner thereby.

G-8. PAYMENTS TO THE CONTRACTOR/RETAINAGE

At the end of each month, or other period as set forth in the Special Provisions, the Engineer will approve an estimate of the value of work satisfactorily performed to that time. Payment will be made in the amount said estimate less the total of all previous payments and retainage, payable on or before the 15th of the following month or as near after the first of the following month as the legally established regular meeting times of the governing and disbursing agencies will permit. All payments shall be in accordance with the laws of the place where the work is being performed. Payments due may be withheld on account of defective work not remedied, liens filed, damage by the Contractor to others not adjusted, or failure to make payments properly to subcontractors, or for material or labor.

Consistent with RCW 60.28.011, the City of Des Moines shall reserve a contract retainage of 5% (five percent) of the moneys earned by the Contractor as a trust fund for the protection and payment of claims by any person arising under the Contract and/or State of Washington, with respect to taxes imposed pursuant to Title 82 RCW which may be due from such Contractor.

As provided in WAC 82-32-010, the Contractor shall be required to exercise its option in writing on whether or not monies reserved from the amounts due the Contractor shall be retained by the public body, deposited by the public body in an interest bearing account in a bank, mutual savings bank, or saving and loan association, or placed in escrow by the public body. This provision shall constitute official notice informing the Contractor of the options available and the method for exercising the option selected. Said option must be exercised prior to or at the time of submission of invoices for the first progress payment to be made under the contract. No progress payment shall be made until the Contractor has exercised its option in writing.

G-9. FINAL PAYMENT APPLICATION

Final payment to the Contractor will be made upon completing or receiving the following items:

1. Items specified for completion after substantial completion certification.
2. Ensure in writing that all claims have or will be settled.

3. Transmittal of required project construction records to the Owner.
4. Proof that taxes, wages, fees, and similar obligations were paid (certificates from Labor and Industries and the Department of Revenue.)
5. A signed Lien Release in a form acceptable to the Owner signed by all subcontractors and major suppliers.
6. Removal of all temporary facilities, markings, rubbish and similar elements.

G-10 THE ENGINEERS' STATUS

The Engineers shall have general supervision of the work. They have authority to stop the work, if necessary in their opinion, to ensure its proper execution. The Contractor shall comply with instructions given by the Engineers in accordance with the terms of the Contract, or by their authorized representatives acting within the scope of the duties assigned to them.

G-11. SURVEYS, PERMITS, AND REGULATIONS

The Engineers will furnish control points sufficient to properly control the construction of the work.

G-12. INSURANCE & INDEMNIFICATION REQUIREMENTS

Indemnification / Hold Harmless

The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Insurance

The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees, or subcontractors.

A. Minimum Scope of Insurance

Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insurance contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City, and the City's consulting design engineer, R.W. Beck, Inc., shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO additional insured endorsement CG 20 10 11 85 or a substitute endorsement providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washing.
4. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

B. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. The Contractor's insurance coverage shall be primary insurance as respect the City. Any insurance, self insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.
2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, or forty-five (45) days prior written notice by regular U.S. Mail to the City Manager, has been given to the City.

D. Contractor's Insurance For Other Losses

The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

E. Waiver of Subrogation

The Contractor and the City waive all rights against each other any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other periods to the extend covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage

Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

H. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall finish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Contractor.

G-13. COMPLIANCE WITH APPLICABLE LAWS

The Contractor agrees to fully comply with all applicable Federal, State and local laws, orders, rules, regulations and ordinances, including but not limited to workmen's compensation, pension and social security laws, safety standards and building codes, and the Contractor shall indemnify and save harmless the Owner from any claim, liability or expense by reason of the failure of the Contractor or any of his subcontractors to comply with such laws, orders, rules, regulations or ordinances.

G-14. PERMITS AND REGULATIONS

The Contractor shall obtain and pay for all permits and licenses, but not permanent easements required in connection with the work, and shall give all notices, pay all fees and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Engineer in writing and any necessary changes shall be adjusted. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the Engineer, he shall bear all costs arising therefrom.

G-15. WAGE RATES

In conformity with the R.C.W. 39.12, no laborer, workman or mechanic employed in the performance of this Contract either by the Contractor or a subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by this Contract shall be paid less than the minimum hourly rate for his trade or occupation hereinafter set forth or, if none is set forth, the minimum hourly wage rates for his trade or occupation which prevail in the locality where the work is to be performed, and the Contractor agrees

that no such laborer, workman or mechanic shall be paid less than such rate. In case any dispute arises to what are the prevailing rates of wages for work of a similar nature and it cannot be adjusted by the parties involved, the matter shall be referred to the Director of Labor & Industries and his decision shall be final. These rates are subject to change to reflect increases and decreases in the rates which may prevail in the area from time to time during the performance of the Contract. No change in these rates or the rates actually paid by the Contractor shall constitute the basis for a change in the Contract Price.

G-16. RELATIONS WITH OTHER CONTRACTORS

The Contractor shall cooperate with all other contractors who may be performing work in behalf of the Owner on any work in the vicinity of the work to be done under this Contract, and he shall so conduct his operations as to interfere to the least possible extent with the work of such contractors. He shall promptly make good, at his own expense, any injury or damage that may be sustained by other contractors at his hands. Any difference or conflict which may arise between the Contractor and other contractors in regard to their work shall be adjusted and determined by the Engineer. If the work of the Contractor is delayed because of any acts or omissions of any other contractor or contractors, the Contractor shall have no claim against the Owner on that account other than for an extension of time.

When two or more contracts are being executed at one time in such manner that work on one contract may interfere with that on another, the Engineer shall decide which contractor shall cease work and which shall continue, or whether the work on both contracts shall progress at the same time, and in what manner.

When the territory of one contract is the necessary or convenient means of access for the transportation or movement of men, material, or appliances required for the execution of another contract; such privileges of access or any other reasonable privilege may be granted by the Engineer to the contractor so desiring, to the extent and amount, in the manner, and at the time, which may be reasonably necessary.

G-17. MEDIATION/ARBITRATION CLAUSE

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

G-18. VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

All questions related to this Agreement shall be resolved under the laws of the State of Washington. In the event that either party deems it necessary to institute legal action arising from this Agreement, such action shall be instituted in the King County Superior Court. The parties each consent to the personal jurisdiction of such court. Except as otherwise provided by law, it is expressly understood that neither party can institute legal

action against the other based on this Agreement until the parties have exhausted the mediation and arbitration procedures required by the previous paragraph.

G-19. RECORD KEEPING

All records or papers of any sort relating to the City and the project will at all times be the property of the City and shall be surrendered to the City upon demand. The Contractor is entitled to retain a complete set of work project for historical and evidentiary purposes. All information concerning the City and said project, which is not otherwise a matter of public record by law to be made public, is confidential and the Contractor will not, in whole or in part, now at any time, disclose that information without the express written consent of the City.

ATTACHMENT B

STEVEN J. UNDERWOOD MEMORIAL PARK PARKING LOT PAVING PROJECT

#	ITEM DESCRIPTION	Lakeridge Paving Co. TOTAL COST	Lakeside Industries TOTAL COST	TOTAL COST	TOTAL COST	TOTAL COST
1	Parking Lot Paving - 41,000 SF	31,980.00	\$35,670.00			
2	Parking Lot Striping - 92 spaces	920.00	\$2,024.00			
	Total Base Bid	\$32,900.00	\$37,694.00	\$0.00	\$0.00	\$0.00
	Sales Tax (8.8%)	\$2,895.20	\$3,317.07	\$0.00	\$0.00	\$0.00
	Total Base Bid	\$35,795.20	\$41,011.07	\$0.00	\$0.00	\$0.00
	ADDENDUM 1					
	Unit costs for:					
	Asphalt Paving -- per SF	\$0.78	\$0.87			
	Base Course Rock-per cubic yard	\$36.00	\$35.00			
	Soil Residual Herbicide - per SF	\$0.50	\$0.02			

passed

AGENDA ITEM

SUBJECT:

Interagency Agreement with City of Kent for Pacific Highway South Joint Use Stormwater Facility

ATTACHMENTS:

1. Agenda Report from July 17, 2003
2. Landscaping Plan for Kent-Des Moines Road
3. Revised Interagency Agreement

AGENDA OF: July 31, 2003

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: July 25, 2003

CLEARANCES:

[X] Finance

[X] Public Works

[X] Legal

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

Purpose and Recommendation:

The purpose of this item is to enter into an agreement with the City of Kent to cover their participation in the construction and maintenance of the Joint Use Stormwater Detention /Treatment Facility improvements for 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 the construction and maintenance of the Joint Use Stormwater Detention/Treatment Facility improvements for the Pacific Highway South Redevelopment Project and further to authorize the City Manager to sign said agreement substantially in the form as submitted."

Background:

This item to enter into an agreement with Kent for the construction and maintenance of a joint use stormwater detention facility was presented to Council on July 17, 2003 (the report for that meeting is included as Attachment #1). At that meeting Council asked staff to: 1) Add language which gives the City the right to review and approve any contract or procurement process Kent uses should they decide to transfer maintenance responsibilities to a third party; and 2) Add a section which requires that mediation and/or arbitration be the first resource for resolving disputes which cannot be resolved through discussion; and 3) Provide landscaping plans which show what will be seen along the Kent-Des Moines Road pond frontage.

Discussion:

The agreement has been revised and is included as Attachment #3. It includes additional language giving the City the right to review and approve any outsourcing by Kent of the pond maintenance work, and a new section on the use of mediation and arbitration to resolve agreement disputes.

A landscaping plan is included as Attachment #2. This plan details the planting in the buffer area between the pond and Kent-Des Moines Road. In this area, there are 42 Douglas Firs which will be planted approximately 12 feet apart – in double rows in some places. The firs will be 6' to 7' tall when planted. Between the firs and Kent-Des Moines Road is a mixture of 81 Portugal Laurels, 67 Strawberry Trees, 78 Laurustinus, 47 Rockroses, 186 Robusta Rugosa Roses, and 126 Compact Burning Bushes. Behind the vegetation is a black vinyl coated chain link fence surrounding the pond. The bottom of the pond varies between 25 and 50 feet below the height of the existing roadway centerline.

The slope to the bottom of the pond begins approximately 34 feet from the edge of the existing roadway. This setback is intended to ensure that the roadway could be widened to its planned cross-section in the future without impacting the pond itself.

The pond is a peculiar Stealth B-2 Bomber-like shape. The pond shape and location were determined through an analysis of both cities' detention and treatment volume needs. Once the total volume needed was determined, there were only two locations on the site which came close to meeting the volume needs without severely impacting wetlands. The two options were the chosen one, and one that is further down Kent-Des Moines Road near the western edge of the property. The western site was thoroughly evaluated, however it was deemed unfeasible due to an extremely high water table. The combined pond required every inch of space available on the eastern or upper site. The peculiar shape is the result of the need to weave the edges around the existing wetlands, and, yet be as close as possible to get the desired volume.

Alternatives:

The City could elect to purchase alternate property, and design and construct our own separate stormwater facility for the south portion of the Pacific Highway South project, although there are no apparent alternate sites. The choice of sites is limited to the drainage basin that the treated water already flows to. Furthermore, all of the environmental permits for the Pacific Highway South Project were obtained with the written commitment that the pond would be in this location, therefore, updating permits would be required. Since the pond construction is already included in the contract awarded to Ceccanti, a change order would be necessary. The project would likely be delayed.

Financial Impact:

Per this agreement, the City of Kent will contribute the \$660,341.37 value of their land toward the joint use stormwater facility on the City's Pacific Highway South Redevelopment Project. The City of Des Moines will be responsible for the cost of design and construction of the facility. Construction, based on the Ceccanti bid, is expected to cost \$685,500. Future

operation and maintenance costs would be split on a 60% Des Moines, 40% Kent basis, which is consistent with the associated benefit from the facility.

Recommendation/Conclusion:

Staff recommends that we enter into this agreement with the City of Kent for construction and operation of the joint use stormwater facility for the Pacific Highway South Project.

Concurrence:

Legal and Finance are in agreement that the City should enter into these agreements with the City of Kent.

AGENDA ITEM

SUBJECT:

Interagency Agreement with City of Kent for Pacific Highway South Joint Use Stormwater Facility

ATTACHMENTS:

1. Interagency Agreement

AGENDA OF: July 17, 2003

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: July 7, 2003

CLEARANCES:

☒ Finance

☒ Public Works

☒ Legal

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

Purpose and Recommendation:

The purpose of this item is to enter into an agreement with the City of Kent to cover their participation in the construction and maintenance of the Joint Use Stormwater Detention /Treatment Facility improvements for 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 the construction and maintenance of the Joint Use Stormwater Detention/Treatment Facility improvements for the Pacific Highway South Redevelopment Project and further to authorize the City Manager to sign said agreement substantially in the form as submitted."

Background:

A number of years ago, the City of Kent purchased a rather large parcel of land just south of Kent-Des Moines Road at the headwaters of Massey Creek. This land is located in a portion of the City of Kent extending west of the Shopping Center located at the southwest corner of Pacific Highway South and Kent-Des Moines Road. The Kent plan was to use this land for a future stormwater detention/treatment facility for their portion of Pacific Highway South.

Since the City of Des Moines was also doing a Pacific Highway South project and since we needed a stormwater detention/treatment facility at the south end of our project, and since the property appeared to be large enough to accommodate both cities' needs, discussions were held on the possibility of sharing the use of the land. Kent Public Works staff felt that shared use was a good idea, so project planning proceeded with this goal in mind.

ATTACHMENT 1

The original plan was to have two separate facilities on the property, one to serve Des Moines and one to serve Kent. By the time the wetlands were delineated and preliminary soils investigation found high ground water and unstable soil conditions on various portions of the property, it became apparent that the City of Des Moines only had two options, find an alternate site for our facility or move ahead with a single joint use facility on the eastern portion of the land.

Since the upper portion of the Massey Creek Basin is fairly heavily developed, no alternate site at a reasonable cost was apparent. As a result, staff proceeded with a plan to do a joint facility in the only reasonably useable portion of the property. The resultant pond will be large enough to serve the needs of both cities for their respective Pacific Highway South projects. The City of Des Moines will use about 60% of the facility and the City of Kent will use about 40%.

Since this will be a joint use facility, ongoing operation and maintenance must be considered in this agreement. These costs are split on a percentage basis equal to the benefit, thus the 60%/40% split called out in the agreement.

By jointly using this one site, the taxpayers will be well served by minimizing the individual cost to the respective cities. In addition, by intensifying the government use of a single site, more land can remain in private ownership for present and future private development.

Discussion:

The cost of construction work necessary for the stormwater improvements has been included in the City of Des Moines' contract plans and specifications. The work includes construction of the stormwater detention/treatment pond and related sensitive area mitigation. The attached agreement provides for the implementation of this work plus ongoing operation and maintenance, the cost of which will be split on a proportionate basis.

These stormwater-related improvements have been envisioned from this project's inception. The City of Kent, by their commitment in this agreement, show that they are onboard with our vision for the improvement of this corridor.

Alternatives:

The City could elect to purchase alternate property, and design and construct our own separate stormwater facility for the south portion of the Pacific Highway South project, although there are no apparent alternate sites.

Financial Impact:

Per this agreement, the City of Kent will contribute the \$660,341.37 value of their land toward the joint use stormwater facility on the City's Pacific Highway South Redevelopment Project. The City of Des Moines will be responsible for the cost of design and construction of the facility. Construction, based on the Ceccanti bid, is expected to cost \$685,500. Future operation and maintenance costs would be split on a 60% Des Moines, 40% Kent basis, which is consistent with the associated benefit from the facility.

Recommendation/Conclusion:

Staff recommends that we enter into this agreement with the City of Kent for construction and operation of the joint use stormwater facility for the Pacific Highway South Project.

Concurrence:

Legal and Finance are in agreement that the City should enter into these agreements with the City of Kent.

**INTERAGENCY AGREEMENT BETWEEN
THE CITY OF KENT AND THE CITY OF DES MOINES
REGARDING THE PACIFIC HIGHWAY SOUTH HOV LANES PROJECT
JOINT USE STORMWATER DETENTION/TREATMENT FACILITY**

THIS INTERAGENCY 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 21650 11th Avenue South, Des Moines, Washington 98198 (hereinafter called "City of Des Moines").

RECITALS

WHEREAS, the City of Kent is required to construct a stormwater detention/treatment facility for their Pacific Highway South HOV Lanes Project; and

WHEREAS, the City of Des Moines is required to construct a stormwater detention/treatment facility for their Pacific Highway South HOV Lanes Project; and

WHEREAS both the City of Kent's and the City of Des Moines' drainage systems will discharge to the headwaters of Massey Creek within the City of Kent limits; and

WHEREAS the City of Kent recently acquired property within the City of Kent and partially within the City of Des Moines to provide for its detention/treatment facility, a map of this property is attached to this AGREEMENT as Exhibit A; and

WHEREAS the City of Des Moines desires to utilize portions of the Kent acquired property to construct a joint-use detention pond; and

WHEREAS the calculated volume that the City of Des Moines requires within the pond area is 60 percent of the total and the calculated volume that the City of Kent requires within the pond area is 40-percent of the total.

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 STORM WATER DETENTION/TREATMENT FACILITIES

1. The City of Kent will allow the City of Des Moines to utilize 60 percent of the joint-pond area on the City of Kent owned property.
2. The City of Des Moines will perform all work and assume all costs associated with the design and construction of the stormwater detention/treatment facility and associated appurtenances. The pond will be designed to accommodate the City of Kent's and the City of Des Moines' stormwater in accordance with the provisions of the City of Kent's May 2002 *Surface Water Design Manual* and the City of Des Moines' requirements. A preliminary drawing of the stormwater detention/treatment facility contemplated by this AGREEMENT is attached as Exhibit B to this AGREEMENT.

3. The City of Des Moines will submit to the City of Kent and/or other agencies all required permit applications and, prior to start of construction, receive all approvals necessary to construct the stormwater detention facility and appurtenances including approvals from the City of Kent.
4. The City of Des Moines agrees that they will perform all work and assume all costs associated with the design and construction of any required environmental mitigation measures necessitated by the construction of the pond and appurtenances.
5. The City of Des Moines and the City of Kent agree that, after the City of Des Moines completes construction and the City of Kent accepts the construction as complete, the City of Kent will perform periodic maintenance of the pond and its appurtenances. The costs for this maintenance work will be shared between the parties. The City of Des Moines will be responsible for 60-percent of the maintenance costs and the City of Kent will be responsible for 40-percent of the maintenance costs. The labor and material cost for maintenance will be at normal City of Kent rates including associated overhead costs. Should the City of Kent contract for or transfer maintenance responsibilities to a third party, the City of Des Moines will be responsible for 60 percent of the total third party maintenance costs and the City of Kent will be responsible for 40 percent of the total third party maintenance costs.
6. The cost of any future modifications to the stormwater detention/treatment facility required for repair, maintenance, or by any federal, state or local ordinance or requirement shall be shared between the parties at the rate of 60 percent for the City of Des Moines and 40 percent for the City of Kent.

7. The City of Kent reserves the right to surplus or sell the remaining portion of the property not required for the stormwater detention/treatment facility.

B. MISCELLANEOUS

1. Termination Items 1 through 4 of Section A of the AGREEMENT shall terminate on the date that construction of the stormwater detention/treatment facility is completed and both parties have accepted the pond construction as final. Items 5, 6 and 7 of Section A of the AGREEMENT shall remain in force in perpetuity unless modified by a future agreement executed by both parties pursuant to Item 5, Section B of this AGREEMENT.
2. 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.

3. 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 2 of this AGREEMENT.
4. Assignment Any assignment of this AGREEMENT by either party without the written consent of the non-assigning party shall be void.
5. 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.
6. 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.

7. 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

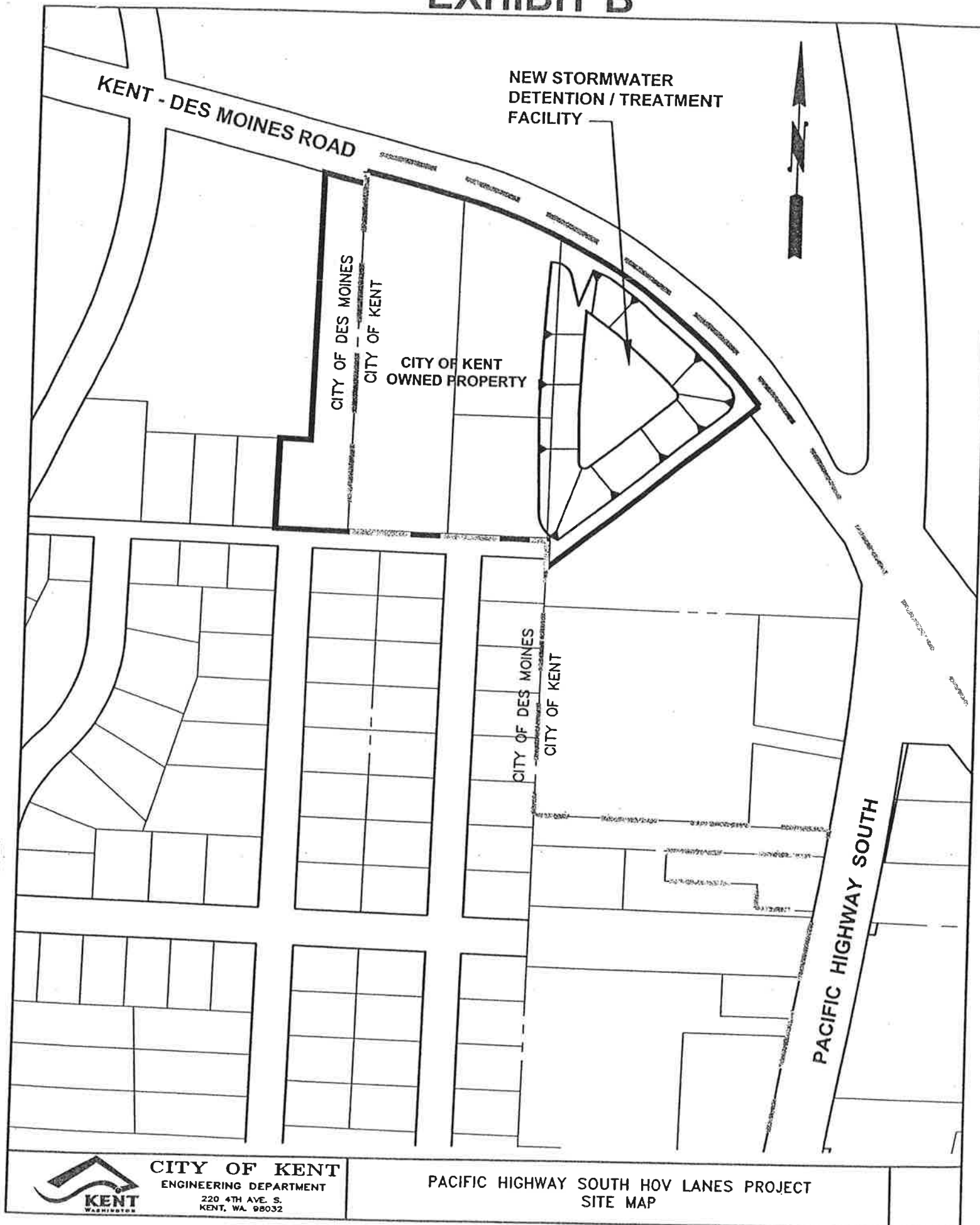
DES MOINES CITY ATTORNEY

4/15/2003 8:56:27 AM



PACIFIC HIGHWAY SOUTH HOV LANES PROJECT VICINITY MAP

EXHIBIT B



3. The City of Des Moines will submit to the City of Kent and/or other agencies all required permit applications and, prior to start of construction, receive all approvals necessary to construct the stormwater detention facility and appurtenances including approvals from the City of Kent.
4. The City of Des Moines agrees that they will perform all work and assume all costs associated with the design, construction and maintenance of any required environmental mitigation measures necessitated by the construction of the pond and appurtenances.
5. The City of Des Moines and the City of Kent agree that, after the City of Des Moines completes construction and the City of Kent accepts the construction as complete, the City of Kent will perform periodic maintenance of the pond and its appurtenances. The costs for this maintenance work will be shared between the parties. The City of Des Moines will be responsible for 60-percent of the maintenance costs and the City of Kent will be responsible for 40-percent of the maintenance costs. The labor and material cost for maintenance will be at normal City of Kent rates including associated overhead costs. In the event that the City of Kent should decide to contract for or transfer maintenance responsibilities to a third party, the City of Des Moines will have the right and opportunity to review and approve any procurement or bidding process and any contract for maintenance responsibilities and, if such a contract for maintenance is ultimately entered into with a third party, the City of Des Moines will be responsible for 60 percent of the total third party maintenance costs and the City of Kent will be responsible for 40 percent of the total third party maintenance costs.
6. The cost of any future modifications to the stormwater detention/treatment facility required for repair, maintenance, or by any federal, state or local ordinance or

requirement shall be shared between the parties at the rate of 60 percent for the City of Des Moines and 40 percent for the City of Kent.

7. The City of Kent reserves the right to surplus or sell the remaining portion of the property not required for the stormwater detention/treatment facility.

B. MISCELLANEOUS

1. Termination Items 1 through 4 of Section A of the AGREEMENT shall terminate on the date that construction of the stormwater detention/treatment facility is completed and both parties have accepted the pond construction as final. Items 5, 6 and 7 of Section A of the AGREEMENT shall remain in force in perpetuity unless modified by a future agreement executed by both parties pursuant to Item 5, Section B of this AGREEMENT.
2. 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.

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with the performance of this AGREEMENT, except for injuries and damages caused by the City of Des Moines' negligence.

3. Resolution of Disputes and Governing Law

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

b. **VENUE, APPLICABLE LAW and PERSONAL JURISDICTION** - Except as otherwise provided by law, it is expressly understood that neither party can institute any legal action against the other based on this Agreement until the parties have exhausted the mediation and arbitration procedures required by the previous paragraph. 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. The parties each consent to the personal jurisdiction of such court. 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 either party's right to indemnification under Item 2, Section B of this AGREEMENT.

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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

A G E N D A I T E M

SUBJECT: Final Draft 2003 Parks,
Recreation and Senior Services Master Plan

ATTACHMENTS:

- A. 2003 Ad Hoc Parks, Recreation and Senior Services Citizens Committee's Priority Projects Funding Overview
- B. 2003 Parks, Recreation & Senior Services Master Plan Project Sheets

AGENDA OF: July 31, 2003

DEPT. OF ORIGIN: Parks, Recreation and Senior Services

DATE SUBMITTED: July 24, 2003

CLEARANCES:

[] Parks, Recreation & Senior Services
Director

APPROVED BY THE CITY MANAGER

FOR SUBMITTAL

Purpose:

The purpose of the agenda item is for the Ad Hoc Parks, Recreation and Senior Services Master Plan Citizens Committee to transmit the revised Draft Master Plan including: policies, projects, funding options and implementation strategies to City Council for final review and to set the date for a Public Hearing on September 11, 2003.

Background:

City Council created an Ad Hoc Parks, Recreation and Senior Services Master Plan Citizens Committee by Resolution in May 2002 to advise City Council on long-range planning, policy and budgetary subjects related to Des Moines Parks, Recreation and Senior Services.

The committee worked with staff to host community workshops and attended numerous neighborhood meetings in July through September 2002 to gain public feedback regarding recreation needs. The committee met as a whole every three weeks to review demographic data, evaluate citizen and user group surveys to create a vision and make recommendations for the 2003 Master Plan. As part of the process the Master Plan Citizens Committee established priorities for parks and open space, recreation and senior services property acquisition, development and ongoing repairs and maintenance of recreation facilities. A comprehensive plan for project funding options was also developed for planned projects.

The Committee's findings and recommendations were presented to City Council for review at the February 27 and April 10, 2003 meetings. City Council members were invited to attend meetings held by the Committee and/or to meet directly with staff to make comments and give input to the Plan. The Plan has been revised to incorporate City Council feedback provided to date.

Discussion:

The 2003 Parks, Recreation and Senior Services Master Plan provides direction for parks, open space, recreation facilities, and services and

New
1

Master Plan Objectives

- 1) Assess the current recreation needs and interests of Des Moines residents
- 2) Provide a vision, goals and priorities for the following areas based on the service needs of Des Moines stakeholders.
- 3) Meet the requirements of the Growth Management Act, Des Moines Comprehensive Plan and Washington State funding agencies through the development of needs analysis and a comprehensive capital planning tool.

Needs Assessment

The Citizens Committee evaluated the distribution of Des Moines parkland based on the city's ten neighborhood planning areas including: North Hill, North Central, Downtown, Central, Pacific Ridge, Zenith, South Des Moines, Woodmont West, Woodmont East and Redondo.

The City of Des Moines has an inventory of 128.5 acres of parkland; 32 of these acres are conservancy acres with no developed recreational features. Adding school land to the city inventory increases the city land inventory by 48.6 acres that are usable for recreational purposes. New land acquisitions proposed in the 2003 Master Plan would increase the combined City recreational acreage by 5 acres (to approximately 150 acres) to provide an acres-to-population ratio of approximately 4.5 acres/1,000 population. Salt Water State Park located between the Zenith and Woodmont West areas of Des Moines adds 88 acres of both conservancy and recreational land making a significant contribution to Des Moines quality of life.

The following chart shows the distribution of parkland in each of the city's ten neighborhoods that contributes to the overall park system.

City of Des Moines Park Distribution

Service Area	Service Area Population	Developed City Park Acres	School Acres	State Acres	Undeveloped Conservancy & ROW Acres	Des Moines Standard 8.5 Ac./ 1,000 Population	-Below or +Above Standard
North Hill	5,069	1.4	8.5	0	.14	43.09 Acres	-33.19 Acres
North Central	60	25.79	0	0	0	5.10 Acres	+20.69 Acres
Downtown	1,117	37.1	0	0	.1	9.5 Acres	+27.6 Acres
Central Des Moines	7,297	14.69	20.8	0	0	62.03 Acres	-26.54 Acres
Pacific Ridge	2,932	1.6	0	0	.1	24.93 Acres	-23.33 Acres
Zenith	4,267	6	0	0	.1	36.27 Acres	-30.27 Acres
South Des Moines	4,793	4.4	12	0	23.3	40.74 Acres	-24.34 Acres
Woodmont West	1,734	0	0	88	8.7	14.74 Acres	+73.26 Acres
Woodmont East	5,140	0	7.1	0	0	43.69 Acres	-36.59 Acres
Redondo	1,567	5.09	0	0	0.1	13.32 Acres	-8.23 Acres
Total Service Area Acres	33,976 Population	96.07 Dev. Acres	48.6 Dev. Acres	88 State Acres	32.2 Cons. Acres	293.41 Acres	-60.94 Acres

Capital Policy Recommendations

Based on Council input the Committee revised its Capital Policy Recommendations as follows:

1. Dedicate a sustainable portion of Real Estate Excise Tax as an ongoing capital funding source for the major capital maintenance of existing recreation buildings and park facilities.
2. Consider Levy Lid Lift funding for multiple park projects throughout Des Moines. A Citizen Voted Bond Issue to fund the future Community Center project should be postponed until improved economic times.
3. Actively seek joint use and shared cost opportunities such as: Interlocal agreements with other governmental agencies, collaborative opportunities with interdepartmental projects, public/private partnerships and volunteerism to develop and maintain parks and facilities.
4. Support economic development (especially in the downtown, Port of Seattle buyout area and Pacific Highway) through creation of a more aesthetically pleasing environment such as: city gateways and signage to include directional road signs to recreational facilities, well kept streetscapes, banners, and flower baskets.
5. Provide adequate parking at all recreational facilities.
6. Support Marina and Redondo Waterfront Improvement Plans capitalizing on Des Moines best recreational features, its waterfront amenities.

To meet the above recommendations, the Committee proposes the following:

1. With traffic mitigation fees to be initiated in Des Moines in 2005 and the continued appropriation of King County transportation funds, the Committee recommends that funds taken from parks projects and reprogrammed to arterial streets through the 2003 Capital Improvement Program process, be returned from arterial street projects to park projects as needed to accomplish Urgent Master Plan needs.
2. The city's investment in the remodeled Activity Center may fill the need for a Community Center for the next decade or until Des Moines' economic picture improves. The Committee recommends that property acquired at Steven J. Underwood Memorial Park on 24th Avenue South and South 220th Street should be utilized for the construction of a soccer field to complete Steven J. Underwood Memorial Park.

Alternatives:

The Plan objective is to locate, acquire, develop and improve a good distribution of both neighborhood and citywide recreation and open space areas that provide for a variety of easily accessible recreation opportunities for all Des Moines citizens.

The Ad Hoc Master Plan Citizens Committee received direction from City Council regarding the following policy issues:

Project Priorities - Master Plan projects have been prioritized into three categories. Priority One projects correspond to the 2003-2008 Capital Improvement Plan. Priority Two and Priority Three projects are important projects that should be planned for implementation between 2004-2014 as opportunities become available (e.g., annexation, interlocal agreement, or alternative funding). (See Attachment B. 2003 Parks, Recreation and Senior Services Master Plan Project Sheets).

Issues requiring urgent resolution:

1. Update the Beach Park Master Plan to resolve the following issues: historic building restoration, trail head design for Des Moines Creek Trail and improved pedestrian and vehicular connection with the Marina.
2. Improve amenities at Des Moines Activity Center such as: ADA accessible walkway from the building to S. 216th Street, acoustical baffles for interior noise mitigation, facility landscaping and patio.
3. Make requested safety improvements to Midway Park such as: lighting, play equipment area renovation and provide ADA access. Cooperate with Puget Sound Energy to expand sports field on adjacent property.
4. Complete Steven J. Underwood Memorial Park to include: Phase IB restrooms and Phase II sports field lighting and construction of a soccer field.
5. Make repairs and provide routine and preventative maintenance at city parks and recreational buildings system-wide as identified in the Master Plan such as: plumbing, electrical and mechanical updates, irrigation repairs, play equipment replacement and ADA access, picnic shelter and kiosk repairs, lighting fixture repair or replacement, walkway and pathway repairs, fencing improvements and painting, refinishing or replacing building exteriors, interiors and flooring.

The total cost to fund *Urgent Priority 1 Master Plan Projects* is \$2,081,558. The cost to fund *Other Priority 1 Projects* as revised by the Committee is an additional \$742,379 for a total of \$2,994,377. The cost to fund *Other Priority Master Plan Projects* would increase the total cost by an additional \$2,088,067. (See Attachment A).

Project Funding Options and Timeline - The Draft Master Plan proposes a multi-year approach to address Parks, Recreation and Senior Services *Urgent Priority 1 Master Plan Projects*, *Other Priority 1 Projects* and *Other Priority Projects*. Proposed funding sources include:

Urgent Priority 1 Master Plan Projects

- Change Park Projects funded in the 2004-2008 Municipal Capital Improvement Fund totaling \$1,258,728 and Other TBD Funds totaling \$7,312,160 to Urgent Priority 1 Master Plan Projects.
- Take some of the appropriations in the 2004-2008 Municipal Capital Improvement (MCI) Fund in the amount of \$823,270 scheduled to be transferred to Arterial Streets and keep in the MCI for Urgent Priority 1 Master Plan Projects.
- Add new 2004-2008 "project specific" grants in the amount of \$190,000 to Urgent Priority 1 Master Plan Projects.

Other Priority 1 Projects

- Take additional appropriations available in the 2006-2008 MCI in the amount of \$442,379 to fund Other Priority 1 Master Plan Projects.
- Program new 2009 MCI Funds in the amount of \$300,000 to Other Priority 1 Master Plan Projects.
- Consider a voted Levy Lid Lift of \$.05 or more as a funding source for Master Plan Priorities and as a sustainable source of park and facility maintenance and operations money.
- Consider a Bond ballot measure as a source of revenue for a future Community Center as improved economic conditions allow (10-15 years).

Other Priority Projects

- Program new 2009 and beyond MCI Funds in the amount of \$2,088,067 to Other Priority Master Plan Projects.
- Consider a voted Levy Lid Lift of \$.05 or more as a funding source for Master Plan Priorities and as a sustainable source of park and facility maintenance and operations money.

Project Implementation- Implementation of the Master Plan will require a great deal of interlocal collaboration, joint planning, and a commitment of financial resources from numerous sources. The Ad Hoc Parks, Recreation and Senior Services Advisory Committee recommends a Parks and Recreation Advisory Committee be appointed by City Council to provide ongoing advise to the city regarding Master Plan implementation. The Committee would assist the Parks, Recreation and Senior Services Department as liaisons with school districts, Highline Community College, neighboring cities, King County, local utility districts, Washington State and Des Moines residents and businesses to achieve the Plan.

Financial Impact:

An updated Priority Projects Funding Overview is attached (see attachment A) which shows the existing 2004-2008 Municipal Capital Improvements Fund approved by City Council in 2003, an overview of Priority 1 Urgent Master Plan Projects, Priority 1 Other Master Plan Projects, Other Master Plan Projects and proposed project revenues.

Recommendation/Conclusion:

The Ad Hoc Parks, Recreation and Senior Services Master Plan Citizens Committee recommends that the Des Moines City Council accept the transmitted Draft 2003 Parks, Recreation and Senior Services Master Plan and direct the Ad Hoc Master Plan Citizens Committee and staff to prepare a final Draft Master Plan for a Public Hearing to be held on September 11, 2003. Following the Public Hearing and City Council adoption the Plan would become an element of the City's Comprehensive Plan.

Concurrence:

The Ad Hoc Parks, Recreation and Senior Services Master Plan Citizens Committee provided a community process whereby the Master Plan was developed and refined. Mayor Steenrod and Councilmembers Sheckler and Thomasson requested changes to the Plan and/or provided additional input to the Plan. Interdepartmental involvement included: City of Des Moines Administration, Community Development, Marina, Finance, Police, Public Works and Parks, Recreation and Senior Services Departments. The neighboring cities of Kent, Federal Way and SeaTac and Highline and Federal Way School Districts provided advice regarding existing and future recreational resources impacting Des Moines and the greater South King County area. The Parks, Recreation and Senior Services Master Plan was not assigned to a City Council Committee but addressed by the City Council as a whole.

**2003 Parks, Recreation and Senior Services
Master Plan
Priority Projects Funding Plan**

CIP PROJECTS APPROVED 2004-2008				2004	2005	2006	2007	2008	2009	Funding Sources Notes
	Steven J. Underwood Memorial Park Phase --1B	Community Center		\$160,512				\$6,643,440		MCI
	Steven J. Underwood Memorial Park Phase --II	Parks Play Equipment Repairs & Replacement		\$78,410	\$858,720 \$161,930	\$360,000 \$145,016	\$72,420	\$60,440		Bond Issue, Other ? Other?
TOTAL	PARKS & RECREATION MCI PROJECTS			\$238,922	\$1,020,650	\$505,016	\$72,420	\$6,703,880		MCI, CDBG, IAC Grants
	2004-2008 MCI Park Revenues Budgeted:									
	Park In Lieu Fees			\$55,000	\$50,000	\$50,000		\$100,000		\$255,000 Park In Lieu Fees
	REET			\$118,922	\$96,930	\$125,016	\$62,420	\$60,440		\$463,728 REET
	CDBG (Project Specific)			\$65,000	\$65,000					\$130,000 CDBG (Project Specific)
	GRANTS (Project Specific)				\$250,000	\$120,000	\$10,000			\$380,000 GRANTS (Project Specific)
	OTHER REVENUE/To be Determined				\$558,720	\$210,000		\$6,543,440		\$7,312,160 To Be Determined
TOTAL	CIP FUNDS AVAILABLE			\$238,922	\$1,020,650	\$505,016	\$72,420	\$6,703,880		\$8,540,888

ITEM # PRIORITY-1- URGENT MASTER PLAN PROJECTS				2004	2005	2006	2007	2008	2009	Funding Sources Notes
1. a	Activity Center Acoustics, Walks & Landscaping			\$39,000	\$56,672					Reprogrammed Funds Request
1. b	Activity Center Sidewalk to 216th & Patio			\$75,000						Reprogrammed Funds Request
2. a	Beach Park Master Plan						\$68,200			Reprogrammed Funds Request
2. c	Beach Park (Play Area, Paths, Picnic Shelter, Restroom Repair)									MCI Funded Project
3. a	Midway Park Play Area Improvements			\$81,000						MCI Funded Project
3. b	Midway Park Expansion			\$62,200						Reprogrammed Funds Request
4. a	Underwood Park Phase IB- 1 Field & Restrooms			\$160,400						MCI Funded Project
4. b	Alternate IB Lighting for 1 field				\$539,543	\$539,543				MCI (IAC Grant Funding Request)
4. c	Underwood Phase II Soccer Field \$1,079,085			\$760,000	\$300,000					Reprogrammed Funds Request
	(Additional Ballfield Lights \$300,000)									MCI (IAC Grant Funding Request)
Sub Total - Urgent Projects Expenditures				\$577,600	\$896,215	\$539,543	\$68,200	\$0	\$0	\$2,081,558
	Proposed Urgent Project Revenues:									
	Reprogrammed from Approved 2004-2008 Park Projects- Park In Lieu Fees			\$55,000	\$50,000	\$50,000				\$155,000 Park In Lieu Fees
	REET			\$118,922	\$96,930	\$125,016	\$62,420			\$403,288 REET
	CDBG (Project Specific)			\$65,000	\$65,000					\$130,000 CDBG (Project Specific)
	New Project Funding- Add Grants/Donations (Project Specific)			\$160,000	\$300,000	\$100,000	\$10,000			\$570,000 Grants (Project Specific)
Sub Total- Urgent Project Revenues				\$398,922	\$511,930	\$275,016	\$72,420			\$1,258,288
Additional Reprogrammed MCI/Other Funds Requested				\$178,678	\$384,285	\$264,527	-\$4,220			\$823,270 MCI Reprogrammed

**2003 Parks, Recreation and Senior Services
Master Plan
Priority Projects Funding Plan**

ITEM #	PRIORITY 1- OTHER MASTER PLAN PROJECTS	2004	2005	2006	2007	2008	2009	Funding Sources Notes
2.b.	Beach Park Restoration Project							Reprogrammed Funds Request
5.	Field House Park Improvements			\$78,570		\$200,000	\$300,000	MCI Funded Project
6.	Cecil Powell Park Improvements			\$41,680				MCI Funded Project
7.a	Parkside Park Play Area Improvements			\$66,100	\$81,150			MCI Funded Project
7.b	Parkside Park Walks & Sports court				\$42,770			Reprogrammed Funds Request
8.	Wootton Park Improvements					\$27,949		MCI Funded Project
9.	Kiddle Park Improvements					\$2,600		MCI Funded Project
10.	Westwood Park Improvements					1,000		Reprogrammed Funds Request
11.	Water Tower Park Improvements					\$71,000		Reprogrammed Funds Request
12.a	Zenith Park Play Equipment							MCI Funded Project
13.	Community Center (deferred to 2015)							Voted Bond- Ad Hoc Postponed
Sub Total- Other Priority 1 Projects Expenditures		\$0	\$0	\$186,350	\$123,920	\$302,549	\$300,000	\$912,819
Proposed Other Project Revenues:								
Reprogram from Approved 2004-2008 Park Projects-								
	Park In Lieu Fees				\$50,000	\$50,000		\$100,000 Park In Lieu Fees
	REET					\$60,440		\$60,440 REET
	CDBG (Project Specific)							\$10,000 Grants (Project Specific)
	Grants/Donations (Project Specific)							\$300,000 New MCI
	New Project Funding-							
	New 2009 MCI Funds						\$300,000	
	Park In Lieu Fees			\$0	\$60,000	\$110,440		
Sub Total- Other Priority 1 Project Revenues		\$0	\$0	\$0	\$63,920	\$192,109	\$300,000	\$470,440
Additional Reprogrammed MCI/Other Funds Requested				\$186,350	\$63,920	\$192,109	\$0	\$442,379 MCI Reprogram/Other

ITEM #	OTHER PRIORITY MASTER PLAN PROJECTS	2004	2005	2006	2007	2008	2009	Funding Sources Notes
14.	Regional Aquatics Facility- priority 1	\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	
12.b	Zenith Park Additions- priority 3						\$261,464	
15.	Des Moines Creek Trail - Phase II- priority 1						\$200,000	
16.a	East Woodmont Park- priority 2						\$300,000	
16.b	East Woodmont Park- priority 2						\$447,126	
17.a	Pacific Ridge Park- priority 2						\$200,000	
17.b	Pacific Ridge Park- priority 2						\$229,477	
Sub Total - Other Projects Expenditures		\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	\$1,713,067	\$2,088,067
Sub Total - Other Projects Revenues (To be Determined)		\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	\$1,713,067	\$2,088,067
Additional MCI/Other Funds Requested		\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	\$1,713,067	\$2,088,067 MCI /Other

TOTAL URGENT PRIORITY 1 PROJECTS	\$577,600	\$896,215	\$539,543	\$68,200	\$0	\$0	\$0	\$2,081,558
TOTAL PRIORITY 1- OTHER MASTER PLAN PROJECTS	\$0	\$0	\$186,350	\$123,920	\$302,549	\$300,000	\$912,819	
TOTAL OTHER PRIORITY MASTER PLAN PROJECTS	\$75,000	\$75,000	\$75,000	\$75,000	\$75,000	\$1,713,067	\$2,088,067	
TOTAL ALL PROJECTS (#1-17)	\$652,600	\$971,215	\$800,893	\$267,120	\$377,549	\$2,013,067	\$5,082,444	

2003 LEVY LID LIFT DOLLARS AVAILABLE

Increase	Rate per \$1,000	Total	\$ Increase	10 years	20 years	30 years
\$0	1.32782	\$2,602,360	0	0	0	0
\$0.05	1.37782	\$2,699,314	96,954	\$959,540.00	\$1,939,080.00	\$2,908,620.00
\$0.10	1.42783	\$2,798,000	195,912	\$1,959,120.00	\$3,918,240.00	\$5,877,360.00
\$0.15	1.47783	\$2,895,246	293,868	\$2,938,680.00	\$5,877,360.00	\$8,816,040.00
\$0.20	1.52783	\$2,993,642	391,824	\$3,918,240.00	\$7,836,480.00	\$11,754,720.00
\$0.25	1.57783	\$3,091,158	489,780	\$4,897,800.00	\$9,795,600.00	\$14,693,400.00
\$0.27	1.60000	\$3,134,817	528,963	\$5,289,630.00	\$10,579,260.00	\$15,868,890.00

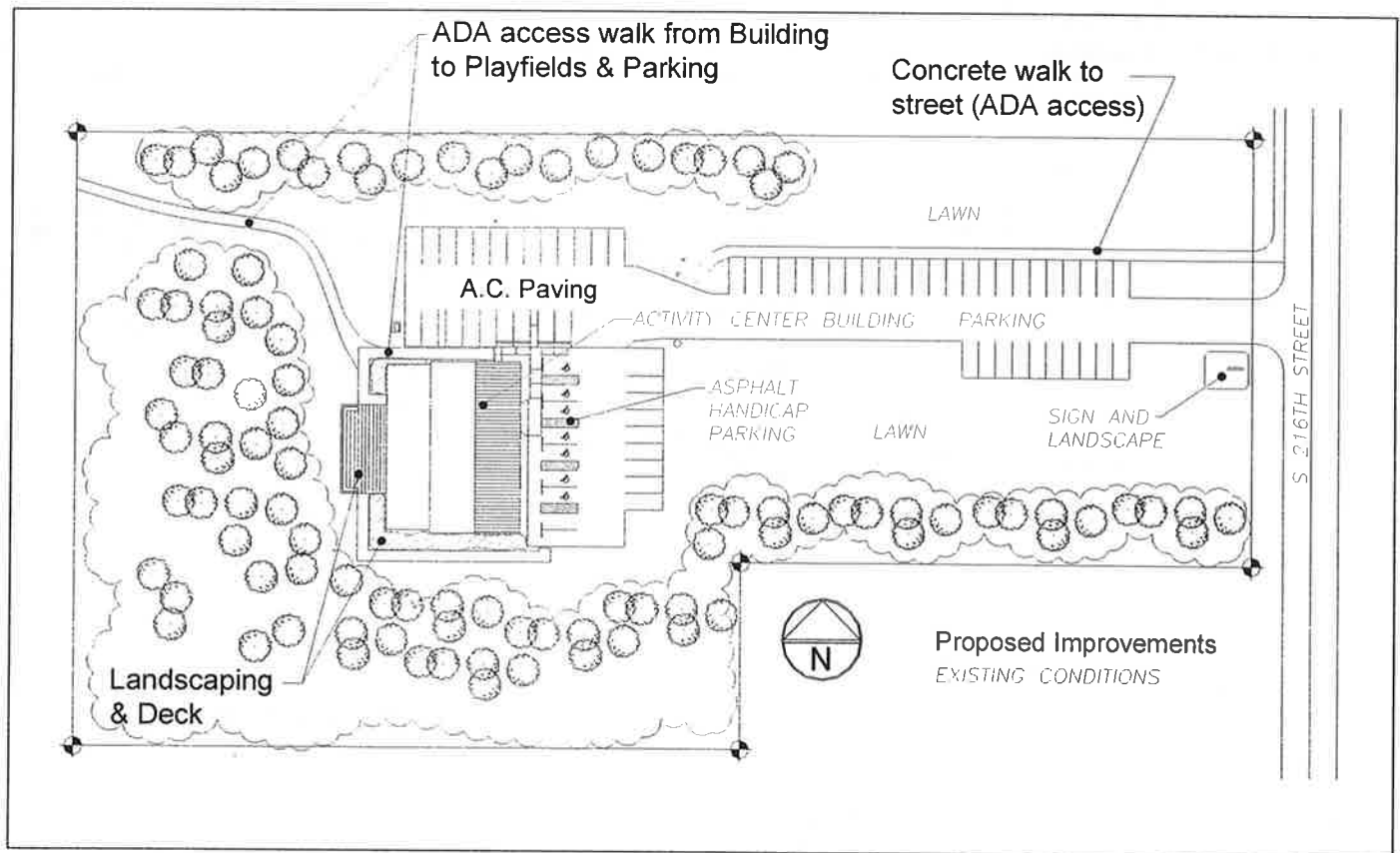
Based on 2003 Assessed Value \$1,959,119.508

PROJECT #1

Des Moines Parks, Recreation and Senior Services Master Plan

Des Moines Activity Center

Address:	2045 South 216 th Street
Size:	4.1 Acres
Zoning:	Residential; Suburban Estates
Park Classification:	Indoor Recreation Facility
Description:	The Activity Center is a multi-purpose facility primarily for use as an interim site (5-10 years) for senior service programs, meetings, art classes, dancing, and other active and passive activities. Secondary use is for community recreation. This facility may be demolished in the future, if a new Community Center is built on city property located at 24 th Avenue South.
Goal:	Indoor facility for passive and active indoor recreation
Existing Facilities:	Renovated interior spaces, parking improvements and access to community park for walking trails and sports.
Proposed Improvements:	Exterior improvements: 1.A. ADA pathways, parking improvements, landscaping, and 1.B. deck or patio, parking lot lighting, and walkway to 216 th Street. Interior improvements: 1.C. Wall divider system, entryway awning, interior acoustical banners, security alarm system. Future street frontage improvements: 1.D. depending on City Council project recommendations.



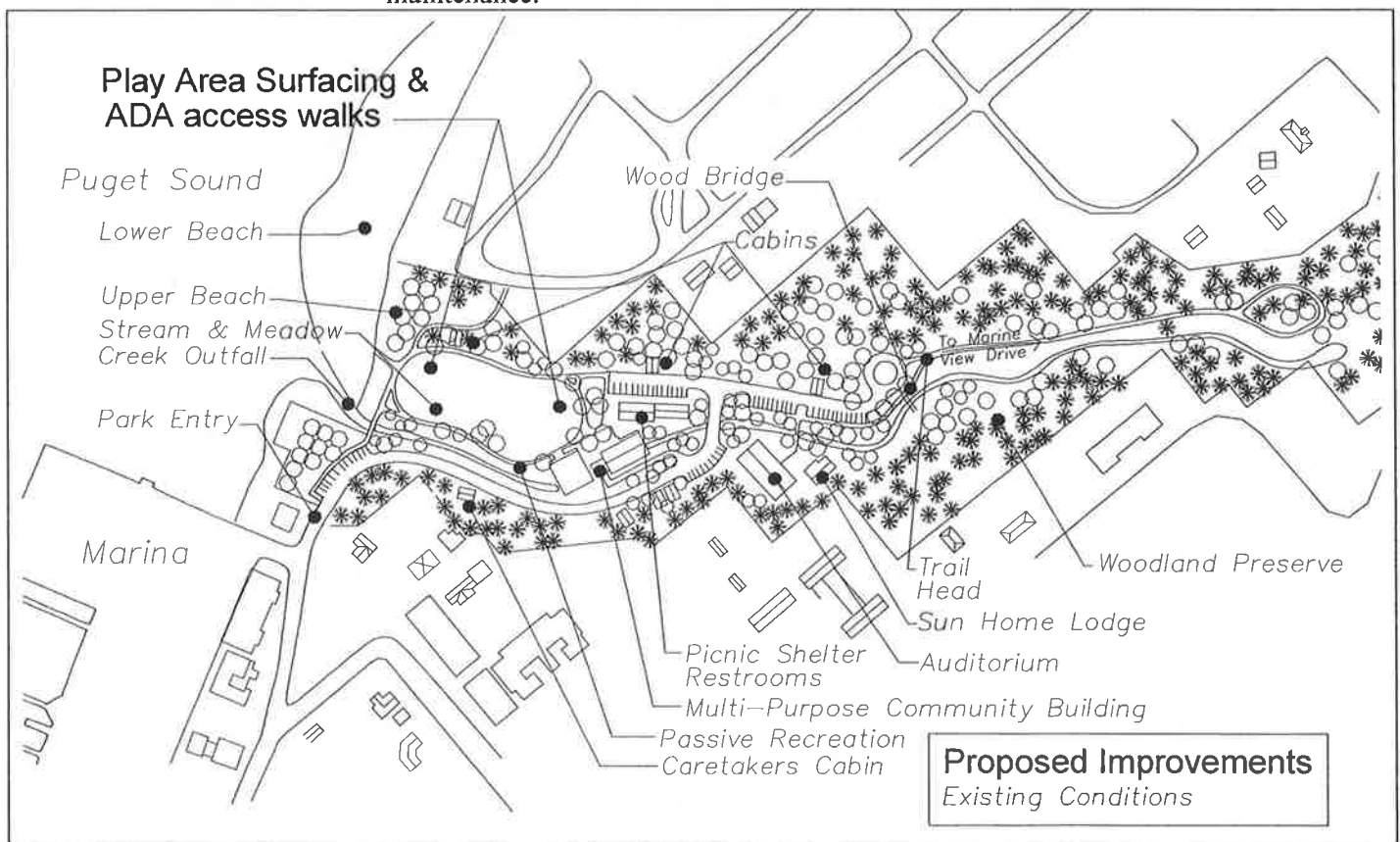
Design & Construction Cost:	1(a) \$48,500; 1(b) \$56, 672, 1(c) \$30,000, 1(d) TBD
Maintenance Level:	I
Existing Annual Maintenance Cost:	Not determined
Annual Maintenance Cost for Proposed Improvements:	1(a) \$8,000

PROJECT #2

Des Moines Parks, Recreation and Senior Services Master Plan

Des Moines Beach Park

Address:	22030 Cliff Avenue South
Size:	22.3 acres
Zoning:	Residential; Suburban Estates
Park Classification:	Community Park
Description:	Des Moines Beach Park is a multi-purpose park providing public access to Puget Sound tidal flats and Des Moines Creek. The park is the future trailhead of the Des Moines Creek Trail. The park is located at the north end of Cliff Drive and the Marina.
Goal:	Waterfront recreation
Existing Facilities:	Historic recreation buildings, Founders Lodge, Dining Hall, Sun Home Lodge, picnic shelter/restrooms building; and two small cabins. Other recreation buildings: auditorium, two caretaker cabins. Park facilities: Beach tidelands, non-motorized boat launch area, meadow area, Des Moines Creek, 50 parking stalls, walkways, trail head for Des Moines Creek Trail.
Proposed Improvements:	Update 1989 Master Plan to evaluate future park and building uses and waterfront improvements. All buildings, park amenities and walkways are in need of repair or maintenance.

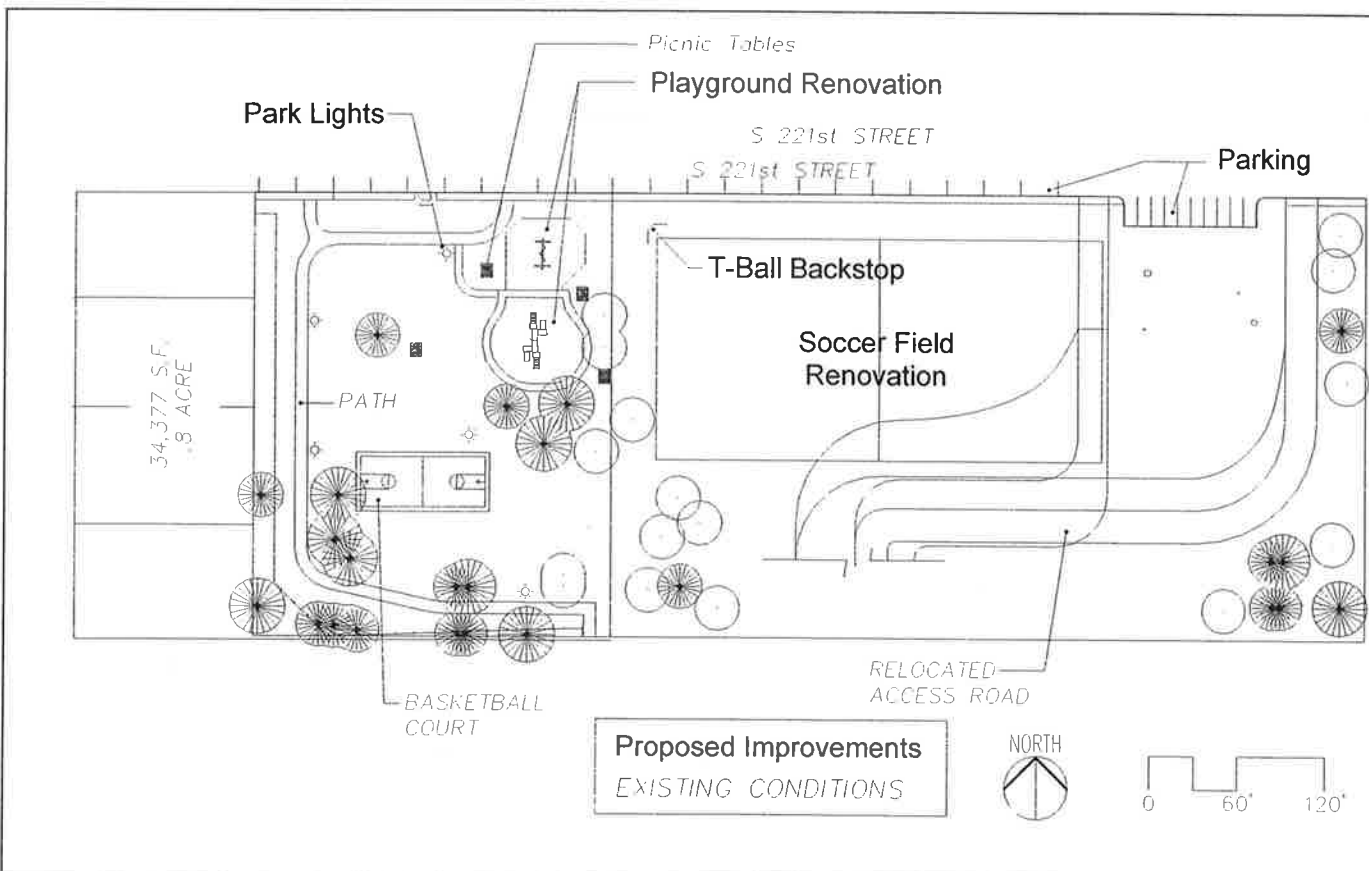


Master Plan:	2(a)\$75,000.00
Design & Construction Cost:	2(b)\$1M-2M- Future park renovations 2(c)\$68,200 – Play area repairs and resurfacing, restore walkways to ADA standards
Maintenance Level:	I
Existing Annual Maintenance Cost:	\$120,000.00
Annual Maintenance Cost for Proposed Improvements:	2(c)\$6,000

Des Moines Parks, Recreation and Senior Services Master Plan

Midway Park

Address:	2900 221 st Street
Size:	1.6 Acres
Zoning:	Residential; Suburban Estates
Park Classification:	Neighborhood Park
Description:	Midway Park is a small neighborhood park with play equipment, sports court, picnic tables, and walking paths. A lawn playfield is located on Puget Sound Energy property to the east of the park.
Goal:	Neighborhood recreation
Existing Facilities:	Two play areas (youth and pre-teen play levels, basketball court, picnic tables and on street parking.
Proposed Improvements:	Park Improvements: 3.A. Park lighting, pathway improvements, play equipment relocation, renovation and surfacing materials and drinking fountain; 3.B. Park expansion onto Puget Sound Energy Midway Switching Station property with an irrigated multi-use sports field and potential for future parking improvements. Future Park Expansion: 3.C. Acquisition of four lots on west side of park; 3.D. Development of park expansion to West (see Pacific Ridge Prototypical Park).



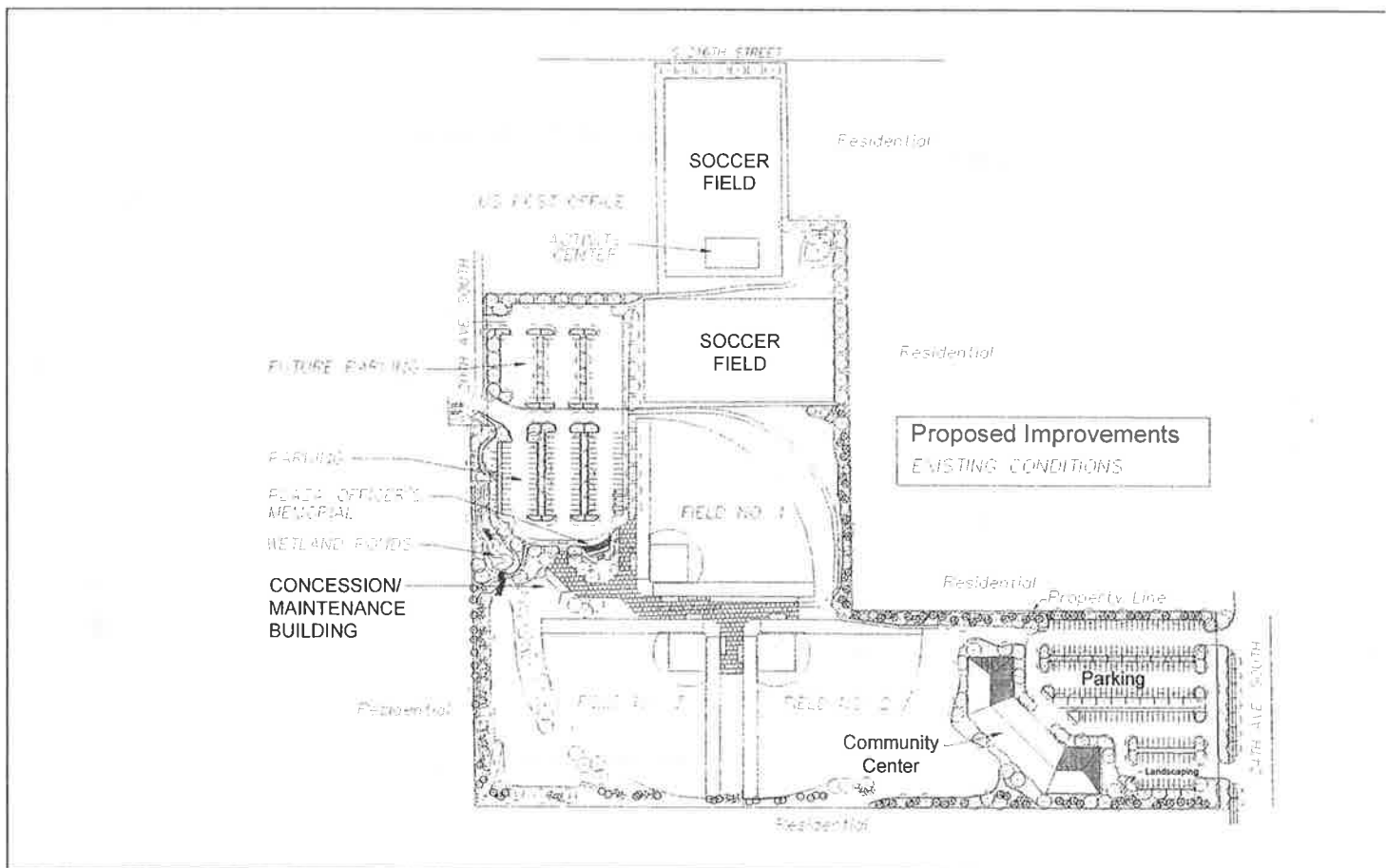
Land Acquisition:	3(c) Undetermined
Design & Construction Cost:	3(a) \$81,000; 3(b) \$62,200; 3(d) Undetermined
Maintenance Level:	II
Existing Annual Maintenance Cost:	\$9,000
Annual Maintenance Cost for Proposed Improvements:	3(a) \$6,000; 3(b) \$12,000, 3(d) \$6,000

PROJECT #4

Des Moines Parks, Recreation and Senior Services Master Plan

Steven J. Underwood Memorial Park

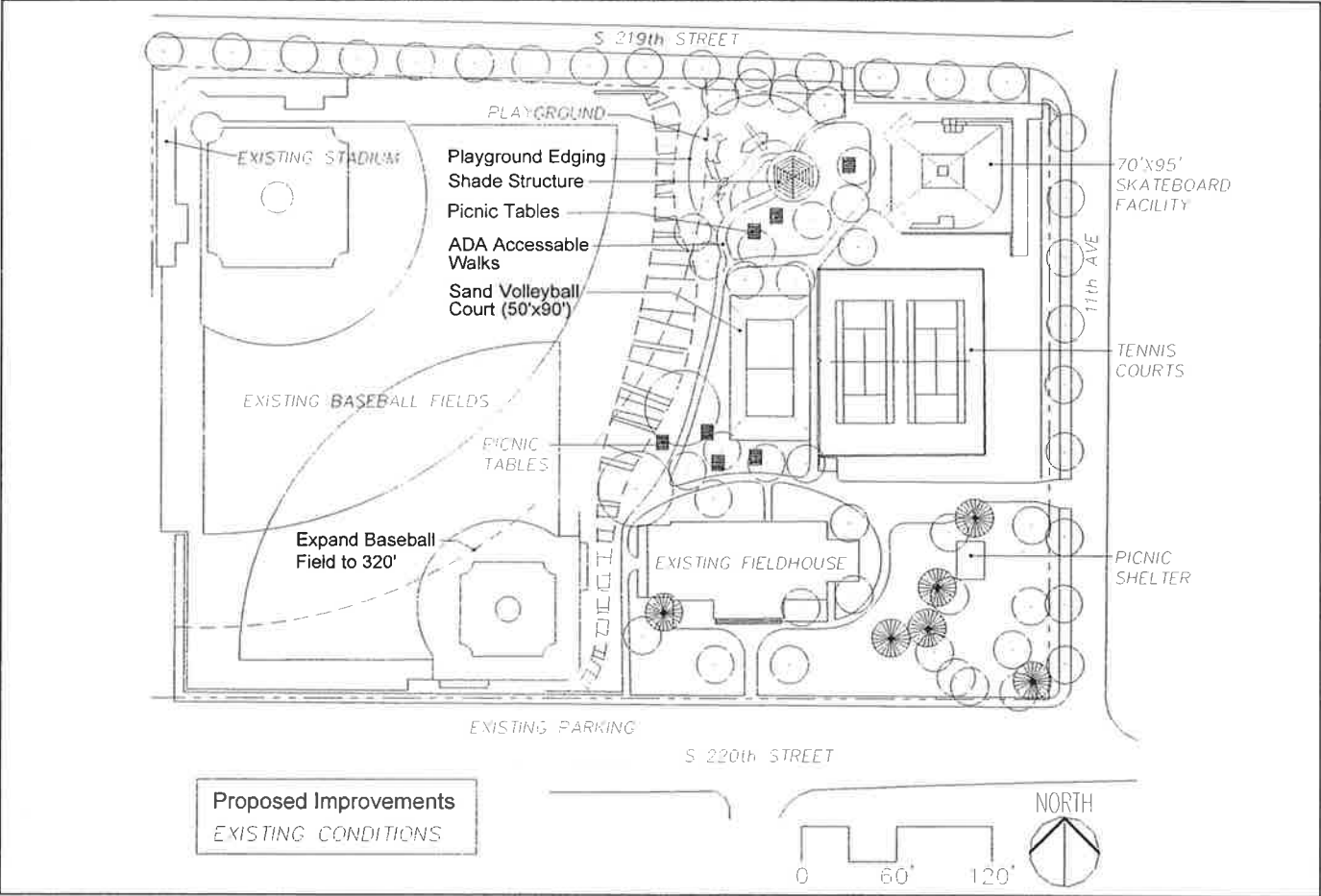
Address:	21800 20 th Avenue South
Size:	20 Acres
Zoning:	Residential
Park Classification:	Community Park; Sports Complex
Description:	The first phase of this sports complex includes two competition softball fields, storm pond retention, parking, paver plaza, and a walking trail around the site.
Goal:	Community Recreation, League and Tournament Sports
Existing Improvements:	Site: Des Moines Activity Center (access at 2045 S. 216 th Street), Park Phase I— Two competition softball fields, memorial plaza, and 100 parking stalls
Proposed Improvements:	Phase IB – 13.A. One competition softball field, restrooms, 13.B. field lights (optional). Phase II – 13.C. One competition soccer field, field lights, and parking. The site of future soccer fields is contingent on City Council project recommendations regarding the Activity Center (Interim Senior Center) and the site of the proposed Community Center.



Design & Construction Cost:	13(a) Phase IB - \$393,700; 13(b)– Lighting - \$460,000 13(c) Phase II - \$1,079,085
Maintenance Level:	I
Existing Annual Maintenance Cost:	\$50,000
Annual Maintenance Cost for Proposed Improvements:	13(a) \$12,000; 13(c) \$14,000

Des Moines Field House Park

Address:	1000 South 220 th Street
Size:	5.2 acres
Zoning:	Residential; Suburban Estates
Park Classification:	Community Park
Description:	The Des Moines Field House is the only city-owned indoor activity facility/gymnasium. The WPA-built log field house has been designated a King County Historic Landmark. The City of Des Moines Park and Recreation Department administrative offices are located in the Field House.
Goal:	Community recreation
Existing Facilities:	Historic features: Field House (indoor gym, community rooms and offices), softball stadium and picnic shelter. Other park amenities include: play equipment, skateboard facility, picnic tables. Proposed Park Improvements: 6.A. volleyball court, shade structure, play equipment improvements, and ADA access and pathway improvements. 6.B. Field House interior improvements funded with Community Development Block Grant Funds: Electrical and mechanical upgrades, doors and door hardware and drainage repairs. Future Park Improvements: 6.C. Expand Field #1 outfield to 320' for baseball.

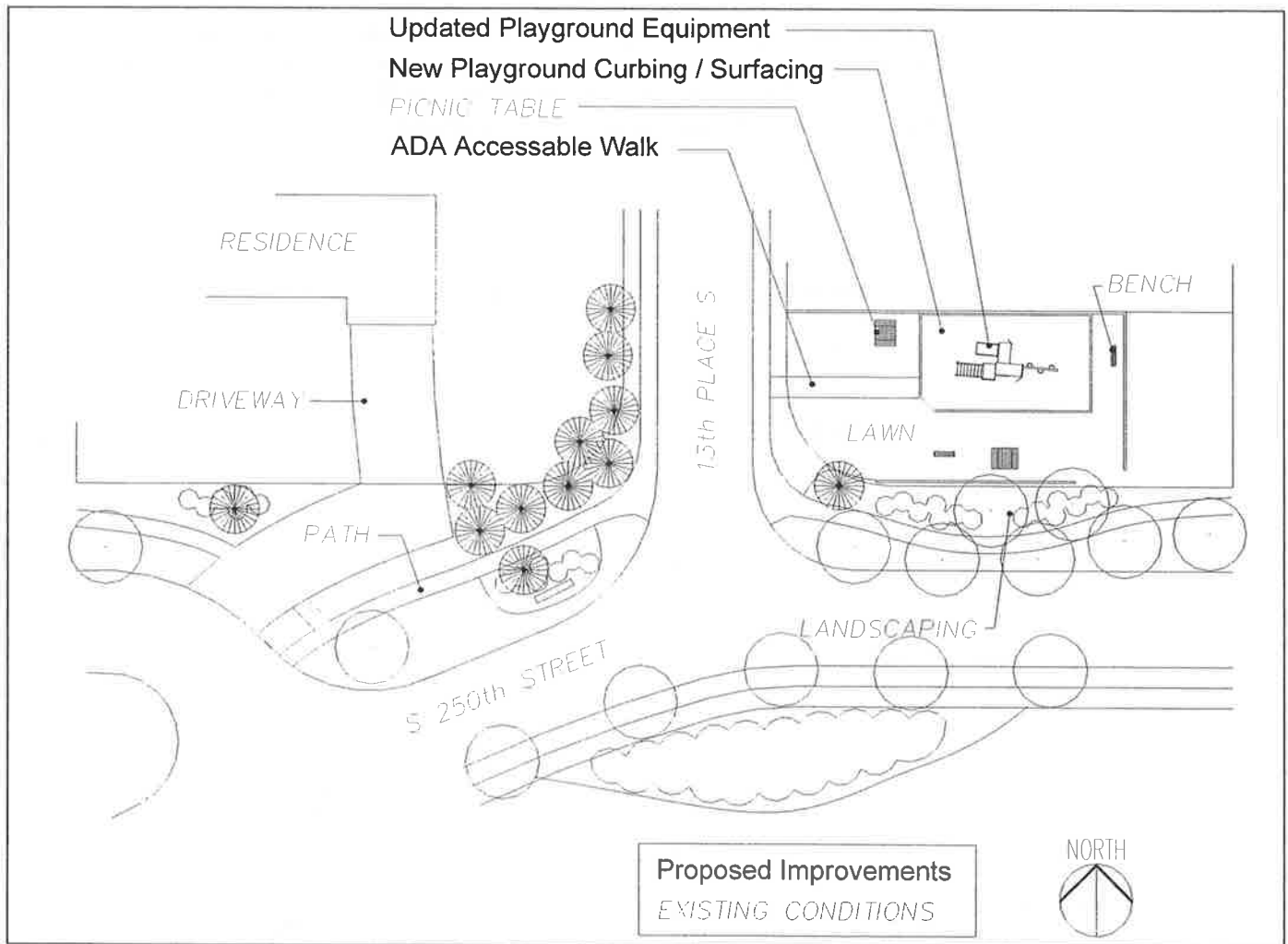


Design & Construction Cost:	6(a)\$78,570 (park); 6(b)\$160,000 (Building CDBG); 6(c) undetermined
Maintenance Level:	I
Existing Annual Maintenance Cost:	\$45,000
Annual Maintenance Cost for Proposed Improvements:	\$6,000

Des Moines Parks, Recreation and Senior Services Master Plan

Cecil Powell Park

Address: 1300 S. 250th Street
 Size: 0.2 acres
 Zoning: Residential
 Park Classification: Mini-Park
 Description: Cecil Powell Park is a small neighborhood play area for children and families with play equipment, lawn, and benches.
 Goal: Neighborhood Park
 Existing Facilities: Open lawn, play equipment, benches and landscape areas.
 Proposed Improvements: Replace play equipment and surfacing material and construction of curbing and walkway for ADA access to play equipment.



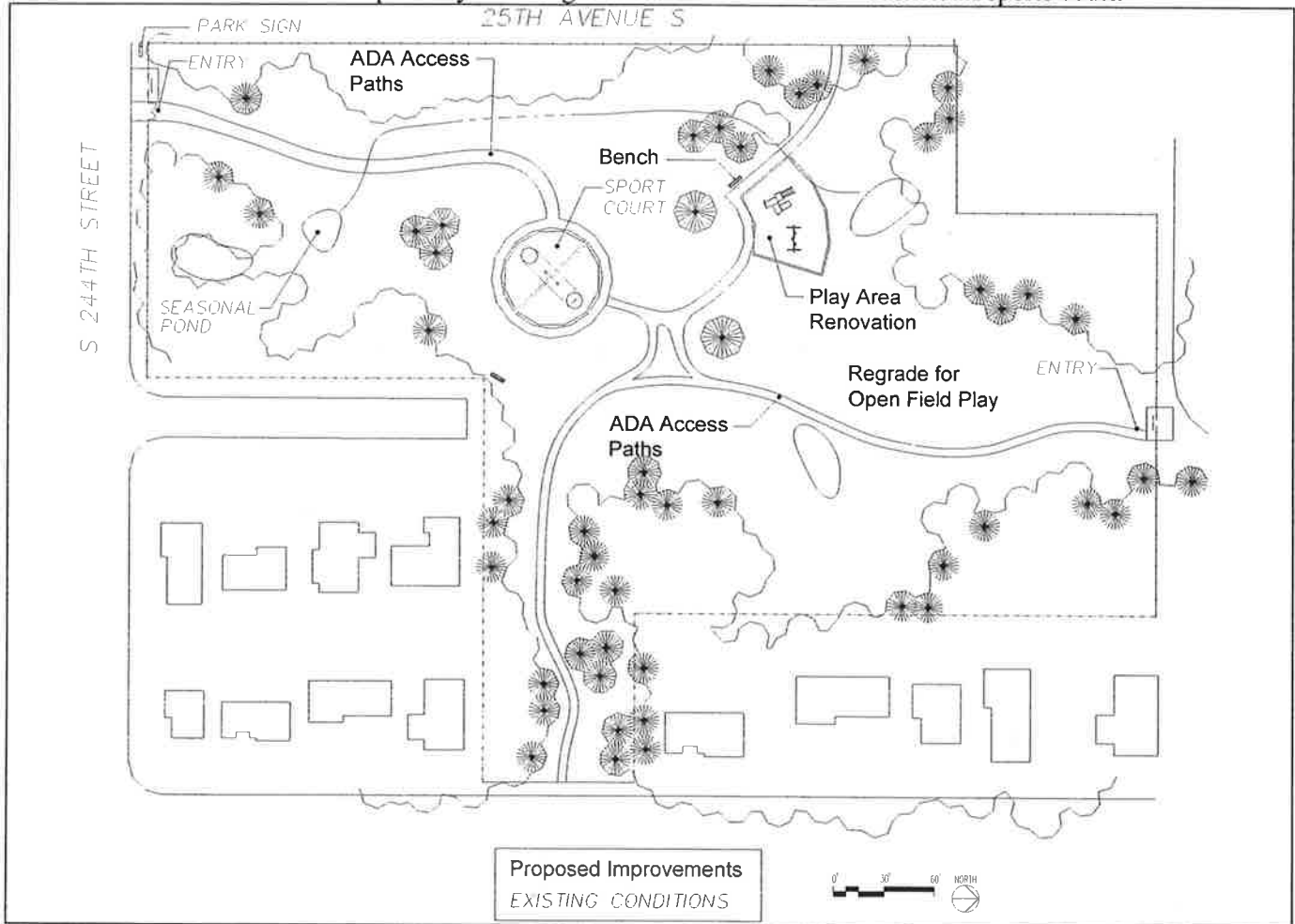
Design & Construction Cost: \$41,680
 Maintenance Level: I
 Existing Annual Maintenance Cost: \$2,500
 Annual Maintenance Cost for Proposed Improvements: \$0

PROJECT #7

Des Moines Parks, Recreation and Senior Services Master Plan

Parkside Park

Address: 2500 244th Street
Size: 4.4 Acres
Zoning: Residential; Suburban Estates
Park Classification: Neighborhood Park
Description: Parkside Park is a small neighborhood park with sports courts and walking paths. Due to deterioration, play equipment was removed in 1999. Large trees protect the open, hilly, grassed areas in the center of the park.
Goal: Neighborhood recreation
Existing Facilities: Meadow, basketball court, swings, and steep walkway.
Proposed Improvements: Park Improvements: 4.A. Improve pathways to make play equipment area ADA accessible and contour hillside for safety and security improvements, install new play equipment and relocate existing play equipment (swings). 4.B. Make drainage improvements and regrade for open play field, install additional pathways for neighborhood access and new basketball/sports court.

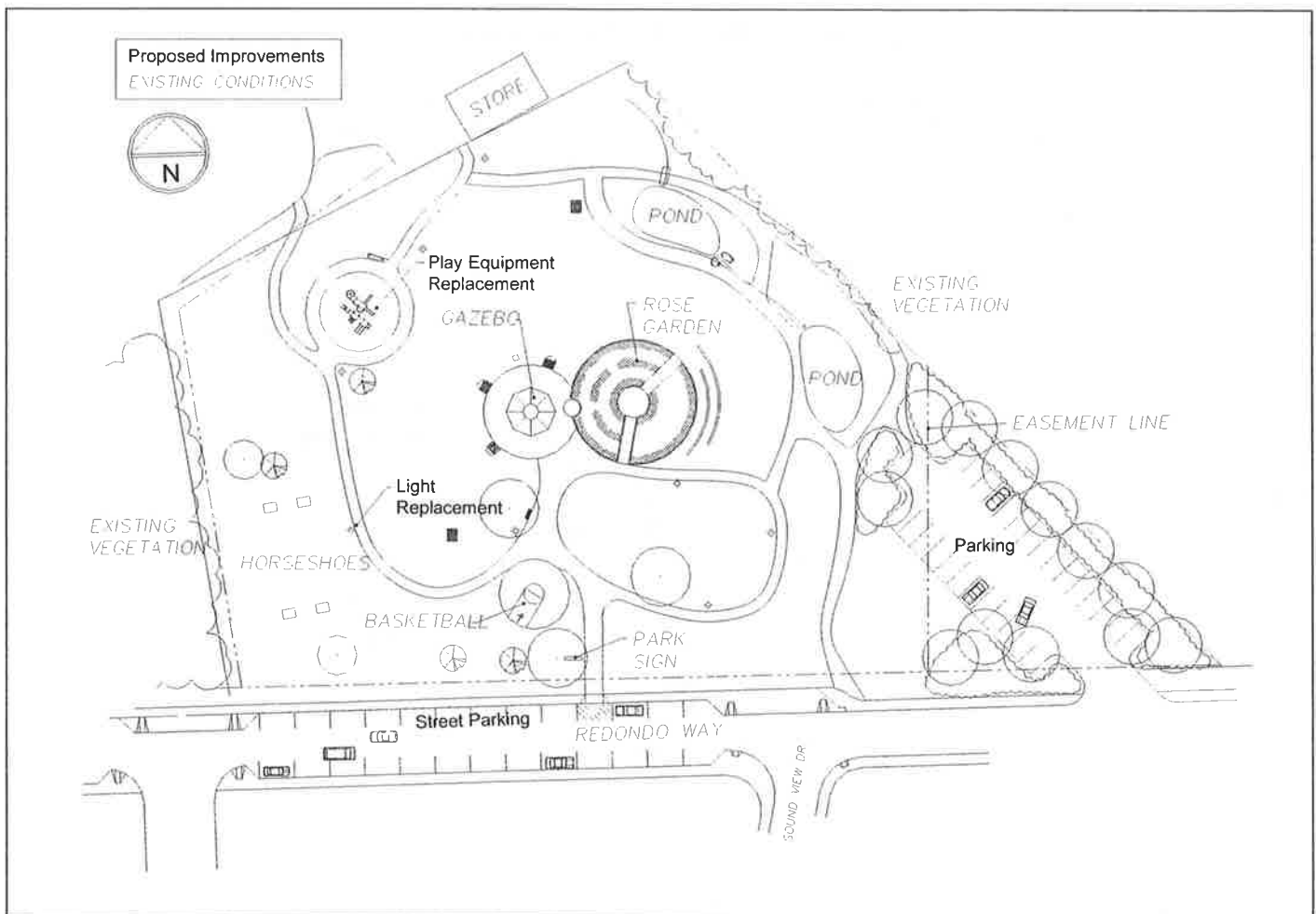


Design & Construction Cost: 4(a) \$66,100 primary; 4(b) \$81,150
Maintenance Level: II
Existing Annual Maintenance Cost: \$4,000
Annual Maintenance Cost for Proposed Improvements: 4(a) \$6,000; 4(b) \$8,000

Des Moines Parks, Recreation and Senior Services Master Plan

Wooton Park

Address:	South 283 rd Street
Size:	2.9 acres
Zoning:	Residential; Suburban Estates
Park Classification:	Neighborhood Park
Description:	Wooton Park is a neighborhood park providing both passive and active recreational opportunities. It also offers views of Puget Sound.
Goal:	Passive and Active Recreation
Existing Facilities:	Picnic tables, benches, gazebo, barbeque, basketball half court, play equipment, horseshoe pits, rose garden, pathways, & landscaping
Proposed Improvements:	Park Improvements: 5.A. Play equipment repairs and surfacing material, lighting replacement. Parking Improvements: 5.B. Street frontage improvements 5.C. Internal parking improvements (southeast corner).



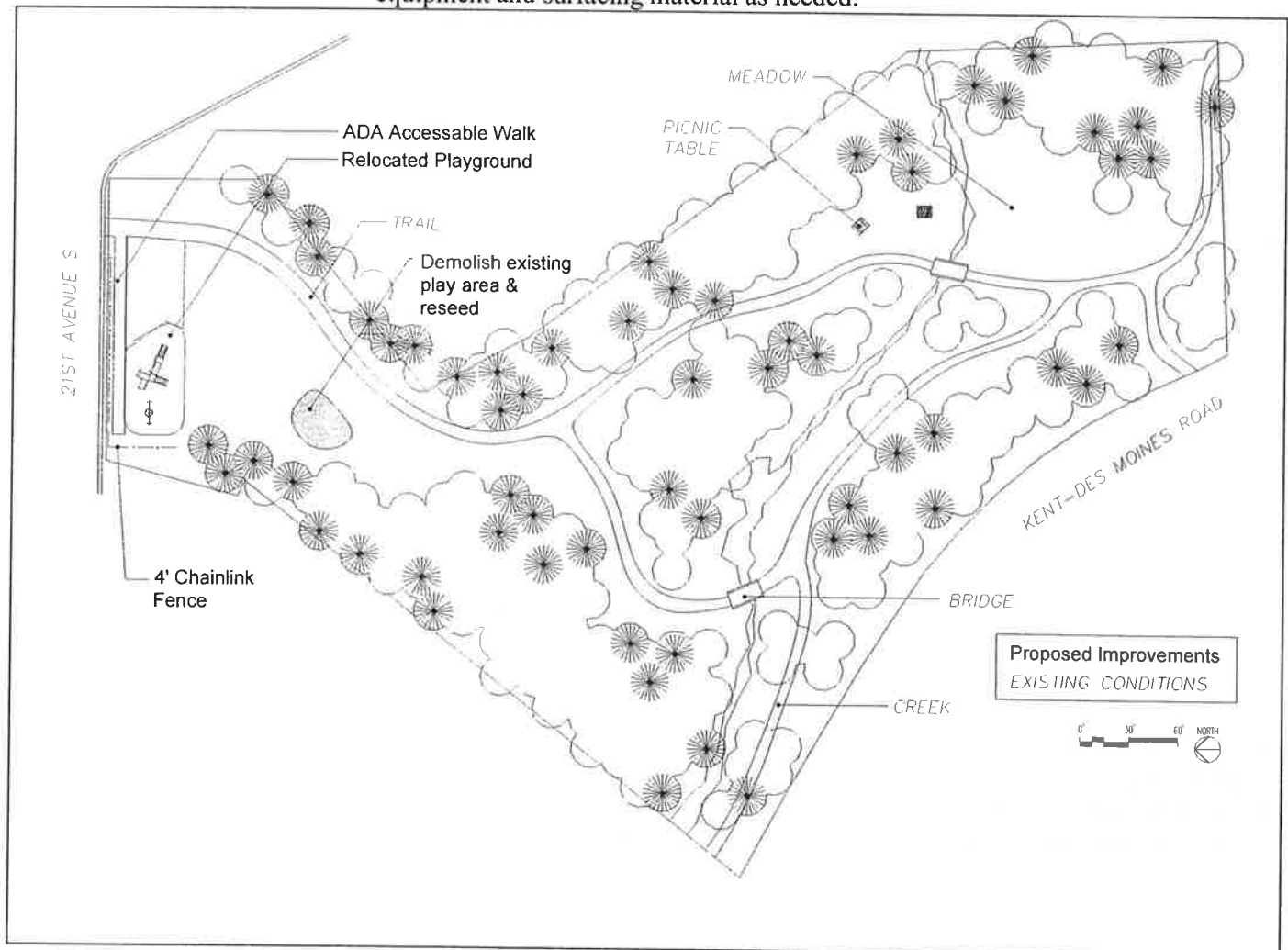
Design & Construction Cost:	5(a) \$42,770
	5(b) \$29,500- Street Frontage Improvements
	5(b) \$48,950 – Parking at Southeast Corner
Maintenance Level:	I
Existing Annual Maintenance Cost:	\$18,000
Annual Maintenance Cost for Proposed Improvements:	5(a) \$6,000

PROJECT #9

Des Moines Parks, Recreation and Senior Services Master Plan

City Park & Kiddie Park

Address: 21st Avenue & Kent-Des Moines Road
Size: 3.2 acres
Zoning: Residential; Suburban Estates
Park Classification: Conservancy and Mini-Park
Description: City Park and Kiddie Park are adjacent neighborhood parks. Kiddie Park is a mini Park within a Conservancy Park. Kiddie Park has open lawn, trees and play equipment. City Park has nature trails and picnic areas that overlook the Massey Creek ravine.
Goal: Neighborhood recreation
Existing Facilities: Nature trail, picnic tables, and meadow and play equipment and open lawn area.
Proposed Improvements: Kiddie Park: Relocate play equipment to more visible upland area and replace equipment and surfacing material as needed.

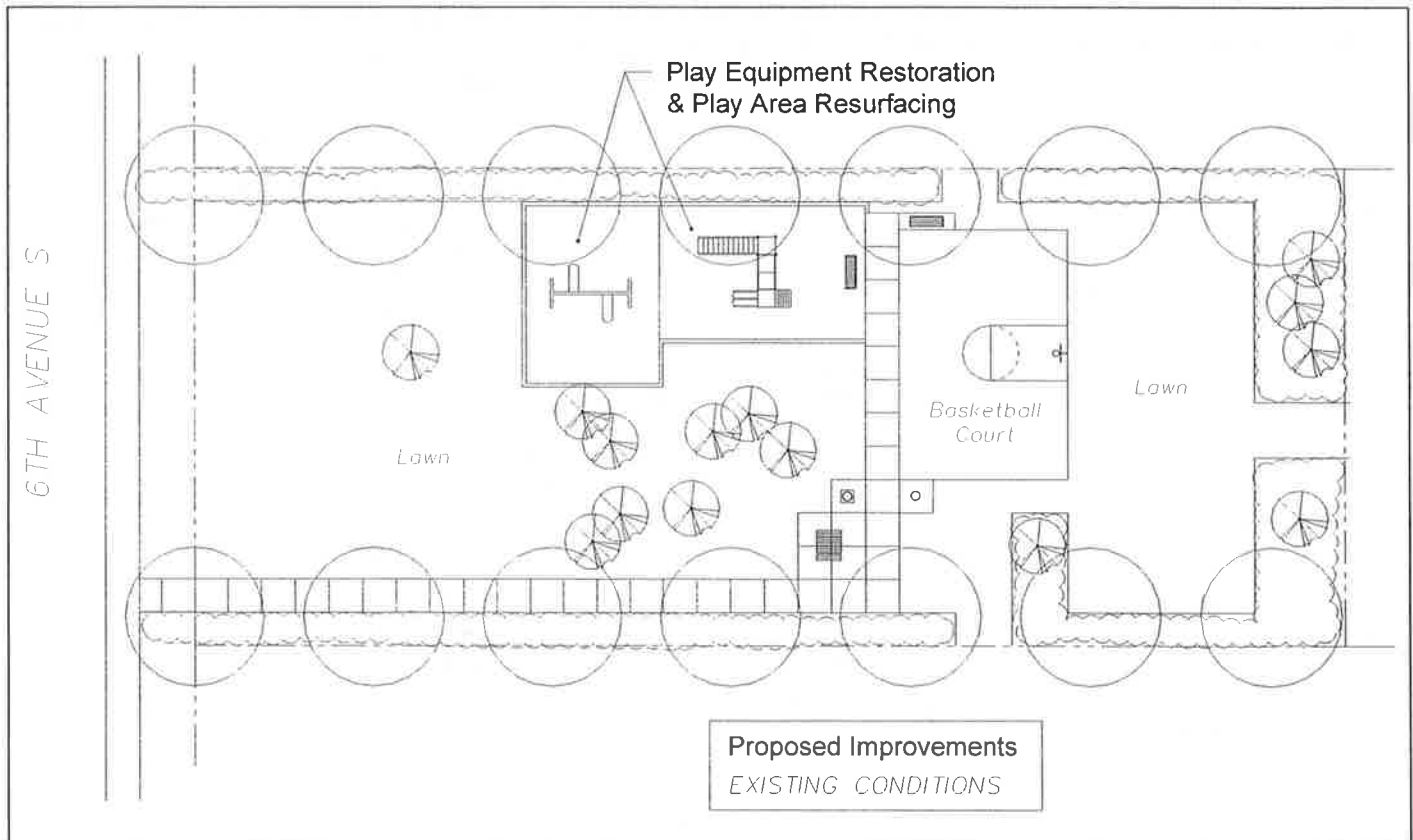


Design & Construction Cost: \$27,949
Maintenance Level: II
Existing Annual Maintenance Cost: \$12,800

Des Moines Parks, Recreation and Senior Services Master Plan

Westwood Park

Address: 6th Avenue S. & S. 192nd Street
 Size: 1.34 Acres
 Zoning: Residential; Suburban Estates
 Park Classification: Mini-Park
 Description: Westwood Park is a neighborhood park for passive and active use.
 Goal: Neighborhood recreation
 Existing Facilities: Walkway, sports court, play structure, picnic table, benches, drinking fountain
 Proposed Improvements: Play equipment restoration, and resurfacing.



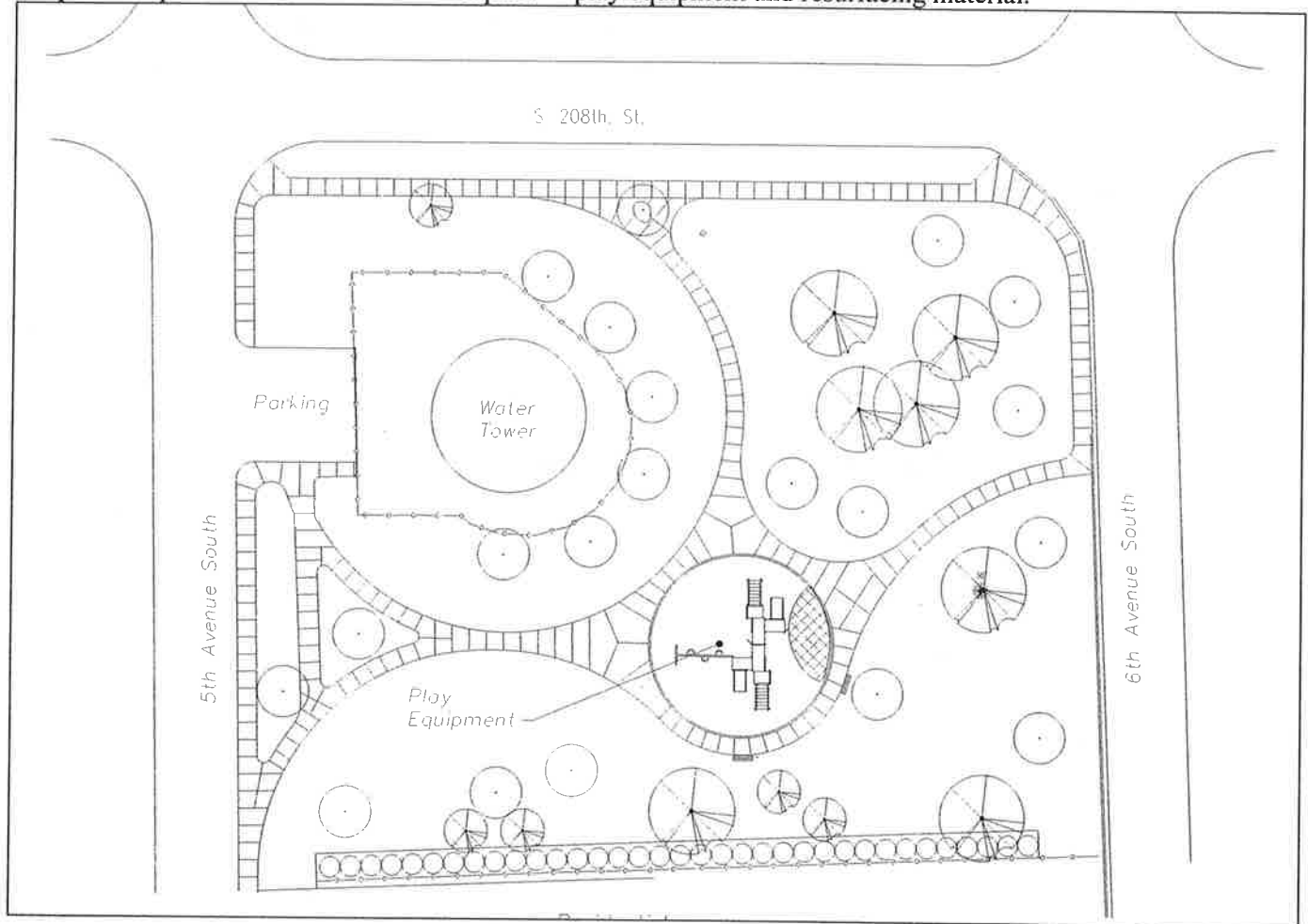
Design & Construction Cost: \$2,600
 Maintenance Level: II
 Existing Annual Maintenance Cost: \$6,000
 Annual Maintenance Cost for Proposed Improvements: \$0

PROJECT #11

Des Moines Parks, Recreation and Senior Services Master Plan

Water Tower Park

Address: South 208th Street between 5th Avenue South and 6th Avenue South
Size: 1.34 Acres
Zoning: Residential; Suburban Estates
Park Classification: Neighborhood Parks
Description: Water Tower Park is leased and managed by the City of Des Moines from Highline Water District with Play equipment, picnic tables, benches, open lawn area, pathways, on street parking, & irrigation.
Goal: Neighborhood recreation
Proposed Improvements: Minor repairs to play equipment and resurfacing material.

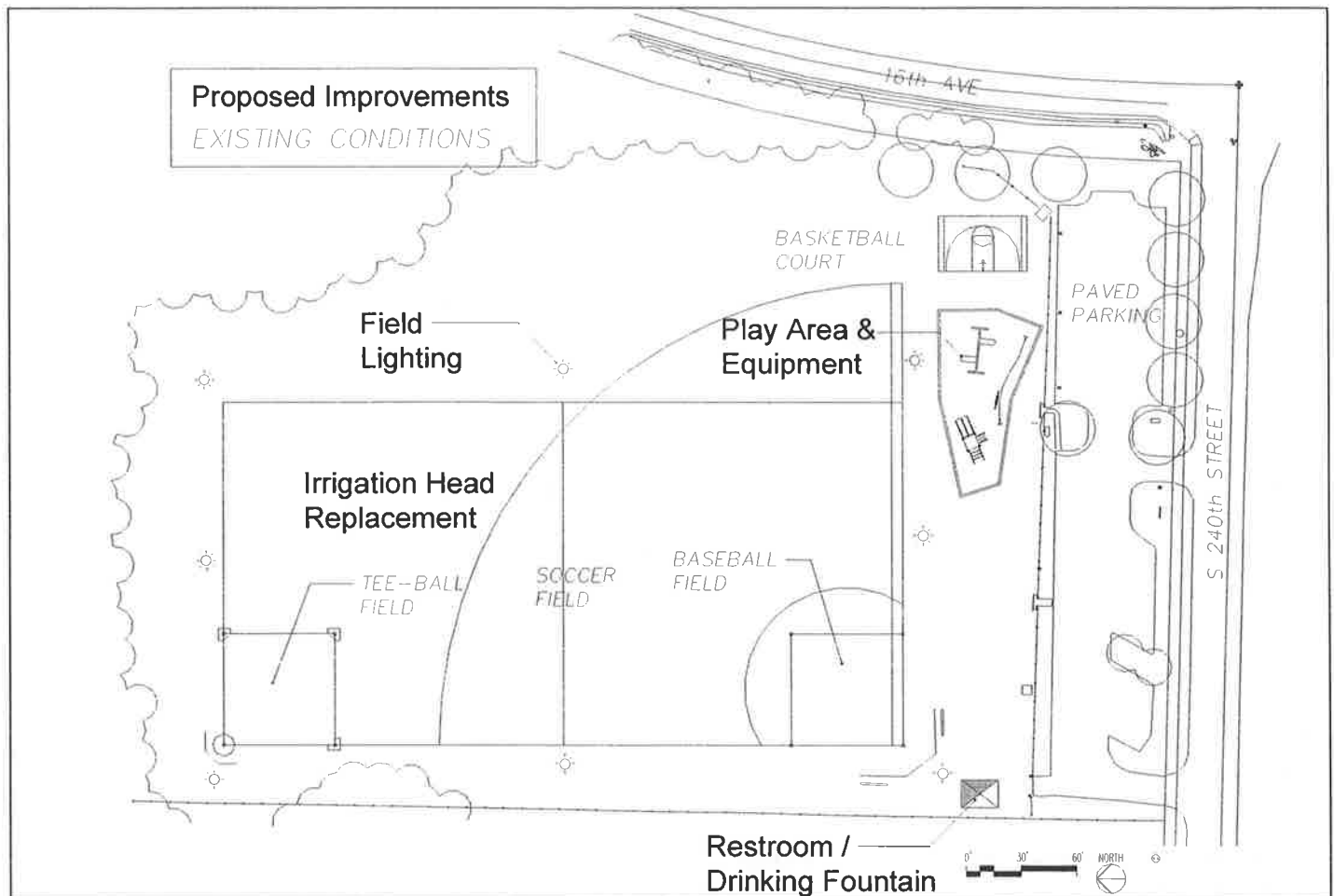


Design & Construction Cost: \$1,000
Maintenance Level: I
Existing Annual Maintenance Cost: \$8,000
Annual Maintenance Cost for Existing Improvements: None

Des Moines Parks, Recreation and Senior Services Master Plan

Zenith Park (Interlocal Project)

Address: NW corner of South 240th Street and 16th Avenue South
 Size: 5.5 Acres
 Zoning: Residential
 Park Classification: Community Park
 Description: Zenith Park is a 5.5-acre community park with heavily used sports fields. The total Zenith site occupies 11.6 acres. The 5.5 acre developed portion is leased and managed by the City of Des Moines from the Highline School District.
 Goal: Community recreation, sports
 Existing Facilities: Multipurpose sports fields, sports court, and parking. Land leased from HSD.
 Proposed Improvements: Land Acquisition: 11.B. Park Improvements: 11.A. drinking fountain, play equipment and irrigation repair, 11.B. restrooms and sports field lights.



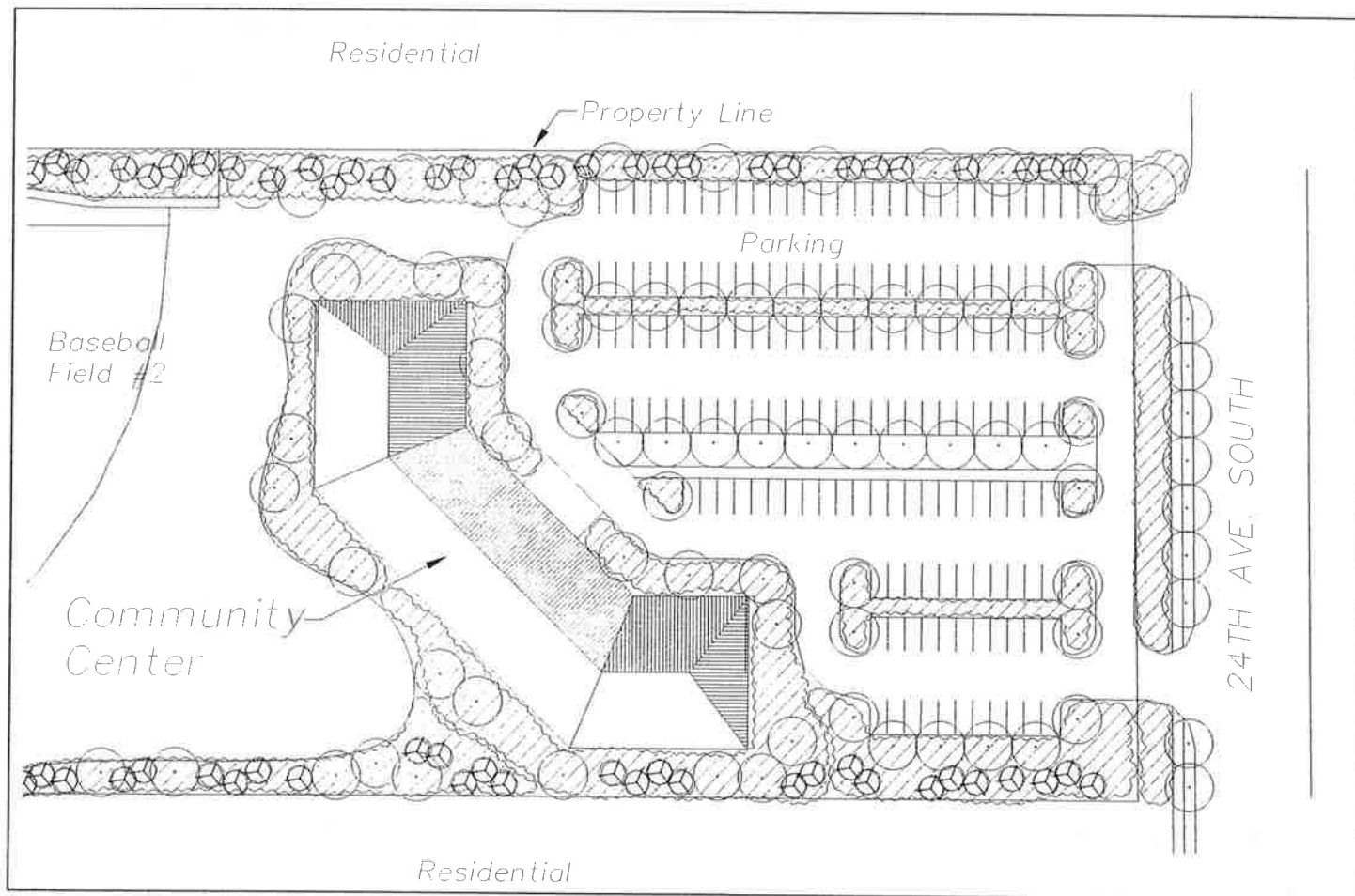
Land Acquisition:	11(b) \$500,000
Design & Construction Cost:	11(a) \$71,000; 11(c) \$261,464
Maintenance Level:	I
Existing Annual Maintenance Cost:	\$30,000
Annual Maintenance Cost for Proposed Improvements	\$12,000

PROJECT #13

Des Moines Parks, Recreation and Senior Services Master Plan

Community Center (Conceptual Plan)

Address: 21939 24th Avenue South
Size: 20,000 sq. ft. (Phase I Core Facility)
Zoning: Residential; Suburban Estates
Park Classification: Community Park
Description: New 20,000 square foot indoor recreation facility pending City Council direction regarding site and building amenities. Proposed amenities at phased build out (based on Senior/Community Center Feasibility Study 1997) include: Commercial Kitchen, meeting rooms, large meeting hall, technology room, exercise room, arts and crafts room, gymnasium, performing arts auditorium, restrooms, and offices.
Goal: Community recreation
Existing Facilities: Infrastructure for surface water retention, water and sewer utilities
Proposed Improvements: Construction of a new multi-purpose recreation facility, parking, and trails connecting to Steven J. Underwood Memorial Park



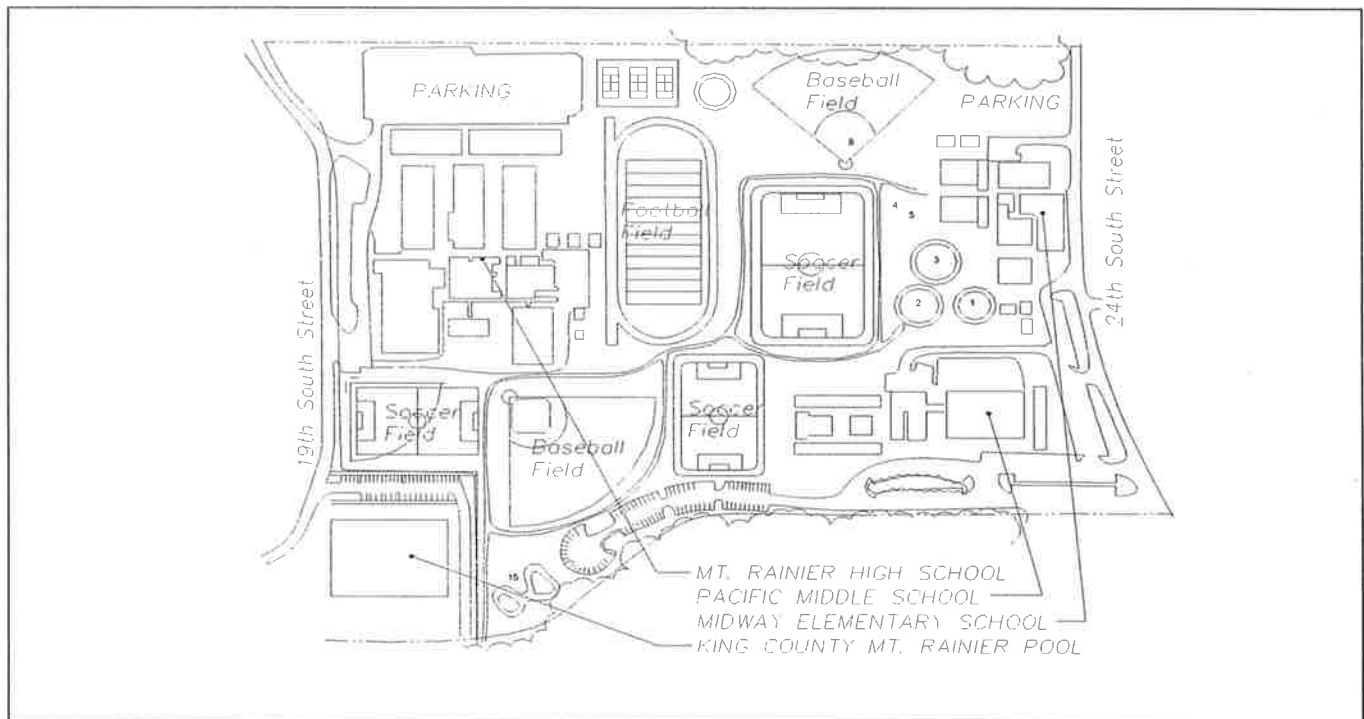
Design & Construction Cost: Phase I \$6,500,000
Maintenance Level: I
Existing Annual Maintenance Cost: \$5,000
Annual Maintenance Cost for Proposed Improvements: \$120,000-\$180,000

PROJECT #14

Des Moines Parks, Recreation and Senior Services Master Plan

Aquatics Facility Options (Interlocal Project)

Address:	TBD
Size:	5 Acres, 20,000- 30,000 Sq.Ft.
Zoning:	Residential; SE
Park Classification:	Regional Park
Description:	Regional Aquatics Facility TBD or Mt. Rainier High School Pool
Goal:	Regional aquatics & recreation
Existing Facilities:	King County Mt. Rainier Pool and parking on land leased from Highline School District.
Proposed Improvements:	Alternatives: 1) Provide new regional (Burien, Des Moines, Kent, SeaTac, Normandy Park and Highline School District) aquatics facility to replace King County Mt. Rainier Pool, 2) King County Pool may transfer to South King County cities or to another entity such as Northwest Center in 2003 or beyond, 3) Provide improved public access and parking at King County Mt. Rainier Pool located at the High School in conjunction with new high school construction in 2005, or 4) Utilize other new South King County aquatics facility such as proposed by the YMCA in the City of SeaTac to serve regional needs.



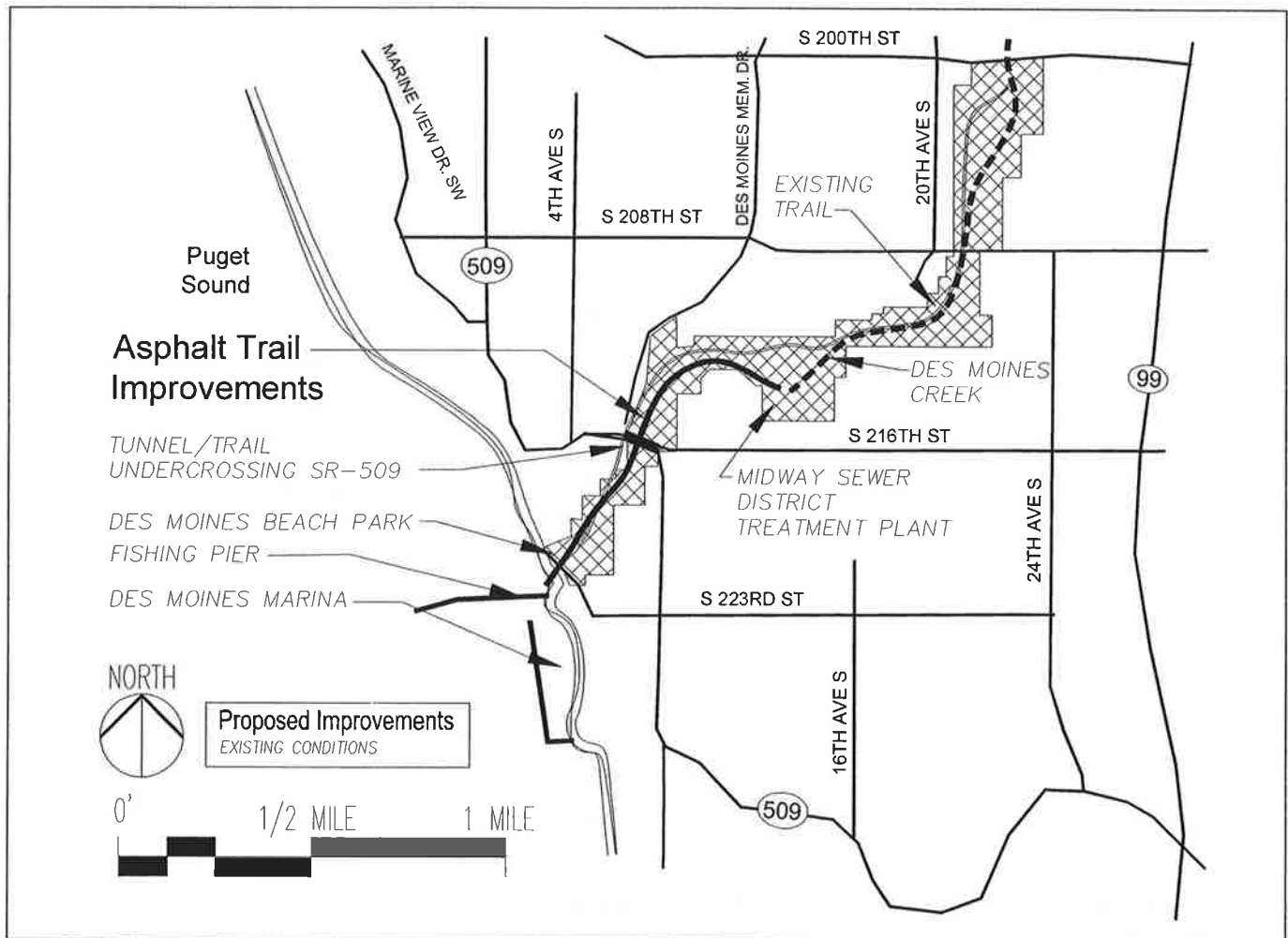
Design & Construction Cost:	Undetermined
Maintenance Level:	I
Existing Annual Maintenance Cost:	Interlocal Collaboration- \$75,000
Annual Maintenance Cost for Proposed Improvements:	Undetermined

PROJECT #15

Des Moines Parks, Recreation and Senior Services Master Plan

Des Moines Creek Trail

Address: Along Des Moines Creek between Des Moines Beach Park and South 200th St.
Size: 9.58 AC./1.5 Mi. within Des Moines, .5 Mi. within SeaTac
Zoning: Residential; suburban Estates
Park Classification: Conservancy
Description: A Class 1 Trail connecting the City of Des Moines to the City of Sea-Tac along the Des Moines Creek. Trailheads located at Des Moines Beach Park and at South 200th Street in Sea-Tac.
Goal: Passive recreation
Proposed Improvements: Completion of 12 foot wide paved surface, trailheads with parking, benches, interpretive signage, and underpassage at Marine View Drive to connect trail from Midway Sewer District to Des Moines Beach Park.



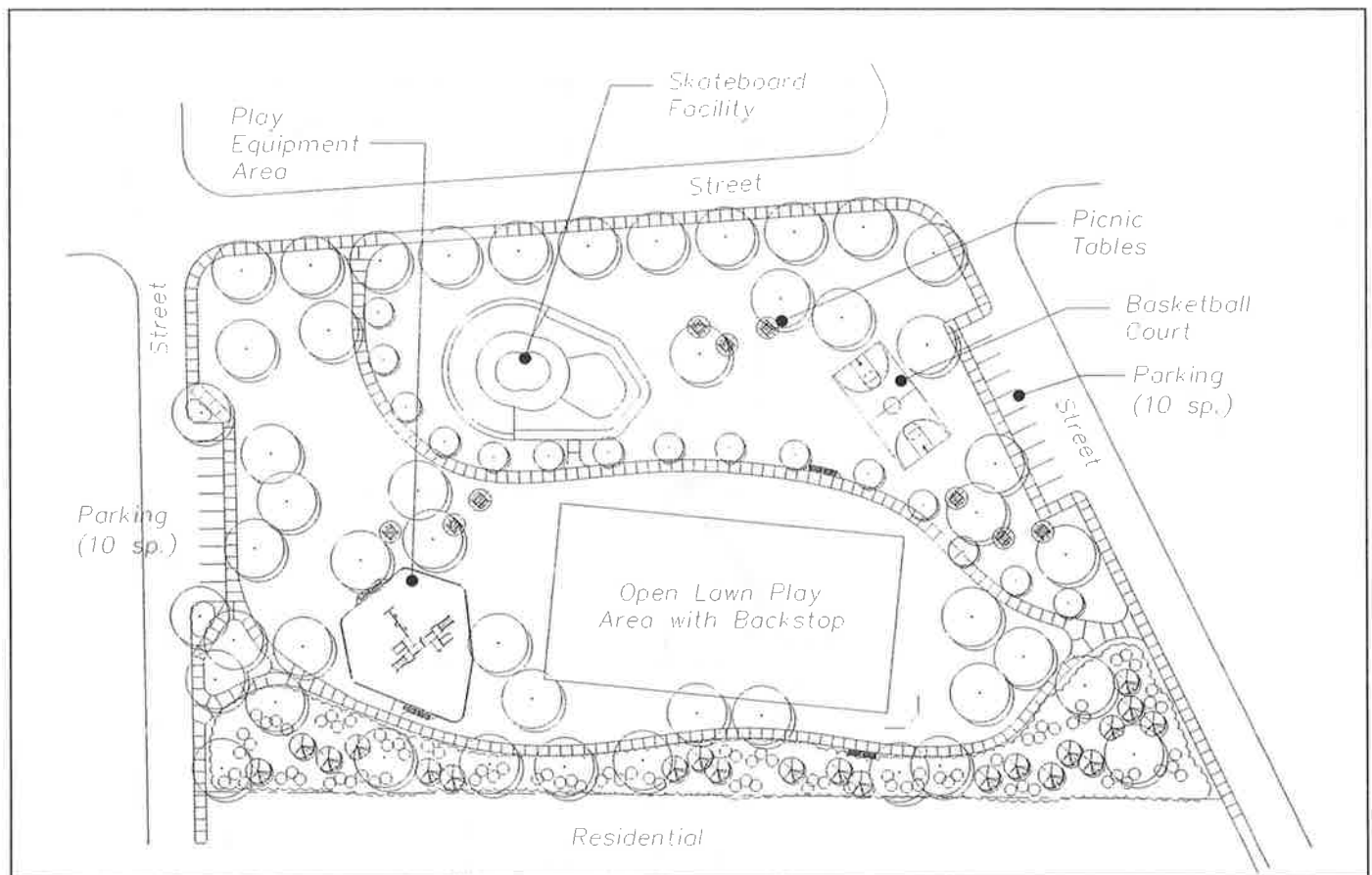
Design & Construction Cost: \$186,600
Maintenance Level: III
Existing Annual Maintenance Cost: \$2,000
Annual Maintenance Cost for Proposed Improvements: \$6,000

PROJECT #16

Des Moines Parks, Recreation and Senior Services Master Plan

East Woodmont Park (Prototypical Project)

Address: East Woodmont Area (Site TBD)
Size: 3 acres (Proposed)
Zoning: Residential; Suburban Estates
Park Classification: Neighborhood Park
Description: Three acre park for use by neighborhood in densely populated area of Des Moines.
Goal: Neighborhood recreation
Proposed Improvements: Land Acquisition: 16.A. Park Improvements: 16.B. Play equipment, sports court, picnic tables, benches, open lawn area, skateboard facility, pathways, off street parking, and irrigation.

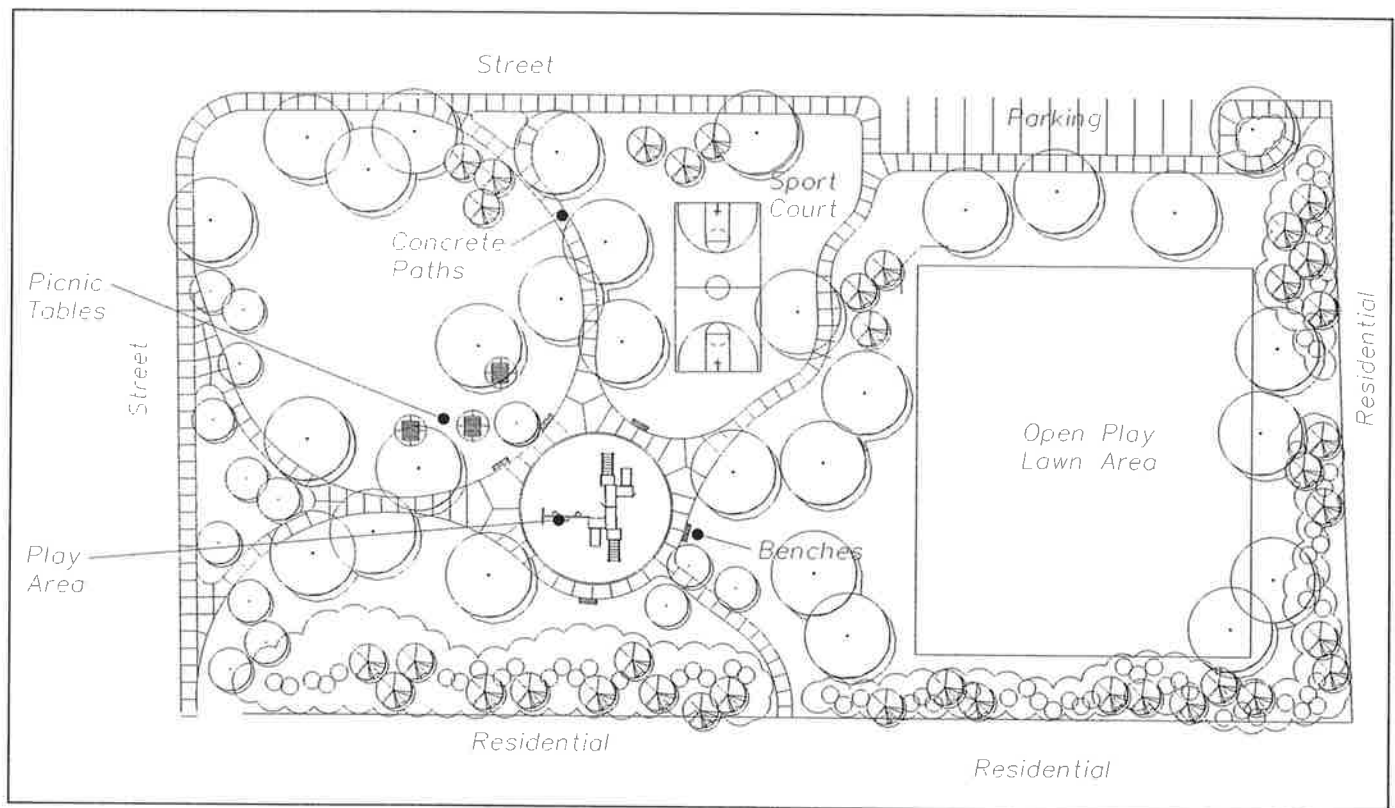


Land Acquisition: 16 (a) \$300,000-450,000
Design & Construction Cost: 16 (b) \$447,126
Maintenance Level: I
Existing Annual Maintenance Cost: None
Annual Maintenance Cost for Proposed Improvements: \$20,000

Des Moines Parks, Recreation and Senior Services Master Plan

Pacific Ridge Park (Prototypical Project)

Address: Pacific Ridge Area (TBD)
 Size: 2 Acres (Proposed)
 Zoning: Residential; Suburban Estates
 Park Classification: Neighborhood Park
 Description: Two acre park for use by neighborhood in densely populated area of Des Moines. May be replaced by expansion of Midway Park in Pacific Ridge Neighborhood.
 Goal: Neighborhood recreation
 Proposed Improvements: Park Improvements: Land Acquisition: 17.A. Park Improvements: 17.B. Play equipment, picnic tables, benches, open lawn area, pathways, off street parking, & irrigation.



Land Acquisition: 17(a) \$200,000-450,000
 Design & Construction Cost: 17(b) \$229,500
 Maintenance Level: I
 Existing Annual Maintenance Cost: \$0
 Annual Maintenance Cost for Proposed Improvements: \$14,000