PS&T COMMITTEE MEETING AGENDA

Date: September 14, 2006	**Facilitator:** Chair Councilman Dave Kaplan
Time: 6:00 pm – 7:30 pm	**Scribe:** Office Manager Terryann Dell
Location: Des Moines City Hall Conference Room	

Present: Councilman Dan Sherman, Councilman Ed Pina, City Manager Tony Piasecki, Police Chief Roger Baker, Police Commander John O'Leary, Assistant City Attorney Richard Brown, PB & PW Director Grant Fredericks, Special Project Manager Len Madsen, Capital Improvement Project Manager Scott Romano, Court Administrator Jennefer Henson

Order	Subject	Presenter	Desired Outcome	Actual Outcome	Assignments
1.	Agenda Item #1 – Hotel Motel Ordinance Revisions	Chief Baker / Assistant City Attorney Richard Brown	Discuss how changes requested by Council are proposed to be included.	Chief Baker and Assistant City Attorney Richard Brown outlined the revisions to Hotel / Motel Ordinance: o Section 1 adds a requirement for an armed and uniformed security guard under certain conditions and time frames. o Section 2 changes the language that limits the time period for revocation of a business license and endorsement. o Section 3 establishes conditions for approval of business license after revocation. o Section 4 adds five (5) enforcement remedies. These revisions lay the foundation for an abatement process if/when necessary. These changes would take place 30 days after they are approved, but the businesses would have one year to correct the issues.	None

Order	Subject	Presenter	Desired Outcome	Actual Outcome	Assignments
1. cont.	Agenda Item #1 – Hotel Motel Ordinance Revisions (Continued)	Chief Baker / Assistant City Attorney Richard Brown	Discuss how changes requested by Council are proposed to be included.	Points from discussion that followed: o Once changes are accepted by council, we need to notify the owners/managers of the changes. o Discussed if the city manager should revoke their business licenses (section 2). o Discussed if there should be fees for the 4-hour class and CPTED survey (section 3). IF PS&T agrees, actual amount of fees would be worked out and presented to council.	Richard to continue with proposed changes and bring before council.
2.	Agenda Item #2 – Redondo Sub-Station	PB & PW Director & Chief Baker	Strategize on best way to proceed with current bid	Grant explained why there is only one bid and why it is higher than the initial estimates. He also explained we have three courses of action: 1. Step away from the substation idea which he didn't suggest. 2. Go to Joshua Green and ask them to give us a cost competitive price, which we would review and enter into a revised lease agreement with them. 3. Commission the design, do a traditional bid & go from the small works roster. Estimated time frame on this option worked out to be about 3 months. The committee discussed these options and decided to reject the current bid and take it back to Joshua Green for a cost competitive price and revised lease agreement.	Reject current bid. Contact Joshua Green for cost competitive bid and revised lease agreement.
3.	Agenda Item #3 – Photo Enforcement System – Red Light Violations	Commander John O'Leary & Court Administrator Jennefer Henson	Receive direction from PS&T committee on next step	Commander O'Leary proposed the city look into Photo Enforcement Systems for Red Light Violations. Court Administrator Jennefer Henson informed the committee she had talked with Auburn who has had such a system in place for the last 2 months. From their conversation, she learned: o The have 4 cameras in 2 intersections. o In 2 months there have been 2,000 tickets written. o There was no increase in court personnel to accommodate the increased workload. o 421 persons cited have responded and 300 cases have been heard to date. o $43,000 has been brought in from those cases.	See next page.

Order	Subject	Presenter	Desired Outcome	Actual Outcome	Assignments
3. cont.	Agenda Item #3 – Photo Enforcement System – Red Light Violations (Continued)	Commander John O'Leary & Court Administrator Jennefer Henson	Receive direction from PS&T committee on next step	The committee discussed the fact that our traffic officers are currently working patrol and therefore, not doing traffic enforcement exclusively. They also discussed because of low police department staffing levels and the safety aspect of this project, it was worth looking into. Chairman Kaplan wanted the city to continue researching this issue and get back to the PS&T Committee on it. Jennefer was asked to contact other jurisdictions that have these systems in place and find out more information. In particular, she was asked to research what are happening with these citations in court, i.e. how courts are dealing with them, what arguments are coming up, are there any legal issues pending on the systems, have the number of accidents gone down.	City to continue researching subject & get back to PS&T. Jennefer Henson asked to research with other courts/jurisdictions.
4.	Agenda Item #4 – Multi Year Design	PB & PW Director Grant Fredericks, Special Project Manager Len Madsen	Confirm approach on how design costs will be covered.	On consent calendar for tonight's meeting.	None.
5.	Agenda Item #5 – Interlocal Agreement for 16th Ave Improvement Project	PB & PW Director Grant Fredericks, Special Project Manager Len Madsen	Review current bidding and construction schedule. Preview ILA before 9/28 council meeting	Len went over the scope of improvements and the proposed agreement with the Midway Sewer District. Any eminent domain issues (consent Item B) have all been settled so will be pulled from the agenda for tonight's meeting. The committee discussed funding issues and asked what other projects might have to be put on hold in order to complete this project. Grant would prepare that information and get to PS&T members by next week. Depending on what bids come in, TIB may up their funding by up to 15% but there's no guarantee. Will come back to PS&T for endorsement of the agreement and advancing the project with a combined bid package at the 9/28 Council meeting.	Grant to prepare list of projects possibly impacted by this one.

Public Safety and Transportation Committee
Agenda
September 14th, 2006
(6:00 – 7:30 PM)

Hotel/Motel Ordinance Revisions (15 minutes)

- **Discuss how changes requested by Council are proposed to be included**

Redondo Police Department Sub-Station Tenant Improvements (10 minutes)

- **Strategize on best way to proceed after Council rejects $157,000 bid**

Photo Enforcement Systems (10 minutes)

- **Receive policy direction on next steps**

Multi-Year Design Contract for Overlay Program (10 minutes)

- **Confirm approach and how design costs incurred in 2006 for the 2007 program will be covered**

Interlocal Agreement (ILA) with Midway Sewer District for 16th Ave S Improvement Project (20 minutes)

- **Review current bidding and construction schedule**
- **Preview ILA before 9/28 full Council review**

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Draft Ordinance No. 06-073 Amending the City's Hotel/Motel Ordinance (DMMC 5.60) ATTACHMENTS: Draft Ordinance No. 06-073 (City Attorney's 3rd Draft – 9/12/06)	FOR AGENDA OF: September 28, 2006 DEPT. OF ORIGIN: Legal DATE SUBMITTED: September 13, 2006 CLEARANCES: [ ] Legal _____ [ ] PD _____ APPROVED BY CITY MANAGER FOR SUBMITTAL: _____

PURPOSE AND RECOMMENDATION

The purpose of this report is to seek City Council approval of "revised" Draft Ordinance No. 06-073 amending the City's overnight lodging (Hotel/Motel) ordinance, DMMC 5.60. Per Council direction the draft ordinance adds a requirement for armed security for hotels or motels whose annual calls for police service exceed 1.00 per rental unit, adds conditions for approval of subsequent applications for a business license and hotel/motel endorsement after a period of revocation, and adds additional enforcement and penalty provisions.

At the council meeting on 9/7/06 this draft ordinance was passed to a second reading for enactment on the next available calendar, however the City Council directed staff to revise the draft ordinance to: 1) "Shorten the process;" 2) Add the requirement for armed security to DMMC 5.60.070; and (3) Add enforcement and penalty provisions.

SUGGESTED MOTION: "To enact Draft Ordinance No. 06-073."

BACKGROUND

As part of the enforcement process of the City's Hotel/Motel Ordinance, enacted in 2003 and now codified as DMMC 5.60, it has been discovered and determined that, despite active enforcement by the Police Department and even after compliance with all of the provisions of the existing ordinance:

1. There are still overnight lodging establishments in the City whose annual calls for service exceed 1.00 per unit;
2. The existing ordinance does not require licensed, armed and uniformed security for hotels or motels whose annual calls for service exceed 1.00 per unit;
3. The existing ordinance does not establish conditions for subsequent applications for business licenses and hotel/motel endorsements after a period of revocation; and
4. The existing ordinance does not clearly establish violations and alternate enforcement remedies.

DISCUSSION

This "revised" proposed ordinance adds the following enforcement tools and procedures to assist the City Manager and the Police Department in their efforts to correct these ongoing problems:

Section 1 adds a requirement that hotels or motels whose annual calls for service exceed 1.00 per unit must have a licensed, armed and uniformed security guard on the premises every day from 6:00 p.m. until 6:00 a.m.;

Section 2 changes the section title from "Enforcement" to "Revocation of Business License," and deletes the language that limits the time period for revocation of a hotel or motel business license and endorsement;

Section 3 adds a new section to DMMC 5.60 establishing conditions for approval of any subsequent application for a business license to operate a hotel or motel on the same property following a period of revocation. The ordinance provides that conditions of approval shall be based upon the hotel or motel property's history of annual calls for service prior to revocation, and:

- All employees of the applicant must attend a four (4) hour crime prevention training class taught by law enforcement personnel; and
- The hotel or motel property must pass a full "Crime Prevention through Environment Design (CPTED)" inspection by law enforcement personnel demonstrating that the property meets minimum security requirements.

Section 4 adds the following enforcement remedies:

- It makes it a violation of DMMC Chapter 5.60 if, after imposition of all of the requirements of section 5.60.070 for a period of one (1) year, the annual calls for service continue to exceed 1.00 per unit;
- It makes a violation of the ordinance a Class 1 Civil Infraction and allows the City to seek fines and penalties in accordance with the City's civil infraction code;
- It provides that each day upon which a violation of the chapter occurs constitutes a separate offense;
- It provides that a violation of the ordinance also constitutes a public nuisance and that anyone who allows or permits a hotel or motel to violate the ordinance is guilty of a criminal offense (misdemeanor); and
- It provides that the city manager may also proceed with a Superior Court abatement action.

ALTERNATIVES

TAKE NO ACTION:

Taking no action would leave the City's overnight lodging ordinance with:

- No requirement for armed security for lodging establishments with annual calls for service exceeding 1.00 per unit;
- A limitation on the city manager's authority to revoke or deny renewal of a hotel/motel business license and hotel/motel endorsement. Under the current ordinance revocation could be not less than 90 days nor more than one (1) year;
- No provision establishing the conditions for subsequent applications for a business license to operate a hotel or motel on the same property following a period of revocation; and
- Very unclear and limited enforcement remedies.

FINANCIAL IMPACT

The financial impact to the City of adopting Draft Ordinance No. 06-073 would be either neutral or positive. The enforcement provisions for collection of fines by civil or criminal action could create additional court revenues.

RECOMMENDATION

Staff recommends the adoption of Draft Ordinance No. 06-073.

CITY ATTORNEY'S FIRST DRAFT 8/8/06
CITY ATTORNEY'S SECOND DRAFT 8/22/06
CITY ATTORNEY'S THIRD DRAFT 9/12/06

DRAFT ORDINANCE NO. 06-073

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to overnight lodgings, amending DMMC Chapter 5.60 by adding a requirement for armed security for hotels or motels whose annual calls for police service exceed 1.00 per unit, adding conditions for approval of subsequent applications for a business license and hotel/motel endorsement after a period of revocation, and adding additional enforcement and penalty provisions.

WHEREAS, the City of Des Moines Overnight Lodgings Ordinance, chapter 5.60 DMMC, does not require armed security for hotels and motels whose annual calls for service are greater than 1.00 per unit, and

WHEREAS, chapter 5.60 DMMC does not establish conditions of approval for subsequent applications for a business license and hotel/motel endorsement after a period of revocation or denial of renewal, and

WHEREAS, chapter 5.60 does not specify or identify violations, alternative enforcement remedies and penalties; now therefore,

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

Sec.1. DMMC 5.60.070 and section 7 of Ordinance No. 1320 are amended to read as follows:

> **5.60.070 Annual calls for police service greater than 1.00 calls per unit.**
> Hotels or motels whose annual calls for service are greater than 1.00 calls per unit are required to meet the following additional conditions, designed to deter crime, to obtain a business license endorsement to operate in the city of Des Moines:
> (1) Conform to the requirements set forth in DMMC 5.60.050 and 5.60.060.
> (2) Provide the Des Moines police department with the names and dates of birth of all owners,

managers, and employees to allow for background checks.
(3) Hold semi-annual employee training sessions, assisted by the Des Moines police department.
(4) Provide 24-hour front desk personnel.
(5) Enforce the following guest rules:
(a) Units cannot be rented for less than a six-hour period.
(b) No unit may be used for drunkenness, fighting, or breaches of the peace. No unit may be used if loud noises come from that unit. Loud noises are those noises that disturb the tranquility of the neighborhood or those noises that would be disturbing to a reasonable person.
(c) Alcohol may not be consumed in common areas except for designated banquet or reception rooms or areas.
(6) Maintain a daily key log. Each key that is found to be missing must have its corresponding lock re-keyed prior to the unit being rented. Each master key that is found to be missing will require the establishment to re-key all corresponding locks.
(7) Issue parking passes to all vehicles to be allowed to park on the premises with each pass marked with the issue date and expiration date.
(8) Require all guests who stay more than 30 days to fill out an application for tenancy in a form provided by the Des Moines police department.
(9) Participate in the Des Moines police department "criminal trespass program." Participation shall mean the facility shall be registered in the "criminal trespass program."
(10) Remove all graffiti and repair all vandalism within seven days of occurrence.
(11) Permit an annual inspection by the city of Des Moines building official to ensure that guestrooms are maintained according to Uniform Health Code and Uniform Fire Code, including tamper-resistant smoke detectors meeting National Fire Protection Agency (NFPA) standards.
(12) Follow crime prevention through environmental design (CPTED) standards for

landscaping/plant maintenance. These standards will be provided by the Des Moines police department.

(13) Install lighting in all common areas with minimum maintained lighting of 1.5 foot-candles at ground level.

(14) Install and operate video monitoring equipment in all parking lots, monitored and recorded at the front desk 24 hours per day, seven days per week.

(15) Have a licensed, armed and uniformed security guard on the premises every day from 6:00 p.m. until 6:00 a.m.

(16) Submit to scheduled semi-annual audits by the city of Des Moines police department to verify compliance with the above-referenced requirements.

Deleted: 5

Sec.2. DMMC 5.60.080 and section 8 of Ordinance No. 1320 are amended to read as follows:

5.60.080 Revocation of business license. If the Chief of Police finds that any hotel or motel has violated or failed to comply with any provisions of this chapter, the Chief shall make a written record of such finding and shall specify therein the particulars, and will inform the Des Moines City Manager. Upon recommendation of the Chief of Police, the City Manager may revoke or deny renewal of the City of Des Moines business license endorsement for that hotel or motel. Revocation or denial of renewal, of the hotel or motel business license endorsement under this chapter shall require revocation of the hotel's or motel's City of Des Moines general business license under DMMC 5.04.060, or denial of renewal of the hotel or motel City of Des Moines general business license under DMMC 5.04.070. The City Manager will provide the hotel or motel with notice of the decision to revoke, or deny renewal of, the City of Des Moines business license as required under DMMC 5.04.060 and 5.04.070.

Deleted: Enforcement

Deleted: for a period of not less than 90 days or not more than one year

NEW SECTION. Sec. 3. Subsequent applications for business licenses and endorsements - Conditions of approval.

(1) The conditions of approval of any subsequent application for a business license or endorsement to operate a hotel or motel on the same property following a period of revocation or denial of renewal of a hotel or motel's business license shall be based upon the hotel or motel property's history of annual calls for service prior to the revocation.

(2) No subsequent application for a business license or endorsement to operate a hotel or motel on the same property following a period of revocation or denial of renewal shall be approved unless the applicant presents a corrective action plan, to the reasonable satisfaction of the Chief of Police and the City Manager, to assure that the conditions and causes of the prior revocation or denial of renewal have been or will be eliminated. Such corrective action plan must, at a minimum, include the following:

(a) All employees of the applicant shall be required to attend a four (4) hour crime prevention training class taught be law enforcement personnel; and

(b) The hotel or motel property must pass a full "Crime Prevention Through Environmental Design (CPTED)" inspection by law enforcement personnel demonstrating that the property meets minimum security requirements.

Sec. 4. DMMC 5.60.100 and Section 10 of Ordinance No. 1320 are amended to read as follows:

Formatted: Hyphenate

Violations, enforcement and penalties.

Deleted: Remedies Cumulative

(1) Remedies cumulative. The remedies provided for herein for failure to comply with this chapter shall be cumulative and in addition to any other remedy at law or equity.

(2) Continuing annual calls for police service greater than 1.00 calls per unit. It is a violation of DMMC Chapter 5.60 if, after

imposition of all of the requirements of section 5.60.070 for a period of one (1) year, the annual calls for service to the hotel or motel continue to be greater than 1.00 per year.

(2) Civil infraction. A violation of or failure to comply with this chapter is a Class 1 Civil Infraction and the City may enforce this chapter and seek fines and penalties in accordance with the provisions of DMMC Chapter 1.24.

(3) Separate offense. Each day upon which a violation of this chapter occurs constitutes a separate offense.

(4) Criminal Offense - Misdemeanor for allowing or permitting nuisance. A violation of this chapter also constitutes a public nuisance and every person who allows or permits a hotel or motel to operate in violation of this chapter is guilty of a misdemeanor.

(5) Nuisance abatement - Enforcement by civil action. The city manager may also seek legal or equitable relief to enjoin any acts or practices and abate any condition which may constitute a nuisance or a violation of this chapter.

NEW SECTION. Sec. 5. Codification. Section 3 of this ordinance shall be codified as new section in chapter 5.60 DMMC.

NEW SECTION. Sec. 6. Severability - Construction.

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

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

NEW SECTION. Sec. 7. 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 _____, 2006 and signed in authentication thereof this ____ day of _____, 2006.

_____
M A Y O R

APPROVED AS TO FORM:

_____
City Attorney

ATTEST:

_____
City Clerk

Published: _____

Effective Date: _____

R:\RSBrown\Case Files - Active\06-073 - Hotel-Motel Ordinance Amendment\Draft Ordinance 06-073 - 3rd Draft.doc

16th Ave S. Improvement Project: Phase 1 Update

Scope
Status
Schedule
Midway Agreement
Cost Sharing
Recommendation

September 14, 2006

City of Des Moines Public Safety
and Transportation Committee

Scope: S. 272nd to S. 260th St.

Roadway: 3 lane section: Left turn lane, bike lane, curb gutter, sidewalk, drainage, landscaping.

Intersection Improvements: Woodmont Dr. Realignment; Left turn channelization & S. 272nd Signal LT phasing;

Midway Sewer Added Bid Schedule (main and sides)

Utility relocations by Others: Water, Power, Gas, phone, cable

Project Status

- Communications
  - (open house, newsletters, City Currents, Web page)
- Right of way:
  - Possession and Use (all16 by 9/29)
  - Temp Const. Licenses (62 signed, 7 remaining)
- Utility Relocation (All complete by 1/15/07)
  - PSE Power – 80% complete 9/25
  - PSE Gas (**S. 279** to S. 260th) Mobilized
  - Comcast Mobilized
  - Qwest Final Design
  - Highline Water* – Bids received Approve 9/25?

Working Schedule (9/06-5/08)

• Communications	On-going
• Right-of-way Possession and Use	Sept 29
• TIB Prospectus Approval	Oct 6
• Final Design: Bid Ad Date	**Oct 17**
• Bid Opening (before Thanksgiving)	Nov 7 or 14
• Bid Evaluation/Council Award	Dec 18
• Preconst Conf: Contractor Schedule	Jan 5
• Utility Work Complete (by others)	Jan 15
• NTP: (utility coord & weather dependent)	Jan 15
• Project Complete (320 days)	May, 08

Midway Sewer Agreement

- Scope:
  - 16th Ave S. S.: 268th to S. 260th St & Side street connections (4700' of 10", 8" & 6" pipe)
- Separate Bid Schedule
- Go now or 5 yr hold (sewer desirable, not critical)
- Single Large Contract: More competitive
- Optimal Construction Coordination
- Fair Cost Reimbursement to City
- Approved by City and District Legal Council

Cost Sharing:

- Sewer $1.65 to $1.81 M (actual construction)
  - Design - Bid Documents ($8K)
  - Construction Engineering: prorated share
  - Admin – Direct costs (up to $14K)
  - Construction- mobilization and traffic control cost balanced
  - Sales tax (total)

Recommendation

Agreement: Combine efforts and advance to bid phase.

9/27: Midway Sewer District Board

9/28: City of Des Moines City Council (Subject to Recommendation of the Public Safety and Transportation committee)

INTERLOCAL AGREEMENT
CITY OF DES MOINES AND MIDWAY SEWER DISTRICT
16th AVENE SOUTH IMPROVEMENT PROJECT
S. 272nd Street to S. 260th Street

WHEREAS, the City of Des Moines, Washington (hereinafter "City") is undertaking a capital improvement project known as the 16th Avenue S. Improvement project (hereinafter "the Project"); and

WHEREAS, Chapter 39.34 RCW authorizes two or more political subdivisions or units of local government of the State of Washington to cooperate on a basis of mutual advantage to provide for services and facilities; and

WHEREAS, the Midway Sewer District (hereinafter "District") owns and operates certain sewer utilities located in the 16th Avenue S. right-of-way and within and adjacent to the project limits of the Project and the District has a franchise agreement to operate in said right-of-way; and

WHEREAS, the City of Des Moines intends to improve 16th Avenue South and this construction presents an opportunity to upgrade the District's sewer utilities; and

WHEREAS, the District plans to upgrade certain sewer utilities located within and adjacent to the project limits of the Project; and

WHEREAS, integrating the District's sewer utilities work into the City's design and construction of the Project would be more expedient, less expensive, and less disruptive to the public than undertaking both the City's and the District's projects separately; and

WHEREAS, the Parties mutually desire to establish a formal arrangement under which the District will pay the City in exchange for the City's incorporating the District's utilities work into the design and construction of the Project; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of defining their respective rights, obligations, costs and liabilities regarding this undertaking; and

WHEREAS, the City Council of the City of Des Moines has taken appropriate action to approve the City's entry into this Agreement; and

WHEREAS, the Board of Commissioners of the District has taken appropriate action to approve the District's entry into this Agreement;

NOW, THEREFORE, in consideration of the terms, conditions and covenants contained herein, the Parties agree as follows:

TERMS

Section 1. Purpose. The purpose of this Agreement is to establish a formal arrangement under which the District will pay the City to incorporate the design of the District's sewer utilities upgrades and relocations into the Project contract documents and to construct said utilities upgrades and relocations in conjunction with the City's design and construction of the Project. The terms, conditions, and covenants of this Agreement shall accordingly be interpreted to advance this purpose. This Agreement further seeks to allocate and define the Parties' respective rights, obligations, costs and liabilities concerning the establishment, operation and maintenance of this undertaking.

Section 2. Term. This Agreement shall be effective upon execution by the Parties hereto. Unless terminated in accordance with Section 3, or Section 4.H, this Agreement shall remain effective until one of the following events, whichever is later: (a) the District's written acceptance of and payment for all District's infrastructure provided pursuant hereto, or (b) December 31, 2007. Thereafter, the agreement shall expire automatically. The Parties may at their option renew this Agreement for a mutually agreed upon term by a writing signed by both Parties.

Section 3. Termination. Either Party may terminate this Agreement with or without cause by providing the other Party with 30 days written notice of its intent to terminate. Termination or expiration shall not alter the District's payment obligations under Section 6 for services already rendered, as well as for the normal and reasonable costs incurred by the contractor in terminating and closing out the District's portion of the work, and shall not alter the Parties' respective obligations under Section 11 of this Agreement.

Section 4. Obligations of the District. The District agrees to:

A. Provide periodic payments to the City to reimburse the City for its costs of designing and constructing the District's sewer utilities relocation and upgrade work pursuant to Section 6 of this Agreement, and as follows:

   a. Engineering/Design.
      i. The District will provide the City with, and assume full responsibility for, engineered plans and specifications for all work to be completed under this agreement. The plans shall be stamped by a licensed engineer and made in accordance with current State of Washington Specifications for Road, Bridge, and Municipal Construction, unless otherwise noted.
      ii. The District shall reimburse the City for 100% of the City's outside costs for engineering/design to incorporate the design prepared by the District's engineering consultant for the District's sewer utilities

relocation and upgrade work into the construction plans, specifications and contract documents for the Project. The actual, pre-determined cost to the District for this engineering/design service is $8,000.

b. Bid Process. The District shall participate in the bid process as follows:
   i. Provide the City with plans, specifications, and such other information relating to Midway Sewer District sewer utilities relocation and upgrade work as is necessary to prepare the bid documents by August 11, 2006.
   ii. Review and approve bid documents as prepared by the City not later than 10 days following submission of the bid documents to the District by the City.
   iii. Accept or reject any or all bids as to Midway Sewer District Schedule. Within ten (10) days of receiving the bid prices, the District shall notify the City in writing that the District either approves or rejects the bid document.

c. Construction. The District shall reimburse the City for the City's actual costs for construction of the District's utilities work based upon:
   i. Contractor's bid schedule for this work, the actual quantities of work installed, and the final actual costs of construction. The engineer's estimate for this work, excluding sales tax, is between $1,654,000 and $1,819,800 or approximately 26 percent of the total estimated construction contract.
   ii. All costs of hot mix asphalt overlay and grinding required to resurface sidestreets outside the City's project limits based upon the City's bid item for such work not to exceed the engineer's estimate of 4600 square yards of Class B asphalt overlay with grind. The engineer's estimate for this work is between $161,000 and $177,000.
   iii. A portion of the actual project mobilization and traffic control cost calculated in the following manner: (Total Actual Mobilization, and Traffic Control Cost) + (Sum of District's actual costs derived from Sections 4.A.b.i and Section 4.A.b.ii) / (Total Project Construction Cost). The District anticipates that 26% the total project mobilization and traffic control costs will be the responsibility of the District. If the City determines that the bids schedules for one or more of these items in 4.A.c.iii is unbalanced, then the District agrees to adjust their contribution to balance these bid items not to exceed 26% of these costs.
   iv. All Washington State Sales tax associated with the District's work.

B. Provide construction surveying, monumentation, and staking of the District's work utilizing datum approved in advance by the City or the City's Consulting Engineer. The District shall replace any monuments, that are removed solely as the result of the District's work, as required by the City for its project. The District shall be responsible for preparing as-built construction drawings and providing said information to the City within 30 days of completion of the District's work.

C. Reimburse the City for the District's prorated share of the City's actual outside costs for construction engineering and management of the project. The District's prorated share of the construction engineering and management cost shall be computed by multiplying the City's actual outside cost for construction engineering and management times the percentage of the construction contract cost that the District's utilities work is of the total construction contract cost for the project, then multiplying the resultant times the same percentage share.

D. Reimburse the City for the District's prorated share of the City's direct project administration and management costs estimated not to exceed $14,000.

E. Respond promptly to information requests submitted by the City or its agents regarding the sewer utilities relocation and upgrade work.

F. Upon satisfactory completion of the District's sewer utilities relocation and upgrade work, provide written acceptance of the work to the City.

G. The District agrees that the 16th Ave S. Project is a priority for the City and that a District inspector will be available during the project construction. The District inspector will record bid item quantities and provide them to the City's engineer for inclusion in monthly pay estimates. The District inspector will have the responsibility for inspection and approval of the District facilities and that the contractor employed by the City will be directed to comply with the District requirements by the City's engineer or designee in accordance with plans and specifications approved by the District. The District inspector shall immediately notify the City, verbally and in writing, of any disapproval of said work and provide said notification prior to progress payment for said work to the Contractor.

H. If the District decides to reject any or all bids, then the District acknowledges that construction of these sewer improvements under a separate contract will likely delay and/or increase the cost of the City's project and the district agrees to postpone said improvements for a period of 5 years beyond completion of the City's improvements unless it is demonstrated that lack of said improvements poses a serious danger to public health or safety.

Section 5. Obligations of the City. The City agrees to:

A. Incorporate the design prepared by the District's engineering consultant for the District's sewer utilities relocation and upgrade work into the construction plans, specifications and contract documents for the Project as a separate schedule.

B. Assume responsibility for constructing the District's sewer utilities relocation and upgrade work in accordance with the plans, specifications, and contract documents, including but not limited to securing all necessary consultants, contractors, and subcontractors. All construction contracts shall be procured through a formal competitive bidding process consistent with applicable State law. The City shall have

sole authority to award and manage the construction contract per the terms of this agreement.

C. Submit to the District written invoices for payment in accordance with Section 6. Include copies of invoices or other documentation from consultants and/or contractors, clearly indicating the District's portion of the invoices.

D. Assume lead agency status and responsibility for applying for and obtaining any and all regulatory permits necessary to complete the Project, including but not limited to right-of-way permits and SEPA approvals.

E. Provide District personnel reasonable access to the Project's construction area for purposes of inspecting, monitoring approving or disapproving the progress of work performed on the District's sewer utilities relocation and upgrade work. The City shall notify a District representative of all construction meetings and shall allow the District representative to participate in all construction meetings.

F. Respond promptly to information requests submitted by the District or its agents regarding the Project.

Section 6. Payment Schedule. The Parties agree to the following billing and payment schedule:

A. The actual cost incurred by the City to incorporate the design prepared by the District's engineering consultant for the District's sewer utilities relocation and upgrade work into the construction plans, specifications and contract documents for the Project has been pre-determined to be $8,000. The District shall tender payment to the City in the form of a check, money order, or other certified funds in this amount within 30 days of execution of this Agreement.

B. For construction contract costs and for construction engineering and management costs incurred by the City for the District's utilities work on the Project, the City shall submit an invoice to the District for the District's share of said expense for the District's utilities work. Said invoice shall contain a reasonably detailed explanation of the methodology utilized by the City in determining the District's share of each expense. To the extent reasonably possible, the City shall document and tabulate separately the actual quantities of work installed to clearly identify the District's portion of the Project construction cost for the District's utilities work. Final adjustment of prorated costs shall be delivered to the District within 30 days of project close out.

C. Within 30 days of receiving any invoice pursuant to subsection 6.B, the District shall tender payment to the City in the form of a check, money order or other certified funds for the invoiced amount.

D. In the event that the Parties disagree regarding the District's share of any expense incurred by the City regarding the Project, the Parties may agree to submit the question for resolution in accordance with the mediation/arbitration clause contained herein.

Section 7. (reserved)

Section 8. Change Orders and Authorization of Cost Overruns:

A. Change Orders. All change orders shall be subject to review and recommendation by the District's Administrator. The District shall have the right to approve or reject change orders relating to the District's work prior to payment to the contractor by the City. The City shall have the right to approve or reject change orders relating to the City's work. The parties shall mutually accept or reject change orders relating to joint work. Any dispute between the parties as to proportional payment for joint element change orders shall be resolved pursuant to the mediation/arbitration clause contained herein.

B. Cost Overruns. The City is authorized on behalf of the District to negotiate and approve all unit price over-runs in bid quantities and change orders related to the installation of the District's sewer main and related work. The District also authorizes the expenditure by the City of a contingency of up to 10% of the contractor's total price for the District's bid schedule for over-runs in bid quantities and change orders associated with the installation of the District's sewer main and related work. For any quantity overruns that cause the cost of the District's sewer line installation to exceed the authorized 10% contingency amount, the City will notify the District in writing requesting a letter of concurrency allowing the City to exceed the 10% contingency before proceeding with the work. The letter will include an explanation of the changed conditions necessitating exceeding the previously approved contingency. A letter of concurrence shall be provided to the City within a reasonable time frame so as to not cause a Project delay. If there is a potential delay due to extra work or a change order, the City will indicate in this notification to the District along with a time for response required from the District. The City will include a progress schedule and any change orders for the District's sewer line installation and related work with the District's monthly invoice. In any event and even without a letter of concurrence from the District, the City is authorized to take any reasonable action and to expend any reasonable amount of money to assure that the District's sewer line and related work will not interfere or delay the timely completion of the project. Any disputes as to the reasonableness of the City's actions or expenditures for the sewer line installation and related work will be resolved as set forth in Section 12 below.

Section 9. Ownership and Disposition of Property. The District's sewer utilities relocated or upgraded pursuant to this Agreement shall become and remain the exclusive property of the District upon completion. All other work constructed under the Project shall become and remain the exclusive property of the City upon completion.

Section 10. Administration; No Separate Entity Created. The City of Des Moines Planning, Building, Public Works Director, or his designee, shall serve as the City's administrator of this Agreement. The Midway Sewer District General Manager, or his designee, shall serve as the District's administrator of this agreement. No separate legal entity is formed by this Agreement

Section 11. Release, Indemnification and Hold Harmless Agreement. Each Party to this Agreement shall be responsible for its own negligent and/or wrongful acts or omissions, and those of its own agents, employees, representatives, contractors or subcontractors, to the fullest extent required by laws of the State of Washington. Each Party agrees to protect, indemnify and save the other Party harmless from and against any and all such liability for injury or damage to the other party or the other Party's property, and also from and against all claims, demands, and causes of action of every kind and character arising directly or indirectly, or in any way incident to, in connection with, or arising out of work performed under the terms hereof, caused by its own fault or that of its agents, employees, representatives, contractors or subcontractors.

The City specifically promises to indemnify the District against claims or suits brought under Title 51 RCW by its own employees, contractors, or subcontractors, and waives any immunity that the City may have under that title with respect to, but only to, the limited extent necessary to indemnify the District. The City shall also indemnify and hold the District harmless from any wage, overtime or benefit claim of any City employee, agent, representative, contractor, or subcontractor performing services under this Agreement. The City further agrees to fully indemnify the District from and against any and all costs of defending any such claim or demand to the end that the District is held harmless therefrom.

The District specifically promises to indemnify the City against claims or suits brought under Title 51 RCW by its own employees, contractors, or subcontractors, and waives any immunity that the District may have under that title with respect to, but only to, the limited extent necessary to indemnify the City. The District shall also indemnify and hold the City harmless from any wage, overtime or benefit claim of any District employee, agent, representative, contractor, or subcontractor performing services under this Agreement. The District further agrees to fully indemnify the City from and against any and all costs of defending any such claim or demand to the end that the City is held harmless therefrom.

Section 12. 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 before a mutually agreed alternative dispute resolution entity or by mediation administered 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 binding arbitration which shall be conducted under mutually agreed rules, or under the American Arbitration Association's Commercial or Construction Arbitration Rules. The arbitrator may be selected by agreement of the parties or through appointment pursuant to the rules of 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.

Section 13. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Any action arising out of this Agreement shall be brought in King County Superior Court.

Section 14. No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between the District and any employee, agent, representative or contractor of the City, or between the City and any employee, agent, representative or contractor of the District.

Section 15. No Third Party Rights. This Agreement is intended for the sole and exclusive benefit of the parties hereto and no third party rights are created by this Agreement.

Section 16. Notices. Notices to the City shall be sent to the following address:

City of Des Moines
City Transportation Engineer
21650 11th Avenue So.
Des Moines, WA 998198

Notices to the District shall be sent to the following address:

Midway Sewer District
General Manager
3030 S. 240th St
Kent, WA 98032 2819

Section 17. Duty to File Agreement With County Auditor. The City shall, after this Agreement is executed by both Parties, file this Agreement with the King County Auditor.

Section 18. Integration/Entire Agreement. This document constitutes the entire embodiment of the Agreement between the Parties, and, unless modified in writing by an amendment to this Interlocal Agreement signed by the Parties hereto, shall be implemented as described above. This Agreement supersedes any oral representations that are inconsistent with or modify its terms and conditions.

Section 19. Non-Waiver. Waiver by any Party of any of the provisions contained within this Agreement, including but not limited to any performance deadline, shall not be construed as a waiver of any other provisions.

Section 20. Amendment. This Agreement may be amended only upon consent of all Parties hereto. Any amendment hereto shall be in writing and shall be ratified and executed by the Parties in the same manner in which it was originally adopted.

Section 21. Severability. If any provision of this Agreement shall be held invalid, the remainder of this agreement shall not be affected thereby.

Section 22. Counterparts. This Agreement shall be effective whether signed by all Parties on the same document or whether signed in counterparts.

Reviewed and approved as authorized by motion of the City of Des Moines City Council on the _____ day of _____, 2006.

CITY OF DES MOINES

By: _____
Anthony A. Piasecki, City Manager

Date: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Des Moines City Attorney

Review and approved as authorized by motion of the Midway Sewer District Board of Commissioners on the _____ day of _____, 2006.

By: _____
Ken Kase, General Manager

Date: _____

STATE OF WASHINGTON)

COUNTY OF KING)

On this day, personally appeared before me _____ , the General Manager of MIDWAY SEWER DISTRICT and stated that he is authorized to sign this instrument on behalf of said company for the uses and purposes therein mentioned.

SUBSCRIBED AND SORN TO before me this _____ day of _____, 2006

_____
NOTARY

_____
Print Name
My commission expires: _____