

AGENDA

**REGULAR MEETING
DES MOINES CITY COUNCIL
21630 11th Avenue South, Des Moines, City Council Chambers**

December 6, 2012 - 7:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

CORRESPONDENCE

COMMENTS FROM THE PUBLIC:

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORTS

CONSENT CALENDAR

Page 1 Item 1: APPROVAL OF MINUTES

Motion is to approve the minutes of the meetings of November 8 and 15, 2012.

Page 7 Item 2: NORTHWEST LANDSCAPE SERVICES (NLS) CONTRACT

Motion is to amend the contract with Northwest Landscape Services for City parks and streetscape maintenance services by extending the contract through December 31, 2014, including an option for the City to extend the contract for an additional twelve months, for an annual amount of \$77,910.24 plus tax; authorize an annual contingency of 10%; and authorize the City Manager to sign said contract amendment substantially in the form as submitted.

Page 113 Item 3: MAYORAL APPOINTMENTS TO THE ARTS COMMISSION

Motion is to confirm the Mayoral appointments of Gene Achziger and John Hicks to the Des Moines Arts Commission effective January 1, 2013 which will expire on December 31, 2015 and Adrian VanderHoeven to fill an unexpired term effective immediately which will expire on December 31, 2013.

Page 119 Item 4. SETTLEMENT OF BEACH PARK AUDITORIUM PROJECT CLAIMS

Motion is to authorize the City Manager to sign the attached Settlement Agreement and Mutual Release of Claims, substantially in the form as attached with respect to claims arising out of the design and construction of the Des Moines Beach Park Auditorium.

125 Item 5. BUDGET AMENDMENT

Motion is to pass Draft Ordinance No. 12-207 relating to municipal finance amending the 2012 budget adopted in Ordinance No. 1529 as amended by Ordinance No. 1547.

OLD BUSINESS

Page 135 1. MARINA & BEACH PARK DEVELOPMENT PLAN – PREFERRED
DEVELOPMENT ALTERNATIVE

Staff Presentation: Harbormaster Joe Dusenbury

Page 147 2. ADOPTION OF 2013 BUDGET
Staff Presentation: Finance Director Paula Henderson

NEW BUSINESS

Page 156 1. B&O TAX AMENDMENT ORDINANCES - DRAFT ORD. NO. 12-196 (TAX
IMPOSED) AND DRAFT ORD. NO. 12-197 (TAX ADMINISTRATION)
Staff Presentation: Finance Director Paula Henderson

Page 227 2. DRAFT ORDINANCE NO. 12-212, UPDATING THE ORDINANCE RELATING
TO EMPLOYEE POLICIES
Staff Presentation: Assistant City Manager Lorri Ericson

NEXT MEETING DATE December 13, 2012, City Council Regular Meeting

ADJOURNMENT

Consent Agenda Item #1

AGENDA

REGULAR MEETING
DES MOINES CITY COUNCIL
21630 11th Avenue South, Des Moines, City Council Chambers

November 8, 2012 - 7:00 p.m.

CALL TO ORDER - Mayor Kaplan called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE – The flag salute was led by Mayor Pro-Tem Pina.

ROLL CALL

Present were Mayor Dave Kaplan; Mayor Pro-Tem Matt Pina; Councilmembers Dan Caldwell, Melissa Musser, Jeanette Burrage, Bob Sheckler and Carmen Scott.

Staff present were City Manager Tony Piasecki; City Attorney Pat Bosmans; Assistant City Attorney Tim George; Assistant City Manager Lorri Ericson; Planning Building and Public Works Director Grant Fredricks; Police Chief George Delgado; Finance Operations Manager Cecilia Pollock; Parks Recreation and Senior Services Director Patrice Thorell; Assistant Director of Transportation and Engineering Dan Brewer; Sergeant Bob Bohl; Assistant Director of Utilities and Environmental Engineering Loren Reinhold; Planning Manager Denise Lathrop; Development Services Manager Robert Ruth; City Clerk Sandy Paul; Associate Transportation Engineer Brandon Carver, Judge Veronica Alicea-Galvan

COMMENTS FROM THE PUBLIC:

Mike Merryfield, 28529 10th Avenue South, spoke about trimming trees in Redondo Heights. The Home Owner's Association has been given permission by the Redondo Heights Condominium, and pledged to apply for all the proper City permits to trim trees that obscure views. Recently the City has held the HOA to codes that apply to new construction whereby the soils are disturbed.

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

Mayor Pro-Tem Pina

- Reported on Finance and Economic Development Committee meeting of October 30
- Reported on the Public Safety and Transportation (PS&T) meeting on November 1
- Reported on the Highline Communities Coalition meeting of November 3
- Reported on the TBD meeting on November 8

Councilmember Musser

- Reported on the PIC meeting at SCA. The SCA name would change to the 'Sound' Cities Association and not 'suburban'; a new SCA committee would be developed to address the issues of smaller cities.
- SCA Networking dinner and Annual Meeting is November 14. Councilmember Musser will vote on behalf of Des Moines.

PRESIDING OFFICER'S REPORT

- AWC Municipal Award of Excellence went to the SCORE member cities at the June Conference. The video that was used in the winning presentation was shown to the City Council.
- Mayor Kaplan mentioned that a number of small business openings had taken place in the City - one a jewelry shop, another a gourmet popcorn shop.

- Spoke today to three Highline Community College classes, followed by a Veteran's Day celebration at Huntington Park.
- Attended a Sound Transit open house at Highline Community College and reported that the letter sent by the Des Moines Council had obviously been read. Sound Transit takes all comments and gives them appropriate consideration.
- The Spirit of Des Moines Awards committee will meet Tuesday November 13. Anyone may nominate an individual they think is worthy of an award.
- Tuesday's election gave us a new president, a new governor, and a new opportunity to deal with a budget deficit. Representatives Orwall and Upthegrove were both reelected. I-502 appears to be passing, which legalizes marijuana. Referendum 74, providing marriage equality, seems also to be passing.

ADMINISTRATION REPORT

- Judge Veronica Alicea-Galvan gave the annual State of the Court report. She addressed topics including school zone cameras, the court security construction project completed in 2012, e-tickets, SCORE, prosecution impacts, and future projects.
- Bids were received for the 216th Street Project, 8th to 24th Avenues. The low bid was \$5.1 million.
- Thursday, November 15, is Grant Fredrick's last day of work before his retirement. He addressed the Council, staff, and community.

CONSENT CALENDAR

Item 1: APPROVAL OF MINUTES

Motion is to approve the minutes of October 18 and 25, 2012 City Council meetings and the Special Meeting to Hold an Executive Session on October 18.

Item 2: APPROVAL OF VOUCHERS

Motion is to approve for payment those vouchers and payroll transfers included in the above list and further described as follows:

Claim checks \$251,241.30

Payroll fund transfers in the total amount of \$445,058.49

Total certified Wire Transfers, Voids, A/P & Payroll vouchers are \$696,299.79

Item 3: MOTION TO CANCEL THE NOVEMBER 29, 2012 PUBLIC HEARING ON LAND USE REVIEW PROCEDURES OF THE ZONING CODE

Motion is to cancel the November 29, 2012 public hearing regarding Land Use Review Procedures by rescinding Resolution No. 1207.

ACTION/DIRECTION

Mayor Pro-Tem Pina moved to adopt the Consent agenda; Councilmember Caldwell, second. The motion passed 7-0.

EXECUTIVE SESSION

Mayor Kaplan recessed the City Council meeting at 8:15 p.m. for the purpose of holding an Executive Session to discuss a potential acquisition of real estate pursuant to Title 42.30.110 (1)(b) RCW. The Executive Session would last for 15 minutes. Present were Mayor Dave Kaplan; Mayor Pro-Tem Matt Pina; Councilmembers Dan Caldwell, Melissa Musser, Jeanette Burrage, Bob Sheckler and Carmen Scott. Also Present were Tony Piasecki; City Attorney Pat Bosmans; Assistant City Manager Lorri Ericson; Planning Building and Public Works Director Grant Fredricks; Parks Recreation Senior Services Director Patrice Thorell; Assistant Director of Transportation and Engineering Dan Brewer Associate Transportation Engineer Brandon Carver.

The Executive Session was adjourned at 8:25 p.m. The City Council meeting was reconvened at 8:30 p.m.

OLD BUSINESS

2. Adoption of 2013-2018 CIP Resolution

This item was address ahead of the public hearings to accommodate Councilmember Scott who needed to leave the meeting.

City Manager Piasecki called attention to specific budget items, including the keyless entry system, which is DOS based and can no longer be repaired and has no funding for replacement. If it stops working, he will find money somewhere to replace it. The banners and reader boards item has no funding unless donations are received and fundraising can be accomplished. In the transportation CIP, specifically, the project at 24th Avenue, the City has applied for a grant, but there are doubts at this time if money will be available in the Public Works Trust Fund. Should the grant be realized, any funding associated with this project would be used to kick start another project.

ACTION/DIRECTION

Councilmember Sheckler moved to adopt draft Resolution No. 12-194 approving the City of Des Moines 2013-2018 Capital Improvement Plan; Mayor Pro-Tem Pina, second.

Mayor Kaplan moved to amend the motion to remove five projects from the CIP: Des Moines Beach Park Sun Home Lodge rehabilitation; Carlson house rehabilitation; roadside cabin rehabilitation; sports cabin rehabilitation; caretakers cabin rehabilitation; second by Councilmember Musser. Additionally, Mayor Kaplan suggested that the motion include direction to staff to bring best estimates for demolition of the buildings, which was accepted as a friendly amendment by Councilmember Musser. The motion passed, 6-1. Councilmember Scott voted *no*.

The main motion as amended passed, 6-1. Councilmember Scott voted no.

Mayor Kaplan read the title of the resolution into the record.

Councilmembers Scott and Sheckler left the meeting at 9:20 p.m.

OLD BUSINESS

1. SCHOOL ZONE SPEED ENFORCEMENT – PILOT PROJECT EVALUATION

Sergeant Bob Bohl showed a power point presentation and provided an evaluation of the school zone speed enforcement program, implemented following a speed study showing up to 230 vehicles per day drive over the speed limit in the Woodmont School zone on 16th Avenue South. Since implementation of the ATS Speed Cameras, violations have been reduced to an average of 17 per day. That success encouraged the expansion of the program to the Midway School zone.

ACTION/DIRECTION

There was no action taken. The presentation was for information only.

PUBLIC HEARING

1. 2013 PROPERTY TAXES

Mayor Kaplan opened the public hearing at 9:35 p.m.

City Manager Tony Piasecki explained the allowable tax levy and the maximum revenue allowed for 2013 by statute. The City will lose an additional \$300,000 in the coming year for a total loss exceeding \$1,000,000 annual revenue since the economic downturn began.

Mayor Kaplan asked that those wishing to speak please do so at this time. No one had signed up to speak. Mayor Kaplan called three times for anyone else wishing to speak.

The City Council had no questions.

Mayor Kaplan closed the Public Hearing at 9:40 p.m.

ACTION/DIRECTION

Councilmember Musser moved to suspend Rule 26a in order to enact Draft Ordinance No. 12-193 on first reading; Mayor Pro-Tem Pina, second. The motion passed, 5-0.

Councilmember Musser moved to enact Draft Ordinance No. 12-193, determining the amount of funds to be raised by ad valorem taxes for the year 2013 for general City expenditures; Mayor Pro-Tem Pina, second. The motion passed, 5-0.

Mayor Kaplan read Draft Ordinance No. 12-193 into the record as approved.

2. **ADOPTION OF 2013 BUDGET**

Mayor Kaplan opened the public hearing at 9:42 p.m.

City Manager Tony Piasecki referenced meetings he was scheduling with individual Councilmembers, the discussed open positions that would and would not be filled. He then turned comment over to the public. No one had signed up to speak.

Mayor Kaplan asked that those wishing to speak please do so at this time. Mayor Kaplan called three times for anyone else wishing to speak.

Mayor Kaplan closed the Public Hearing at 9:45 p.m.

ACTION/DIRECTION

Mayor Pro-Tem Pina moved to pass Draft Ordinance No. 12-192 to a second reading for enactment at the November 29, 2012 City Council meeting; second by Councilmember Musser. The motion passed, 5-0.

Mayor Kaplan read the Draft Ordinance into the record as approved.

NEXT MEETING DATE November 15, 2012, City Council Study Session

ADJOURNMENT - There being no further business to come before the City Council, Councilmember Musser moved to adjourn; Councilmember Caldwell, second. The motion passed, 5-0. The meeting was adjourned at 9:55 p.m.

Respectfully submitted,

Sandy Paul MMC
City Clerk

MINUTES

DES MOINES CITY COUNCIL STUDY SESSION 21630 11th Avenue South, City Council Chambers

November 15, 2012 - 7:00 p.m.

CALL TO ORDER - Mayor Kaplan called the meeting to order at 7:02 p.m.

PLEDGE OF ALLEGIANCE – The flag salute was led by Councilmember Burrage.

ROLL CALL

Present were Mayor Dave Kaplan; Mayor Pro-Tem Matt Pina; Councilmembers Dan Caldwell, Melissa Musser, Jeanette Burrage, and Bob Sheckler.

Councilmember Scott was absent. Councilmember Musser moved to excuse Councilmember Scott; Mayor Pro-Tem Pina, second. The motion passed, 6-0.

Staff present were City Manager Tony Piasecki; Assistant City Manager Lorri Ericson; Police Chief George Delgado; Acting Public Works Director Dan Brewer; Development Services Manager Robert Ruth; Acting Commander Patty Harris; City Clerk Sandy Paul

DISCUSSION ITEM

1. HIGHLINE COMMUNITY COLLEGE/CENTRAL WASHINGTON UNIVERSITY/HERITAGE UNIVERSITY POLICY DISCUSSION
Discussion Introduced by Mayor Kaplan

John Bascom of Heritage University in Toppenish; Jim Baldino and Barbara Badgely both of Central Washington University in Ellensburg; and Jack Birmingham of Highline Community College in Des Moines were present to discuss the partnership that has evolved on the Des Moines Campus of HCC. Kaplan Language College also has a presence on the HCC Campus.

Discussion included goals of the educational institutions matched to the future needs of the local community including how well the branch campus model works to educate students. The college-bound programs, also known as running start, whereby high school students attend college classes during their last years of high school, are other programs that can reduce costs for students and families.

The universities criticized the state for abandoning their funding to colleges at all levels. A Bachelor's degree at Central now costs \$80,000, the cost for a small business franchise. There are 80,000 students in Washington state who qualify for educational funding assistance who do not get it.

The Council asked what they could do to assist educational and campus growth and offered assistance to create mutually beneficial programs and projects through lobbying, zoning changes, and changes or additions in educational programs. Lobbying efforts could include alternative funding sources.

Councilmember Sheckler left the meeting at 8:45 p.m.

Dr. Birmingham thanked the City and Council for the support in the past few years, and offered thanks, also, for the opportunity to have this discussion. Educational institutions remain one of the City's biggest economic development engines. Additional meetings will be scheduled in the future.

NEXT MEETING DATE: Regular Meeting November 29, 2012

ADJOURNMENT

There being no further business to come before the City Council, Councilmember Musser moved to adjourn; Mayor Pro-Tem Pina, second. The motion passed, 6-0.

Respectfully submitted,

Sandy Paul CMC
City Clerk

AGENDA ITEM

SUBJECT: Parks and Public Works Landscape Maintenance Contract Extension With Northwest Landscape Services (NLS)

AGENDA OF: December 6, 2012
DEPT. OF ORIGIN: Planning, Building & Public Works

DATE SUBMITTED: November 29, 2012

ATTACHMENTS:

- 1. Contract Amendment
2. NLS Contract (2011)

CLEARANCES:

- [X] Legal
[X] Finance
[] Marina N/A
[X] Parks, Recreation & Senior Services
[X] Planning, Building & Public Works
[] Police N/A
[] Courts N/A

APPROVED BY CITY MANAGER FOR SUBMITTAL:

Purpose:

The purpose of this agenda item is to approve an amendment (Attachment 1) to the Parks and Public Works landscape maintenance services Contract (Attachment 2) with Northwest Landscaping Services by extending the Contract for an additional twenty four (24) months through December 31, 2014, and adding an option for the City to extend the contract an additional twelve (12) months. The following motion will appear on the consent calendar:

Suggested Motion

Motion: "I move to amend the Contract with Northwest Landscape Services for City parks and streetscape maintenance services, by extending the Contract through December 31, 2014, including an option for the City to extend the Contract for an additional twelve months, for an annual amount of \$77,910.24 plus tax; authorize an annual contingency of 10%; and authorize the City Manager to sign said Contract amendment substantially in the form as submitted."

Background:

In 2011, the City advertised for contracted limited landscape maintenance services. Northwest Landscape Services (NLS) was the successful low bidder for these services. On June 23, 2011, the Council approved the Contract (Attachment 2) for a period of 6 months, and authorized Administration to extend the Contract for an additional 12 months through 2012 if NLS provided satisfactory performance. During the last 6 months of 2011, NLS performed landscape maintenance services, and based on the quality of their work, Administration extended the Contract through 2012.

In-house Parks maintenance resources have been reduced over recent years and continue to be limited due to General Fund budget limitations. In exchange for contracted parks maintenance services, the budget year of 2012 reduced its part-time seasonal Parks staffing from 2.34 (2011) to 1.00 FTE. This reduced part-time seasonal Parks staffing level is also currently proposed for the 2013 budget.

Furthermore, over the past few years there have been grounds and landscape maintenance improvements added to the general scope of work for the City's Parks staff such as; 16th Avenue South street/sidewalk improvements, Pacific Highway South Median and sidewalk landscaping, Steven J. Underwood Park and recently completed projects at South 216th Street and the Field House complex, all bringing additional landscape maintenance requirements.

With recent increases in landscape maintenance needs and budget-driven decreases in Parks maintenance staffing levels, a deficit has been created in terms of in-house capacity and ability to maintain all of the City's landscaping to acceptable levels. Therefore, the decision was made in 2011 to use more cost effective contracted landscape maintenance services given fewer seasonal and full time staff.

Regardless of the staffing reductions, landscaping at City parks and streetscapes must be maintained to acceptable community and safety standards. Based on the experience with NLS, staff believes that landscape maintenance needs at City parks and right of ways can continue to be met in an efficient and economical manner through the joint efforts of both in-house maintenance staff and contracted services.

Previously, staff looked into partnering with neighboring cities for this work but was not able to negotiate mutual benefits due to lack of interest at the time. Staff continues to explore partnering opportunities with neighboring cities in an effort to further reduce costs to the City.

Discussion:

The original contract gives the City the choice to extend the Contract for up to 24 months. Administration has already extended the Contract for 12 months (2012); therefore the contract as approved, gives the City the ability to extend the term through 2013 without any modifications. Administration would just need authority from Council to extend the contract for the final 12 months (See Alternative 1 below).

The performance of NLS has been closely monitored by City staff and continues to meet or exceed all standards and requirements per the Contract. Given the exemplary performance by NLS since June of 2011, Administration is recommending that the term of the contract be extended through 2014, with an option to extend for an additional 12 months. NLS has agreed to lock-in the 2012 rates for these services for the next two years.

Alternatives:

- 1) Council could choose to leave the term of the Contract as it is currently written, and just give Administration the authority to extend the term for the final 12 months, through 2013.
- 2) Council could choose not to approve the Contract extension, and choose not to Contract for landscape maintenance service at all. There would be several impacts with such a decision. First, the City's maintenance division would be required to perform said work with a limited number of staff which would not only negatively affect the appearance of the City's landscaped assets but would also reduce the time available for other necessary maintenance operations, support to the City's recreational programs and tasks that need to be completed. Second, in order

to provide the services to minimally acceptable standards, the part-time seasonal Parks staffing levels would need to be restored to 2011 levels by adding 1.34 FTE to the 2013 General Fund.

- 3) Council could choose not to approve the Contract extension, and ask staff to re-advertise for contracted landscape services. Given the previous good performance by NLS, and the fact that they are willing to extend the contract without any annual cost increases, staff does not recommend this alternative.

Financial Impact:

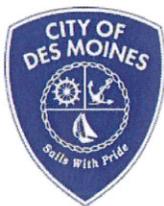
The costs for these contracted services are included in the proposed 2013 Parks Operation budget. If the full contract authority plus contingency is used, the total contract would be as follows: Base Bid: \$58,352.64; Alternate 3: \$12,597.60; Extra Hours: \$6,960.00; Contingency (10%): \$7,791.02; Washington State Sales Tax: \$8,141.62 for a grand total of: \$93,842.89. The 2013 proposed budget is \$98,500. A similar budget would be required for the 2014 Parks Operations budget.

Recommendation/Conclusion:

Staff recommends extending the landscape maintenance services Contract titled: 2011 Parks and Right of Way Landscape Maintenance, RFB #052011A with Northwest Landscape Service through 2014.

Concurrence:

Planning, Building & Public Works, Parks, Legal and Finance Departments concur.



CONTRACT AMENDMENT/ADDENDUM FORM

CONTRACT FOR PARKS AND RIGHT OF WAY LANDSCAPE MAINTENANCE BETWEEN THE CITY OF DES MOINES AND NORTHWEST LANDSCAPE SERVICES

THIS AMENDMENT/ADDENDUM is entered into on this ____ day of _____, 2012, pursuant to that certain Contract entered into on the 28th day of June, 2011, between the **CITY OF DES MOINES**, WASHINGTON (hereinafter "City"), and **NORTHWEST LANDSCAPE SERVICES**, (hereinafter "NLS").

The parties herein agree that the Contract dated June 28, 2011, shall remain in full force and effect, except for the amendments/addendums set forth as follows:

1. **ATTACHMENT C – Bid Schedule (Page 24)**, is hereby amended to read as follows:

SEE ATTACHED PAGES 1 THROUGH 4 TITLED: "2013 CONTRACT EXTENSION" Attachment C Bid Schedule" and; PAGES 1 THROUGH 4 TITLED: "2014 CONTRACT EXTENSION" Attachment C Bid Schedule", incorporated herein by reference.

2. **Section 2 of ATTACHMENT I (Page 33)**, is hereby amended to read as follows:

Term.

The term of this Agreement shall commence upon the effective date of this Agreement and shall continue until the completion of the Services on December 31, ~~2014~~ 2014 ("Term"). The contract shall also include a satisfactory performance extension (at no additional bid pricing increase to the City) of up to ~~twenty-four (24)~~ twelve (12) months. The CITY will notify the Contractor in writing a minimum of thirty (30) days in advance of the contract termination date of the intent to extend the contract ~~twenty-four (24)~~ twelve (12) months based upon satisfactory performance.

BASE BID																		
2013	Project #1		Project #2		Project #3		Project #4		Project #5		Project #6		Project #7		Project #8		Project #9	
	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE
	Big Catch Park 2180 Marine View Drive South (Plaza, Boat, 216th)	1.00 x \$34.80 = \$34.80	City Hall 21630 11th Avenue South	0.90 x \$34.80 = \$31.32	Public Works Eng. 21650 11th Avenue South	2.40 x \$34.80 = \$83.52	Police Dept. 21900 11th Avenue South	5.00 x \$34.80 = \$174.00	Field House (Upper) 1000 South 220th Street islands)	20.00 x \$34.80 = \$696.00	South Marina Park 227th & Dock Street (Incl. 227th traffic islands)	0.20 x \$34.80 = \$6.96	Beach Park 22030 Cliff Avenue South	2.40 x \$34.80 = \$83.52	Overlook II 22200 5th Avenue South	1.00 x \$34.80 = \$34.80	Overlook I 223rd and 5th Avenue South	1.00 x \$34.80 = \$34.80
January		1.34 x \$34.80 = \$46.63		1.17 x \$34.80 = \$40.72		1.56 x \$34.80 = \$54.29		2.83 x \$34.80 = \$98.48		12.82 x \$34.80 = \$446.14		0.89 x \$34.80 = \$30.97		6.79 x \$34.80 = \$236.29		1.40 x \$34.80 = \$48.72		0.85 x \$34.80 = \$29.58
February		8.56 x \$34.80 = \$297.89		7.78 x \$34.80 = \$270.74		3.84 x \$34.80 = \$133.63		9.32 x \$34.80 = \$324.34		13.38 x \$34.80 = \$465.62		5.51 x \$34.80 = \$191.75		29.56 x \$34.80 = \$1,028.69		11.83 x \$34.80 = \$411.68		4.88 x \$34.80 = \$169.82
March		4.73 x \$34.80 = \$164.60		7.88 x \$34.80 = \$274.22		3.36 x \$34.80 = \$116.93		1.79 x \$34.80 = \$62.29		12.51 x \$34.80 = \$435.35		5.54 x \$34.80 = \$192.79		26.36 x \$34.80 = \$917.33		4.04 x \$34.80 = \$140.59		1.65 x \$34.80 = \$57.42
April		3.90 x \$34.80 = \$135.72		3.30 x \$34.80 = \$114.84		1.50 x \$34.80 = \$52.20		1.35 x \$34.80 = \$46.98		12.90 x \$34.80 = \$448.92		3.65 x \$34.80 = \$127.02		24.95 x \$34.80 = \$868.26		4.20 x \$34.80 = \$146.16		1.45 x \$34.80 = \$50.46
May		4.16 x \$34.80 = \$144.77		2.78 x \$34.80 = \$96.74		1.74 x \$34.80 = \$60.55		1.62 x \$34.80 = \$56.38		12.08 x \$34.80 = \$420.38		3.71 x \$34.80 = \$129.11		24.36 x \$34.80 = \$847.73		3.73 x \$34.80 = \$129.80		1.53 x \$34.80 = \$53.24
June		7.16 x \$34.80 = \$249.17		5.68 x \$34.80 = \$197.66		2.74 x \$34.80 = \$95.35		8.12 x \$34.80 = \$282.58		11.48 x \$34.80 = \$399.50		4.46 x \$34.80 = \$155.21		23.36 x \$34.80 = \$812.93		9.40 x \$34.80 = \$327.12		4.20 x \$34.80 = \$146.16
July		4.42 x \$34.80 = \$153.82		4.50 x \$34.80 = \$156.60		2.12 x \$34.80 = \$73.78		2.32 x \$34.80 = \$80.74		13.33 x \$34.80 = \$463.88		4.08 x \$34.80 = \$141.98		27.95 x \$34.80 = \$972.66		6.31 x \$34.80 = \$219.59		1.72 x \$34.80 = \$59.86
August		6.61 x \$34.80 = \$230.03		9.78 x \$34.80 = \$340.34		3.94 x \$34.80 = \$137.11		2.12 x \$34.80 = \$73.78		15.68 x \$34.80 = \$542.18		6.91 x \$34.80 = \$240.47		33.56 x \$34.80 = \$1,167.89		4.69 x \$34.80 = \$163.21		2.56 x \$34.80 = \$89.09
September		9.30 x \$34.80 = \$323.64		7.55 x \$34.80 = \$262.74		6.50 x \$34.80 = \$226.20		5.52 x \$34.80 = \$192.10		43.60 x \$34.80 = \$1,517.28		5.35 x \$34.80 = \$186.18		31.35 x \$34.80 = \$1,090.98		11.60 x \$34.80 = \$403.68		5.85 x \$34.80 = \$203.58
October		3.68 x \$34.80 = \$128.06		3.24 x \$34.80 = \$112.75		5.52 x \$34.80 = \$192.10		10.66 x \$34.80 = \$370.97		45.64 x \$34.80 = \$1,588.27		1.98 x \$34.80 = \$68.90		15.98 x \$34.80 = \$556.10		3.80 x \$34.80 = \$132.24		2.70 x \$34.80 = \$93.96
November		2.22 x \$34.80 = \$77.26		2.00 x \$34.80 = \$69.60		4.92 x \$34.80 = \$171.22		10.47 x \$34.80 = \$364.36		40.33 x \$34.80 = \$1,403.48		0.63 x \$34.80 = \$21.92		5.80 x \$34.80 = \$201.84		2.11 x \$34.80 = \$73.43		2.02 x \$34.80 = \$70.30
December																		
*TOTAL PROJECT HOURS / COST	57.08	\$1,986.38	56.56	\$1,968.29	40.14	\$1,396.87	71.35	\$2,482.98	253.65	\$8,827.02	42.91	\$1,493.27	252.42	\$8,784.22	64.11	\$2,231.03	30.41	\$1,068.27

200 Extra Hours of Maintenance Labor: 200 hr x **\$34.80** (Hourly Labor Rate) = **\$6,960.00** (Extra Hours Cost)

* TOTAL PROJECT HOURS / COST shall be based on the number of services (ie. Mowing, trimming, weeding, etc.) and associated labor hours provided each month, the same unit cost is applied equally to all items of work.

** All items of work must be completed within any given month in order to receive full payment for that month.

2013 CONTRACT EXTENSION
Attachment C
Bid Schedule
2011 Parks and Right of Way Landscape Maintenance
RFB #05-2011A

BASE BID																
2013	Project #10	Project #11	Project #12	Project #13	Project #14	Project #15	Project #16	Project #17								
	Water Tower Park 20802 5th Avenue South	Westwood Park 6th Avenue South & 192nd Street	Midway Park 2900 South 221st Street	Wooten Park 283rd Street & Redondo Beach Drive	Redondo-Bearding Lot Redondo Beach Drive & Redondo-Way	Cecil Powell Park 250th & 13th Place South	City Park (Pond) Kent Des Moines Road & 22nd Place	City Park South 230th Street & 21st Avenue South								
	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE
January	1.50 x \$34.80 = \$52.20	4.00 x \$34.80 = \$139.20	2.00 x \$34.80 = \$69.60	2.20 x \$34.80 = \$76.56	0.80 x \$34.80 = \$27.84	6.00 x \$34.80 = \$208.80	1.00 x \$34.80 = \$34.80	0.80 x \$34.80 = \$27.84								
February	3.78 x \$34.80 = \$131.54	2.47 x \$34.80 = \$85.96	5.78 x \$34.80 = \$201.14	4.24 x \$34.80 = \$147.55	0.00	3.63 x \$34.80 = \$126.32	0.95 x \$34.80 = \$33.06	2.11 x \$34.80 = \$73.43								
March	15.32 x \$34.80 = \$533.14	11.03 x \$34.80 = \$383.84	27.42 x \$34.80 = \$954.22	19.36 x \$34.80 = \$673.73	0.00	7.17 x \$34.80 = \$249.52	5.65 x \$34.80 = \$196.62	8.54 x \$34.80 = \$297.19								
April	13.94 x \$34.80 = \$485.11	2.62 x \$34.80 = \$91.18	26.92 x \$34.80 = \$936.82	18.10 x \$34.80 = \$629.88	0.00	4.10 x \$34.80 = \$142.68	2.65 x \$34.80 = \$92.22	8.99 x \$34.80 = \$312.85								
May	13.95 x \$34.80 = \$485.46	2.05 x \$34.80 = \$71.34	21.80 x \$34.80 = \$758.64	14.50 x \$34.80 = \$504.60	0.00	2.85 x \$34.80 = \$99.18	1.95 x \$34.80 = \$67.86	7.95 x \$34.80 = \$276.66								
June	12.62 x \$34.80 = \$439.18	2.43 x \$34.80 = \$84.56	26.72 x \$34.80 = \$929.86	17.76 x \$34.80 = \$618.05	0.00	3.42 x \$34.80 = \$119.02	2.90 x \$34.80 = \$100.92	7.94 x \$34.80 = \$276.31								
July	12.52 x \$34.80 = \$435.70	9.68 x \$34.80 = \$336.86	17.82 x \$34.80 = \$620.14	12.76 x \$34.80 = \$444.05	0.00	5.32 x \$34.80 = \$185.14	4.10 x \$34.80 = \$142.68	6.49 x \$34.80 = \$225.85								
August	15.07 x \$34.80 = \$524.44	2.64 x \$34.80 = \$91.87	22.40 x \$34.80 = \$779.52	15.24 x \$34.80 = \$530.35	0.00	3.28 x \$34.80 = \$114.14	2.20 x \$34.80 = \$76.56	9.00 x \$34.80 = \$313.20								
September	16.92 x \$34.80 = \$588.82	4.13 x \$34.80 = \$143.72	44.92 x \$34.80 = \$1,563.22	24.96 x \$34.80 = \$868.61	0.00	6.52 x \$34.80 = \$226.90	4.95 x \$34.80 = \$172.26	10.19 x \$34.80 = \$354.61								
October	17.10 x \$34.80 = \$595.08	15.95 x \$34.80 = \$555.06	24.60 x \$34.80 = \$856.08	18.50 x \$34.80 = \$643.80	0.00	14.75 x \$34.80 = \$513.30	5.85 x \$34.80 = \$203.58	9.00 x \$34.80 = \$313.20								
November	9.06 x \$34.80 = \$315.29	8.94 x \$34.80 = \$311.11	13.56 x \$34.80 = \$471.89	10.68 x \$34.80 = \$371.66	0.00	13.26 x \$34.80 = \$461.45	2.90 x \$34.80 = \$100.92	5.02 x \$34.80 = \$174.70								
December	3.12 x \$34.80 = \$108.58	8.09 x \$34.80 = \$281.53	4.10 x \$34.80 = \$142.68	4.64 x \$34.80 = \$161.47	0.00	12.18 x \$34.80 = \$423.86	2.05 x \$34.80 = \$71.34	2.60 x \$34.80 = \$90.48								
*TOTAL PROJECT HOURS / COST	134.90	\$4,694.52	74.03	\$2,576.24	238.04	\$8,283.79	162.94	\$5,670.31	82.48	\$2,870.30	37.15	\$1,292.82	78.63	\$2,736.32		

		ALTERNATE 1										ALTERNATE 2									
2013		Project #18		Project #19		Project #20		Project #21		Project #22		Project #23		Project #24		Project #25		Project #26			
		Activity Center 8045 216th Avenue South	Field House (Lower) 1090 South 220th Street	Memorial Park Mariane View Drive & Des Moines Merperial Drive	251st Entrance Way 851st & Marine View Drive	Sonju Park 84728 16th Avenue South	Mitway Park (Meadow Only) 2908 South 221st Street	Messy-Ceak Plaza Kent Des Moines Road @ 8th-9th Avenue South	Parkside Park 244th & 25 Avenue South	Barnes Creek 15th Avenue South											
January		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
February		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
March		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
April		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
May		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
June		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
July		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
August		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
September		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
October		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
November		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
December		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
*TOTAL PROJECT HOURS / COST		0-00	\$0.00	0-00	\$0.00	0-00	\$0.00	0-00	\$0.00	0-00	\$0.00	0-00	\$0.00	0-00	\$0.00	0-00	\$0.00	0-00	\$0.00		

2013 CONTRACT EXTENSION
Attachment C
Bid Schedule
2011 Parks and Right of Way Landscape Maintenance
RFB #05-2011A

2013	ALTERNATE 3												TOTAL PROJECT COST PER MONTH				
	Project #27				Project #28				Project #29				BASE BID	ALTERNATES			TOTALS
	16th Avenue South 272nd Street to South 260th Street				Pacific Highway South 216th Street to Kent Des Moines Road				MVD & 7th Ave. South 216th Street to Kent Des Moines Road					1	2	3	
HOURS	RATE	=		HOURS	RATE	=		HOURS	RATE	=							
January	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	=	\$0.00	\$0.00	\$0.00	\$1,788.72	\$1,788.72
							\$0.00										
February	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	=	\$0.00	\$0.00	\$0.00	\$1,830.83	\$1,830.83
							\$0.00										
March	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	=	\$0.00	\$0.00	\$0.00	\$6,582.42	\$6,582.42
							\$0.00										
April	29.00	x	\$34.80	=	#####	x	\$34.80	=	44.00	x	\$34.80	=	\$0.00	\$0.00	\$6,298.80	\$5,052.26	\$11,351.06
			\$1,009.20				\$3,758.40				\$1,531.20						
May	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	=	\$0.00	\$0.00	\$0.00	\$4,254.30	\$4,254.30
			\$0.00				\$0.00										
June	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	=	\$0.00	\$0.00	\$0.00	\$4,506.60	\$4,506.60
			\$0.00				\$0.00										
July	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	=	\$0.00	\$0.00	\$0.00	\$5,056.09	\$5,056.09
			\$0.00				\$0.00										
August	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	=	\$0.00	\$0.00	\$0.00	\$4,752.98	\$4,752.98
			\$0.00				\$0.00										
September	29.00	x	\$34.80	=	#####	x	\$34.80	=	44.00	x	\$34.80	=	\$0.00	\$0.00	\$6,298.80	\$6,902.23	\$13,201.03
			\$1,009.20				\$3,758.40				\$1,531.20						
October	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	=	\$0.00	\$0.00	\$0.00	\$8,442.48	\$8,442.48
			\$0.00				\$0.00										
November	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	=	\$0.00	\$0.00	\$0.00	\$5,450.38	\$5,450.38
			\$0.00				\$0.00										
December	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	=	\$0.00	\$0.00	\$0.00	\$3,733.34	\$3,733.34
			\$0.00				\$0.00										
*TOTAL PROJECT HOURS / COST	58.00		\$2,018.40		216.00		\$7,516.80		88.00		\$3,062.40		\$0.00	\$12,597.60	\$58,352.64	\$70,950.24	

BASE BID											
2014	Project #1	Project #2	Project #3	Project #4	Project #5	Project #6	Project #7	Project #8	Project #9		
	HOURS RATE	HOURS RATE	HOURS RATE	HOURS RATE	HOURS RATE	HOURS RATE	HOURS RATE	HOURS RATE	HOURS RATE	HOURS RATE	HOURS RATE
	Big Catch Park 2180 Marine View Drive South (Plaza, Boat, 216th)	City Hall 21630 11th Avenue South	Public Works Eng. 21650 11th Avenue South	Police Dept. 21900 11th Avenue South	Field House (Upper) 1000 South 220th Street	South Marina Park 227th & Dock Street (Incl. 227th traffic islands)	Beach Park 22030 Cliff Avenue South	Overlook II 22200 5th Avenue South	Overlook I 223rd and 5th Avenue South		
January	1.00 x \$34.80 \$34.80	0.90 x \$34.80 \$31.32	2.40 x \$34.80 \$83.52	5.00 x \$34.80 \$174.00	20.00 x \$34.80 \$696.00	0.20 x \$34.80 \$6.96	2.40 x \$34.80 \$83.52	1.00 x \$34.80 \$34.80	1.00 x \$34.80 \$34.80		
February	1.34 x \$34.80 \$46.63	1.17 x \$34.80 \$40.72	1.56 x \$34.80 \$54.29	2.83 x \$34.80 \$98.48	12.82 x \$34.80 \$446.14	0.89 x \$34.80 \$30.97	6.79 x \$34.80 \$236.29	1.40 x \$34.80 \$48.72	0.85 x \$34.80 \$29.58		
March	8.56 x \$34.80 \$297.89	7.78 x \$34.80 \$270.74	3.84 x \$34.80 \$133.63	9.32 x \$34.80 \$324.34	13.38 x \$34.80 \$465.62	5.51 x \$34.80 \$191.75	29.56 x \$34.80 \$1,028.69	11.83 x \$34.80 \$411.68	4.88 x \$34.80 \$169.82		
April	4.73 x \$34.80 \$164.60	7.88 x \$34.80 \$274.22	3.36 x \$34.80 \$116.93	1.79 x \$34.80 \$62.29	12.51 x \$34.80 \$435.35	5.54 x \$34.80 \$192.79	26.36 x \$34.80 \$917.33	4.04 x \$34.80 \$140.59	1.65 x \$34.80 \$57.42		
May	3.90 x \$34.80 \$135.72	3.30 x \$34.80 \$114.84	1.50 x \$34.80 \$52.20	1.35 x \$34.80 \$46.98	12.90 x \$34.80 \$448.92	3.65 x \$34.80 \$127.02	24.95 x \$34.80 \$868.26	4.20 x \$34.80 \$146.16	1.45 x \$34.80 \$50.46		
June	4.16 x \$34.80 \$144.77	2.78 x \$34.80 \$96.74	1.74 x \$34.80 \$60.55	1.62 x \$34.80 \$56.38	12.08 x \$34.80 \$420.38	3.71 x \$34.80 \$129.11	24.36 x \$34.80 \$847.73	3.73 x \$34.80 \$129.80	1.53 x \$34.80 \$53.24		
July	7.16 x \$34.80 \$249.17	5.68 x \$34.80 \$197.66	2.74 x \$34.80 \$95.35	8.12 x \$34.80 \$282.58	11.48 x \$34.80 \$399.50	4.46 x \$34.80 \$155.21	23.36 x \$34.80 \$812.93	9.40 x \$34.80 \$327.12	4.20 x \$34.80 \$146.16		
August	4.42 x \$34.80 \$153.82	4.50 x \$34.80 \$156.60	2.12 x \$34.80 \$73.78	2.92 x \$34.80 \$101.41	13.33 x \$34.80 \$463.88	4.08 x \$34.80 \$141.98	27.95 x \$34.80 \$972.66	6.31 x \$34.80 \$219.59	1.72 x \$34.80 \$59.86		
September	6.61 x \$34.80 \$230.03	9.78 x \$34.80 \$340.34	3.94 x \$34.80 \$137.11	2.12 x \$34.80 \$73.78	15.58 x \$34.80 \$542.18	6.91 x \$34.80 \$240.47	33.56 x \$34.80 \$1,167.89	4.69 x \$34.80 \$163.21	2.56 x \$34.80 \$89.09		
October	9.30 x \$34.80 \$323.64	7.55 x \$34.80 \$262.74	6.50 x \$34.80 \$226.20	15.75 x \$34.80 \$548.10	43.60 x \$34.80 \$1,517.28	5.35 x \$34.80 \$186.18	31.35 x \$34.80 \$1,090.98	11.60 x \$34.80 \$403.68	5.85 x \$34.80 \$203.58		
November	3.68 x \$34.80 \$128.06	3.24 x \$34.80 \$112.75	5.52 x \$34.80 \$192.10	10.66 x \$34.80 \$370.97	45.64 x \$34.80 \$1,688.27	1.98 x \$34.80 \$68.90	15.98 x \$34.80 \$556.10	3.80 x \$34.80 \$132.24	2.70 x \$34.80 \$93.96		
December	2.22 x \$34.80 \$77.26	2.00 x \$34.80 \$69.60	4.92 x \$34.80 \$171.22	10.47 x \$34.80 \$364.36	40.33 x \$34.80 \$1,403.48	0.63 x \$34.80 \$21.92	5.80 x \$34.80 \$201.84	2.11 x \$34.80 \$73.43	2.02 x \$34.80 \$70.30		
*TOTAL PROJECT HOURS / COST	57.08 \$1,986.38	56.56 \$1,968.29	40.14 \$1,396.87	71.35 \$2,482.98	253.65 \$8,827.02	42.91 \$1,493.27	252.42 \$8,784.22	64.11 \$2,231.03	30.41 \$1,058.27		

200 Extra Hours of Maintenance Labor: 200 hr x **\$34.80** (Hourly Labor Rate) = **\$6,960.00** (Extra Hours Cost)

* TOTAL PROJECT HOURS / COST shall be based on the number of services (ie. Mowing, trimming, weeding, etc.) and associated labor hours provided each month, the same unit cost is applied equally to all items of work.

** All items of work must be completed within any given month in order to receive full payment for that month.

2014 CONTRACT EXTENSION
Attachment C
Bid Schedule
2011 Parks and Right of Way Landscape Maintenance
RFB #05-2011A

BASE BID																	
2014	Project #10		Project #11		Project #12		Project #13		Project #14		Project #15		Project #16		Project #17		
	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	
	Water Tower Park 20802 5th Avenue South	1.50 x \$34.80 = \$52.20	4.00 x \$34.80 = \$139.20	Westwood Park 6th Avenue South & 192nd Street	2.00 x \$34.80 = \$69.60	2.00 x \$34.80 = \$69.60	2.20 x \$34.80 = \$76.56	Wooten Park 283rd Street & Redondo Beach Drive	0-60 x \$34.80 = \$0.00	Redondo Beach Drive & Rebop-Up-Way	6.00 x \$34.80 = \$208.80	6.00 x \$34.80 = \$208.80	City Park (Pond) Kent Des Moines Road & 22nd Place	1.00 x \$34.80 = \$34.80	1.00 x \$34.80 = \$34.80	City Park South 230th Street & 21st Avenue South	0.80 x \$34.80 = \$27.84
January																	
February		3.78 x \$34.80 = \$131.54	2.47 x \$34.80 = \$85.96		5.78 x \$34.80 = \$201.14	5.78 x \$34.80 = \$201.14	4.24 x \$34.80 = \$147.55		0-60 x \$34.80 = \$0.00	0-60 x \$34.80 = \$0.00	3.63 x \$34.80 = \$126.32	3.63 x \$34.80 = \$126.32		0.95 x \$34.80 = \$33.06	0.95 x \$34.80 = \$33.06	2.11 x \$34.80 = \$73.43	
March		15.32 x \$34.80 = \$533.14	11.03 x \$34.80 = \$383.84		27.42 x \$34.80 = \$954.22	27.42 x \$34.80 = \$954.22	19.36 x \$34.80 = \$673.73		0-60 x \$34.80 = \$0.00	0-60 x \$34.80 = \$0.00	7.17 x \$34.80 = \$249.52	7.17 x \$34.80 = \$249.52		5.65 x \$34.80 = \$196.62	5.65 x \$34.80 = \$196.62	8.54 x \$34.80 = \$297.19	
April		13.94 x \$34.80 = \$485.11	2.62 x \$34.80 = \$91.18		26.92 x \$34.80 = \$936.82	26.92 x \$34.80 = \$936.82	18.10 x \$34.80 = \$629.88		0-60 x \$34.80 = \$0.00	0-60 x \$34.80 = \$0.00	4.10 x \$34.80 = \$142.68	4.10 x \$34.80 = \$142.68		2.65 x \$34.80 = \$92.22	2.65 x \$34.80 = \$92.22	8.99 x \$34.80 = \$312.85	
May		13.95 x \$34.80 = \$485.46	2.05 x \$34.80 = \$71.34		21.80 x \$34.80 = \$758.64	21.80 x \$34.80 = \$758.64	14.50 x \$34.80 = \$504.60		0-60 x \$34.80 = \$0.00	0-60 x \$34.80 = \$0.00	2.85 x \$34.80 = \$99.18	2.85 x \$34.80 = \$99.18		1.95 x \$34.80 = \$67.86	1.95 x \$34.80 = \$67.86	7.95 x \$34.80 = \$276.66	
June		12.62 x \$34.80 = \$439.18	2.43 x \$34.80 = \$84.56		26.72 x \$34.80 = \$929.86	26.72 x \$34.80 = \$929.86	17.76 x \$34.80 = \$618.05		0-60 x \$34.80 = \$0.00	0-60 x \$34.80 = \$0.00	3.42 x \$34.80 = \$119.02	3.42 x \$34.80 = \$119.02		2.90 x \$34.80 = \$100.92	2.90 x \$34.80 = \$100.92	7.94 x \$34.80 = \$276.31	
July		12.52 x \$34.80 = \$435.70	9.68 x \$34.80 = \$336.96		17.82 x \$34.80 = \$620.14	17.82 x \$34.80 = \$620.14	12.76 x \$34.80 = \$444.05		0-60 x \$34.80 = \$0.00	0-60 x \$34.80 = \$0.00	5.32 x \$34.80 = \$185.14	5.32 x \$34.80 = \$185.14		4.10 x \$34.80 = \$142.68	4.10 x \$34.80 = \$142.68	6.49 x \$34.80 = \$226.85	
August		15.07 x \$34.80 = \$524.44	2.64 x \$34.80 = \$91.87		22.40 x \$34.80 = \$779.52	22.40 x \$34.80 = \$779.52	15.24 x \$34.80 = \$530.35		0-60 x \$34.80 = \$0.00	0-60 x \$34.80 = \$0.00	3.28 x \$34.80 = \$114.14	3.28 x \$34.80 = \$114.14		2.20 x \$34.80 = \$76.56	2.20 x \$34.80 = \$76.56	9.00 x \$34.80 = \$313.20	
September		16.92 x \$34.80 = \$588.82	4.13 x \$34.80 = \$143.72		44.92 x \$34.80 = \$1,563.22	44.92 x \$34.80 = \$1,563.22	24.96 x \$34.80 = \$868.61		0-60 x \$34.80 = \$0.00	0-60 x \$34.80 = \$0.00	6.52 x \$34.80 = \$226.90	6.52 x \$34.80 = \$226.90		4.95 x \$34.80 = \$172.26	4.95 x \$34.80 = \$172.26	10.19 x \$34.80 = \$354.61	
October		17.10 x \$34.80 = \$595.08	15.95 x \$34.80 = \$555.06		24.60 x \$34.80 = \$856.08	24.60 x \$34.80 = \$856.08	18.50 x \$34.80 = \$643.80		0-60 x \$34.80 = \$0.00	0-60 x \$34.80 = \$0.00	14.75 x \$34.80 = \$513.30	14.75 x \$34.80 = \$513.30		5.85 x \$34.80 = \$203.58	5.85 x \$34.80 = \$203.58	9.00 x \$34.80 = \$313.20	
November		9.06 x \$34.80 = \$315.29	8.94 x \$34.80 = \$311.11		13.56 x \$34.80 = \$471.89	13.56 x \$34.80 = \$471.89	10.68 x \$34.80 = \$371.66		0-60 x \$34.80 = \$0.00	0-60 x \$34.80 = \$0.00	13.26 x \$34.80 = \$461.45	13.26 x \$34.80 = \$461.45		2.90 x \$34.80 = \$100.92	2.90 x \$34.80 = \$100.92	5.02 x \$34.80 = \$174.70	
December		3.12 x \$34.80 = \$108.58	8.09 x \$34.80 = \$281.53		4.10 x \$34.80 = \$142.68	4.10 x \$34.80 = \$142.68	4.64 x \$34.80 = \$161.47		0-60 x \$34.80 = \$0.00	0-60 x \$34.80 = \$0.00	12.18 x \$34.80 = \$423.86	12.18 x \$34.80 = \$423.86		2.05 x \$34.80 = \$71.34	2.05 x \$34.80 = \$71.34	2.60 x \$34.80 = \$90.48	
*TOTAL PROJECT HOURS / COST		134.90 \$4,694.52	74.03 \$2,576.24		238.04 \$8,263.79	238.04 \$8,263.79	162.94 \$5,670.31		0-60 \$0.00	0-60 \$0.00	82.48 \$2,870.30	82.48 \$2,870.30		37.15 \$1,292.82	37.15 \$1,292.82	76.63 \$2,736.32	

		ALTERNATE 1										ALTERNATE 2									
		Project #18	Project #19	Project #20	Project #21	Project #22	Project #23	Project #24	Project #25	Project #26	Project #18	Project #19	Project #20	Project #21	Project #22	Project #23	Project #24	Project #25	Project #26		
		Activity Center 2045 216th Avenue South	Field House (Lower) 1090 South 220th Street	Memorial Park Prairie View Drive & Des Moines Memorial Drive	251st Entrance Way 251st & Maine View Dulve	Sonju Park 24728 16th Avenue South	Midway Park (Meadow Only) 2906-South 221st Street	Massey-Creek Plaza Keot Des Moines Road @ 8th-9th-Ayentia South	Parkside Park 244th & 25 Avenue Souk	Barnes-Greek 15th Avenue South											
		HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	HOURS	
		RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	RATE	
2014		0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	
January		\$34.80	\$34.80	\$34.80	\$34.80	\$34.80	\$34.80	\$34.80	\$34.80	\$34.80	\$34.80	\$34.80	\$34.80	\$34.80	\$34.80	\$34.80	\$34.80	\$34.80	\$34.80	\$34.80	
February		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
March		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
April		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
May		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
June		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
July		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
August		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
September		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
October		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
November		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
December		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
*TOTAL PROJECT HOURS / COST		0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	0-80	
		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	

2014 CONTRACT EXTENSION
Attachment C
Bid Schedule
2011 Parks and Right of Way Landscape Maintenance
RFB #05-2011A

2014	ALTERNATE 3												TOTAL PROJECT COST PER MONTH			
	Project #27				Project #28				Project #29				ALTERNATES			TOTALS
	16th Avenue South 272nd Street to South 260th Street				Pacific Highway South 216th Street to Kent Des Moines Road				MVD & 7th Ave. South 216th Street to Kent Des Moines Road				3			
HOURS	RATE	=		HOURS	RATE	=		HOURS	RATE	=		BASE BID				
January	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	\$1,788.72	\$0.00	\$0.00	\$1,788.72	
			\$0.00				\$0.00				\$0.00					
February	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	\$1,830.83	\$0.00	\$0.00	\$1,830.83	
			\$0.00				\$0.00				\$0.00					
March	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	\$6,582.42	\$0.00	\$0.00	\$6,582.42	
			\$0.00				\$0.00				\$0.00					
April	29.00	x	\$34.80	=	#####	x	\$34.80	=	44.00	x	\$34.80	\$5,052.26	\$0.00	\$6,298.80	\$11,351.06	
			\$1,009.20				\$3,758.40				\$1,531.20					
May	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	\$4,254.30	\$0.00	\$0.00	\$4,254.30	
			\$0.00				\$0.00				\$0.00					
June	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	\$4,506.60	\$0.00	\$0.00	\$4,506.60	
			\$0.00				\$0.00				\$0.00					
July	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	\$5,056.09	\$0.00	\$0.00	\$5,056.09	
			\$0.00				\$0.00				\$0.00					
August	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	\$4,752.98	\$0.00	\$0.00	\$4,752.98	
			\$0.00				\$0.00				\$0.00					
September	29.00	x	\$34.80	=	#####	x	\$34.80	=	44.00	x	\$34.80	\$6,902.23	\$0.00	\$6,298.80	\$13,201.03	
			\$1,009.20				\$3,758.40				\$1,531.20					
October	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	\$8,442.48	\$0.00	\$0.00	\$8,442.48	
			\$0.00				\$0.00				\$0.00					
November	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	\$5,450.38	\$0.00	\$0.00	\$5,450.38	
			\$0.00				\$0.00				\$0.00					
December	0.00	x	\$34.80	=	0.00	x	\$34.80	=	0.00	x	\$34.80	\$3,733.34	\$0.00	\$0.00	\$3,733.34	
			\$0.00				\$0.00				\$0.00					
*TOTAL PROJECT HOURS / COST	56.00		\$2,018.40		216.00		\$7,516.80		88.00		\$3,062.40	\$8,352.64	\$0.00	\$12,597.60	\$70,950.24	



BID AND CONTRACT DOCUMENTS

AND

SPECIFICATIONS

FOR

**2011 PARKS AND RIGHT OF WAY
LANDSCAPE MAINTENANCE**

RFB # 05-2011A

***City of Des Moines
Public Works & Parks Maintenance Department
2255 South 223rd Street
Des Moines, WA 98198***

***Mailing Address:
City of Des Moines
Public Works Engineering Department
21650 11th Avenue South
Des Moines, WA 98198***

BID AND CONTRACT DOCUMENTS AND SPECIFICATIONS

FOR

**2011 PARKS AND RIGHT OF WAY
LANDSCAPE MAINTENANCE**

RFB # 05-2011A

Bids Accepted Until 10:00 a.m., June 10, 2011

AT:

City of Des Moines
Public Works Engineering Department
21650 11th Avenue South
Des Moines, WA 98198

Prepared By:

PUBLIC WORKS & PARKS MAINTENANCE DEPARTMENT
CITY OF DES MOINES, WASHINGTON

**CITY OF DES MOINES
REQUEST FOR BIDS**

2011 PARKS AND RIGHT OF WAY LANDSCAPE MAINTENANCE - RFB # 05-2011A

SUBMITTAL OF SEALED BIDS:

Notice is hereby given that the City of Des Moines, Washington, ("City") will receive sealed bids through Friday, June 10, 2011, until 10:00 a.m., at the Public Works Engineering Department located at 21650 11th Avenue South, Des Moines, Washington 98198. Proposals received after 10:00 a.m. on said date will not be considered.

PRE-BID MEETING:

An informational meeting for interested contractors will be held Thursday, June 2, 2011 at 10:00 a.m. in the Public Works & Parks Maintenance Department Service Center located at 2255 South 223rd Street, Des Moines, Washington 98198, to discuss the work to be performed. All prospective bidders are strongly encouraged to attend this meeting. Bidders are also strongly encouraged to make site visits to each "Project" (Parks and Right of Ways) location included within this RFB # 05-2011A prior to attending this meeting.

BID OPENING:

All bids for this RFB # 05-2011A will be opened and read publicly aloud at 10:00 a.m. on June 10, 2011, in the Public Works Engineering Department located at 21650 11th Avenue South, Des Moines, Washington 98198.

All bid proposals shall be accompanied by a bid deposit by a cashier's or certified check, or Bid Bond in an amount equal to five percent (5%) of the amount of such bid proposal. Should the successful bidder fail to enter into a contract and furnish satisfactory Performance Bond within the time stated in the specifications, the bid deposit or bond shall be forfeited to the City of Des Moines.

DESCRIPTION OF WORK:

The City of Des Moines, Washington is seeking qualified firms to submit bids to provide parks and right of way landscape maintenance services to the City of Des Moines on an annual basis. These services include provision of all labor and equipment necessary for the maintenance of Des Moines parks and rights of way including but not limited to the following:

1. TURF: mowing, trimming, edging, fertilize, herbicide;
2. TREES, SHRUBS, PLANTINGS BEDS: weed and litter removal, edging, trimming, pruning, pre-emergent herbicide;
3. HARD SURFACES: Edging; sweeping and blowing, pre-emergent.

There will not be a cost estimate provided for this work.

The bidder is urged to check the contract provisions carefully.

The City reserves the right to omit services and materials (see "2-6 Work and Materials Omitted" in "Section 2: General Contractual Terms and Conditions")

All bid proposals shall be in accordance with the Instructions to Bidders and all other contract documents now on file in the offices at the City of Des Moines Public Works & Parks Maintenance Department Service Center. Bid documents may be obtained by request and by calling (206) 870-6556 or (206) 870-6559. Any questions concerning the description of the work contained in the contract documents must be directed to John Blackburn, Public Works & Parks Maintenance Assistant Superintendent, by email at jblackburn@desmoineswa.gov; by calling (206) 870-6556; or by letter addressed to John Blackburn, Public Works & Parks Maintenance Assistant Superintendent; 2255 South 223rd Street, Des Moines, Washington 98198, prior to bid opening date.

PURCHASE OF BID DOCUMENTS:

By request, bidders may purchase copies of the Bidding Documents in person by providing a Twenty-Five and no/100 Dollars (\$25.00) (non-refundable) check or cashiers' check payable to the City of Des Moines. These documents may be picked up at the City of Des Moines Public Works & Parks Maintenance Department Service Center located at 2255 South 223rd Street, Des Moines, WA 98198. Please make prior arrangements by either phone or email with John Blackburn for these copies.

The Contractor will be required to comply with all local, State, and Federal laws and regulations pertaining to equal employment opportunities.

The City encourages minority and women-owned firms to submit bids consistent with the City's policy to ensure that minority and women-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts.

RESERVATION OF RIGHTS:

The City reserves the right to reject any and all bids, waive any informalities or minor irregularities in the bidding, and determine which bid or bidder meets the criteria set forth in the bid documents. No bidder may withdraw his bid after the hour set for the opening thereof unless the award is delayed for a period exceeding thirty (30) days.

BIDDER'S CHECKLIST

The bidder's attention is especially called to the following forms, which must be executed in full as required and submitted as part of the bid. Failure to comply shall result in rejection of any bid not so complying.

Bid Form (Attachment B)

The Bid Form shall be completed and fully executed, including filling in the total bid amounts.

Bid Schedule (Attachment C)

The unit prices shall be set forth in the space provided.

Bid Signature Page (Attachment D)

The Bid Signature Page shall be filled in and fully executed by the bidder.

Bid Bond Form (Attachment E)

This form is to be executed by the bidder and the surety company unless a certified check is submitted with the bid. The amount of this bond or certified check shall not be less than five percent (5%) of the total bid amount and shall be shown in both words and figures.

Subcontractor List (Attachment F)

The Subcontractor List shall be filled in by the bidder. (This section may/may not apply)

Combined Affidavit and Certification Form (Attachment G)

This form must be subscribed to and sworn before a Notary Public and notarized.

Contractor's Compliance Statement (Attachment H)

The Contractor's Compliance Statement shall be filled in and fully executed by the bidder.

SUCCESSFUL BIDDER'S CHECKLIST

The following documents are to be executed and delivered to the City within ten (10) calendar days after the Bid is accepted:

Maintenance/Labor Agreement (Attachment I)

The successful bidder will fully execute and deliver to the City four (4) signed originals of the 2011 Parks and Right of Way Landscape Maintenance / Labor Agreement ("Contract") from these Bid Documents.

**Notice to Labor Unions or Other Employment Organizations
Nondiscrimination in Employment (Exhibit B)**

If this applies, the successful bidder will sign and post copies of this Notice in conspicuous places available to employees or applicants for employment.

Certificate of Insurance

The successful bidder will provide four (4) original Certificate of Insurance evidencing the insurance requirements set forth in the Contract.

Performance/Payment Bond (Exhibit C)

The successful bidder will provide four (4) fully executed Performance/Payment Bonds as appropriate.

Business License

The successful bidder will provide a copy of a current Business License with the City of Des Moines.

Contractor's Registration

The successful bidder will provide a copy of Contractor's current registration with the State of Washington.

SECTION 1: INSTRUCTIONS TO BIDDERS

1-1 Time and Place for Submission and Opening of Bids

Sealed bids must be submitted by 10:00 a.m. local time on June 10, 2011, to the City of Des Moines (the "City"), at the Public Works Engineering Department located at 21650 11th Avenue South, Des Moines, Washington 98198 and will be publicly opened and read aloud on June 10, 2011, at 10:00 a.m. local time.

The City must receive the sealed bid before the time and date specified in order to be considered. Telex or facsimile bids will not be accepted. The bidder accepts all risks of late delivery of mailed bids or of miss-delivery regardless of fault. Late bids will be considered non-responsive, and will not be opened.

If, after reviewing this document the bidder chooses not to submit a bid, the bidder may complete and return the "No Bid Response Form" provided as Attachment "A" by the date and time indicated above.

1-2 Bid Form

Bids shall be made on the "Bid Form", Attachment "B" issued by the City as part of these bid documents, without reservation or amendment. Bids must be typewritten or printed in ink. Upon completion, the Bid Form and the bid bond or certified check and any other requested information shall be placed in a sealed envelope. On the outside of the envelope, place the bid name, bid number and the time bids are due.

1-3 Bid Signature

All bids shall give the total bid price and shall be signed in ink by the bidder or their authorized representative, with the address. If the bid is made by an individual, the name, signature, and address must be shown. If the bid is made by a firm or partnership, the name and address of the firm or partnership and the signature of at least one of the general partners must be shown. If the bid is made by a corporation, the bid shall show the title of the person authorized to sign on behalf of the corporation, his or her title and the address. The City reserves the right to request documentation showing the authority of the individual signing the bid to execute contracts on behalf of anyone, or any entity, other than himself/herself. Refusal to provide such information upon request may cause the bid to be rejected as nonresponsive.

1-4 Bid Withdrawal Due to Error

Bids may not be withdrawn due to a claim of error in a bid unless written notice of such claim and supporting evidence for such claim including cost breakdown sheets are received by the City within a minimum of forty-eight (48) hours prior to the opening of bids.

1-5 Modification of Bid

A modification of a bid already received will be considered only if the modification is received prior to the time announced for bid opening. All modifications shall be made in writing, executed and submitted in the same form and manner as the original bid.

1-6 Examination of Bid and Contract Documents – Bidder Responsibilities

The submission of a bid shall constitute an acknowledgment upon which the City may rely that the bidder has thoroughly examined and is familiar with the bid and contract documents and has reviewed and inspected all applicable federal, state and local statutes, regulations, ordinances and resolutions dealing with or related to the equipment and/or services to be provided herein. The failure or neglect of a bidder to examine such documents, statutes, regulations, ordinances or resolutions shall in no way relieve the bidder from any obligations with respect to the bidder's bid or the contract documents. No claim for additional compensation will be allowed which is based upon a lack of knowledge of any contract documents, statutes, regulations, ordinances or resolutions. Bidders shall visit delivery and service location(s) as required. Bidders shall become familiar with and verify any environmental factors, which may impact current or future prices for this requirement.

1-7 Interpretation of Bid and Contract Documents

No oral interpretations will be made to any bidder as to the meaning of the bid or contract documents and no oral communications will be binding upon the City. Requests for an interpretation shall be made by facsimile, email or by mail and delivered to the Public Works & Parks Maintenance Assistant Superintendent or Designee of the City at the address indicated in Section 1-1, at least ten (10) days before the date announced for opening the bids. Any interpretation deemed necessary by the City will be in the form of an addendum to the bid documents and when issued will be sent as promptly as is practical to all parties to whom the bid documents have been issued. All such addenda shall become part of the bid.

1-8 Addenda

Each bid shall include acknowledgment of receipt and review of all addenda issued during the bidding period on the Bid Form.

1-9 Bid Price

The bid price shall include everything necessary for the completion of the contract including, but not limited to, furnishing all materials, equipment, tools, freight charges, facilities and all management, superintendence, labor and service, except as may be provided otherwise in the contract documents. **All Washington State sales tax and all other government taxes, assessments and charges shall be included in the various Bid item prices as required by law.** The offer shall remain in effect ninety (90) days after the bid opening. In the event of a discrepancy between a unit price and an extended amount and/or the total price, the unit price will govern and the extended amount and/or total price will be corrected accordingly. However, downward correction of a bid, which would displace the apparent low bidder, will only be permitted if the error made and the intended bid price can be determined solely from the bid documents.

1-10 Postponement of Bid Opening

The City reserves the right to postpone the date and time for the opening of bids by announcing such postponement at any time prior to the date and time announced in these documents.

1-11 Rejection of Bids

- A. The City reserves the right to reject any bid for any reason including, but not limited to, the following: any bid which is incomplete, obscure, irregular or lacking necessary detail and specificity; any bid which omits a price on any one or more items on the Bid Form and Bid Schedule; any bid in which prices are unbalanced in the opinion of the City; any bid accompanied by insufficient or irregular bid bond; any bid from bidders who (in the sole judgment of the City) lack the qualifications and/or responsibility necessary to perform the work after considering the elements in Section 1-14.B; any bid for which a bidder fails or neglects to complete and submit any qualifications information within the time specified by the City and as may be otherwise required herein; and, any bid submitted by a bidder who is not registered or licensed as may be required by the laws of the State of Washington.
- B. The City further reserves the right to reject any portion of any bid and/or to reject all bids. In consideration for the City's review and evaluation of its bid, the bidder waives and releases any claims against the City arising from any rejection of any or all bids.

1-12 Alterations to Documents Prohibited

Any addition, limitation or provision attached to the bid may render it informal or nonresponsive and cause its rejection. Alteration by erasure or interlineations must be explained or noted in the bid form over the signature of the bidder. No oral, telegraphic, electronic or telephonic bids or modifications will be considered.

1-13 Disqualification of Bidder

If, in the opinion of the City, there is reason to believe that collusion exists among bidders, none of the bids of the participants in such collusion will be considered. All bidders are required to submit the Affidavit of Non-Collusion (Attachment G) with their bids.

1-14 Evaluation of Bids

Bids will be evaluated by the City to determine which bid is the lowest responsive bid by a responsible bidder. An award will be based on criteria as outlined herein:

- A. Responsiveness – The City will consider all the material submitted by the bidder to determine whether the bid is in compliance with the bid documents.
- B. Responsibility – The City will consider all the material submitted by the bidder, and other evidence it may obtain, to determine whether the bidder is capable of and has a history of successfully completing contracts of this type.

The following elements may be given consideration by the City in determining whether a bidder is a responsible bidder: a) the ability, capacity and skill of the bidder to perform the contract or provide the service required; b) whether the bidder can perform the contract and do so within the time specified; c) the quality of performance by the bidder on previous and similar contracts; and, d) such other information as may be secured having a bearing on the decision to award the contract. When requested by the City, bidders shall furnish acceptable evidence of the bidder's ability to perform, such as firm commitments by subcontractors, equipment, supplies and facilities, and the bidder's ability to obtain the necessary personnel. Refusal to provide such information upon request may cause the bid to be rejected.

- C. Lowest Bid – The lowest bid shall be determined as set forth on the Bid Form.

The acceptance of a bid will be evidenced by a Notice of Award. No other act of the City shall constitute acceptance of a bid. Within ten (10) days after receipt of Notice of Award, the bidder whose bid is accepted, shall furnish the required performance bond, certificate of insurance, execute the contract and perform all other acts required by the bid and contract documents as conditions precedent to formation of the contract.

1-15 Procedures When Only One Bid is Received

In the event only a single responsive bid is received, the City reserves the right to conduct a price and/or cost analysis of such bid. The sole bidder shall provide such information, data and other documentation as deemed necessary by the City for such analysis. The City reserves the right to reject such bid.

1-16 Bid Documents

Bidders are required to submit with the bid package the following:

- | | |
|----------------------------------|--|
| A. <i>Attachment A (Page 21)</i> | No Bid Response Form, (<i>Optional</i>). |
| B. <i>Attachment B (Page 22)</i> | Bid Form. |
| C. <i>Attachment C (Page 24)</i> | Bid Schedule. |
| D. <i>Attachment D (Page 25)</i> | Bid Signature Page. |
| E. <i>Attachment E (Page 26)</i> | Bid Bond Form. |
| F. <i>Attachment F (Page 27)</i> | Subcontractor or Suppliers List. (May Not Apply) |
| G. <i>Attachment G (Page 28)</i> | Combined Affidavit and Certification Form. |
| H. <i>Attachment H (Page 30)</i> | Contractor's Compliance Statement. |

1-17 Conflicts of Interest and Noncompetitive Practices

By submitting a bid, the Contractor agrees as follows:

- A. Conflict of Interest – That it has no direct or indirect pecuniary or proprietary interest, that it shall not acquire any interest which conflicts in any manner or degree with the work, services, equipment or materials required to be performed and/or provided under this contract and that it shall not employ any person or agent having any such interests. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to the City and take action immediately to eliminate the conflict or to withdraw from this contract, as the City may require.
- B. Contingent Fees and Gratuities
 - 1. That no person or selling agency except bona fide employees or designated agents or representatives of the Contractor have been employed or retained to solicit or secure this contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
 - 2. That no gratuities in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of the City or other governmental agency with a view toward securing this contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this contract.

1-18 Bid Security

No bid will be considered unless accompanied by either a cashier's or certified check in an amount equal to five percent (5%) of the Total Bid Price as indicated on Attachment B, "Bid Form", or a bid bond in the form of Attachment E. The check or bond shall be payable to the City; it shall be forfeited as fixed and liquidated damages in case the bidder fails, neglects or refuses to enter into a contract for the faithful performance of said work (including the providing of any evidence of insurance and/or performance bond required herein), in the event the bid is awarded to them, within ten (10) days after the award is made. If a bid bond is submitted in lieu of a check, it shall be executed by a corporate surety authorized to transact business in the State of Washington and in the form prescribed in Attachment E. The check or bidder's bond shall be attached to the bid form.

The City further reserves the right to hold all bids (and the accompanying bid security) from the date of the bid opening until the contract and any performance/payment bond are executed, provided that such period does not exceed ninety (90) days, and each bid shall remain effective during that period.

1-19 Performance/Payment Bond

The bidder to whom the City has awarded this Contract will remove the Performance/Payment Bond (Exhibit C) attached to the Public Works Contract and deliver it to the City fully executed by the bidder and a surety company in the amount of one hundred twenty five percent (125%) of the contract price as security for the faithful performance of the work including the payment of all persons furnishing materials and performing labor on the work and all payments arising from the performance of the work due the State of Washington pursuant to Titles 50 and 51 RCW. Such bond must be executed by a duly licensed surety company, which is registered with the Washington State Insurance Commissioner, and the surety's name shall appear in the current Authorized Insurance Company List in the State of Washington, published by the Office of the Insurance Commissioner. The scope of the Performance/Payment Bond (Exhibit C) shall in no way affect or alter the liabilities of the Contractor to the City under Section 8 "Indemnification" of the Public Works Contract.

The City may require the surety company to appear and qualify itself upon the bond. If, at any time, the City determines in its sole judgment that the surety company is insufficient, the City may require the Contractor to furnish additional surety in form and arrangement satisfactory to the City and in an amount not exceeding that originally required. The Contractor shall submit four (4) performance bonds complying with the requirements of this paragraph within ten (10) days after the award is made. Payments will not be made on the Contract until sufficient surety as required is furnished.

1-20 Bid Dispute

- A. Any actual or prospective bidder, including sub-contractors and suppliers showing a substantial economic interest in this contract who is aggrieved in connection with the solicitation or award of this contract, may protest to the City in accordance with the procedures set forth herein. Protests based on the specifications or other terms in the contract documents, which are apparent prior to the date established for submittal of bids, shall be submitted not later than ten (10) calendar days prior to said date, or shall be deemed waived. All other protests shall be accepted only from actual bidders and shall be submitted within five (5) calendar days after the aggrieved person knows or should have known of the facts and circumstances upon which the protest is based; provided, however, that in no event shall a protest be considered if all bids are rejected or after the award of this contract.
- B. In order to be considered, a protest shall be in writing and shall include: (1) the name and address of the aggrieved person; (2) the RFB # 05-2011A number and contract title under which the protest is submitted; (3) a detailed description of the specific grounds for protest and any supporting documentation; and (4) the specific ruling or relief requested. The written protest shall be addressed to:

City of Des Moines
 21650 11th Avenue South
 Des Moines, Washington 98198
 Attention: John Blackburn
 Bid Protest – RFB # 05-2011A; 2011 Parks and Right of Way Landscape
 Maintenance

- C. Upon receipt of a written protest, the City will promptly consider the protest. The City may give notice of the protest and its basis to other persons, including bidders involved in or affected by the protest; such other persons may be given an opportunity to submit their views and relevant information. If the protest is not resolved by mutual agreement of the aggrieved person and the City, the City will promptly issue a decision in writing stating the reasons for the action taken and informing the aggrieved person of his or her right to appeal the decision to the City Manager or his or her designee. A copy of the decision shall be mailed (by certified mail, return receipt requested) or otherwise promptly furnished to the aggrieved person and any other interested parties who requested a copy of the decision. The decision will be considered final and conclusive unless appealed within five (5) calendar days after receipt of the decision to the City Manager or his or her designee. If the decision is appealed, then the subsequent determination of the City Manager or his or her designee shall issue within five (5) days of the City Manager's receipt of the appeal and shall be final and conclusive.
- D. Failure to comply with these protest procedures will render a protest untimely or inadequate and shall result in rejection thereof by the City.

SECTION 2: GENERAL CONTRACTUAL TERMS AND CONDITIONS

2-1 Administration

This contract will be between the City and the Contractor who will be responsible for delivering all equipment and performing all work and services described herein. The City is not party to defining the division of work between the Contractor and the Contractor's subcontractors, if any, and the specifications have not been written with this intent.

The Contractor represents that it has or will obtain all personnel and equipment required to perform the services hereunder. Such personnel shall not be employees of the City.

The Contractor's performance under this contract will be monitored and reviewed by John Blackburn, Public Works & Parks Maintenance Assistant Superintendent. Questions by the Contractor regarding interpretation of the terms, provisions and requirements of this contract shall be addressed to John Blackburn, Public Works & Parks Maintenance Assistant Superintendent, at (206) 870-6556, for response.

2-2 Proof of Compliance with Contract

In order that the City may determine whether the Contractor has complied with the requirements of the contract documents, the Contractor shall, at any time when requested, submit to the City properly authenticated documents or other satisfactory proofs as to the Contractor's compliance with such requirements.

2-3 Contract Documents and Precedence

The documents embodying the legally binding obligations between the City and the Contractor for completion of the work consist of the following: The City's Request for Bid, Instructions to Bidders, General Contractual Terms and Conditions, Bid Form, Bid Schedule, Bid Signature Page, Bid Bond Form, Combined Affidavit and Certification Form, Contractor's Compliance Statement, Maintenance/Labor Agreement For 2011 Parks and Right of Way Landscape, Technical Requirements, Monthly Maintenance Schedule, Addenda and Change Orders, and the 2011 Parks and Right of Way Landscape Maintenance Technical Requirements. The contract documents are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the contract documents, the City will issue an interpretation regarding the controlling provision, which interpretation shall be binding.

2-4 Charges to Contractor

Charges which are the obligation of the Contractor under the terms of the contract shall be paid by the Contractor to the City on demand and may be deducted by the City from any money due or to become due to the Contractor under the contract and may be recovered by the City from the Contractor or its surety.

2-5 Change Orders

The City may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the specifications within the scope

of this contract. Oral orders will not be binding on the City unless confirmed in writing by the City. Except as provided herein, no order, statement, or conduct of the City will be treated as a change hereunder or will entitle the Contractor to an equitable adjustment.

If any change hereunder causes an increase or decrease in the Contractor's cost of, or time required for, the performance or any part of the work under this contract, an equitable adjustment will be made and the contract modified in writing accordingly. However, no claim will be allowed for any costs incurred more than five (5) days before the Contractor gives written notice as required.

If the Contractor intends to assert a claim for an equitable adjustment hereunder, it shall, within five (5) days after receipt of a written change order form from the City or after giving the City the written notice required above, as the case may be, submit to the City a written statement setting forth the general nature and monetary extent of such claim; provided the City, in its sole discretion, may extend such five (5) day submittal period upon request by the Contractor. The Contractor shall supply such supporting documents and analysis for the claims as the City may require to determine if the claims and costs have merit.

No claim by the Contractor for an equitable adjustment hereunder will be allowed if asserted after final payment under this contract.

2-6 Work and Materials Omitted

The Contractor shall, when directed in writing by the City, omit work, services and materials to be furnished under the contract and the value of the omitted work and materials will be deducted from the contract price and the delivery schedule will be reviewed if appropriate. The value of the omitted work, services and materials will be a lump sum or unit price, as mutually agreed upon in writing by the Contractor and the City. If the parties cannot agree on an appropriate deduction, the City reserves the right to issue a unilateral change order adjusting the price and the delivery schedule.

2-7 Washington State Sales Tax

The Contractor shall make payment directly to the State for all applicable Washington State sales taxes and all other governmental taxes, assessments and charges.

2-8 Shipping Charges

All prices shall include freight. Requests for additional compensation for freight charges will be rejected by the City.

2-9 Warranty

All materials and equipment sold and labor performed under this contract are warranted by the Contractor to be free from defects in materials or workmanship for a period of at least one (1) year from date of delivery and installation; provided, however, that this warranty may extend beyond this time period pursuant to any attached warranties. If the merchandise sold or work performed hereunder is defective on account of workmanship or materials, the Contractor agrees to replace the merchandise or, at the

City's sole option, repair the defective merchandise. All defects in work or materials shall be promptly corrected.

2-10 No Waiver of Warranties and Contract Rights

Conducting of tests and inspections, review of specifications or plans, payment for goods or services, or acceptance by the City does not constitute a waiver, modification or exclusion of any express or implied warranty or any right under this contract or in law.

2-11 Legal Relations

The Contractor shall comply with all of the City's resolutions and regulations applicable under this contract and with any local, state or federal law or regulation applicable to the materials, equipment or service provided under this contract. Neither the Contractor nor the City shall assign any interest, obligation or benefit under or in this contract or transfer any interest in the same, whether by assignment or notation, without prior written consent of the other party. This contract shall be binding upon and inure to the benefit of the successors of the parties.

2-12 Applicable Law and Forum

Except as hereinafter specifically provided, this contract shall be governed by and construed according to the laws of the State of Washington including, but not limited to, the Uniform Commercial Code, Title 62A RCW. Any suit arising here from shall be brought in King County Superior Court, which shall have sole and exclusive jurisdiction and venue.

2-13 Hazardous Chemical Communication

In order to comply with WAC 296-62-054, Hazard Communication, the Contractor shall submit with each shipment a Material Safety Data Sheet (MSDS) for all products containing any toxic products that may be harmful to the end user. The MSDS Sheet is to accompany the toxic product(s) to the specified delivery sites.

Include the following information in the MSDS:

- A. Chemical Abstract Service (CAS) numbers for every chemical that is listed in the MSDS.
- B. If the product is actually used diluted, the dilution rate should be so stated in the MSDS and the hazards and corresponding personal protection, etc., also be listed.
- C. A statement as to the intended use of the product.

2-14 Delivery and Liquidated Damages

Time is of the essence of the contract and each and all of its provisions in which performance is a factor. The Contractor will be held to strict compliance with the prescribed date(s) set forth in these contract documents. For each and every day that delivery is delayed beyond the specific date(s), damage will be sustained by the City. Because of the difficulty in computing the actual damages and disadvantages to the

City, and as a reasonable forecast of actual damages which the City will suffer by the delay in delivery, the parties agree that for each such delay the Contractor will pay the City liquidated damages (and not as a penalty) in accordance with Section 1.3 of Attachment I, Maintenance/Labor Agreement, to compensate for any damages caused by such delay. The City may deduct from any payment owing to the Contractor, any liquidated damages, which may be incurred by the Contractor pursuant to this paragraph.

2-15 Force Majeure

The Contractor's or City's failure to perform any of its obligations under this contract shall be excused if due to causes beyond the control and without the fault or negligence of the Contractor or City, respectively, including, but not restricted to, acts of God, acts of public enemy, acts of any government, fire, floods, epidemics, and strikes.

2-16 Patents, Copyrights and Rights in Data

Any patentable result or material suitable for copyright arising out of this contract shall be owned by and made available to the City for public use, unless the City shall, in a specific case where it is legally permissible, determine that it is in the public interest that it not be so owned or available.

The Contractor agrees that the ownership of any plans, drawings, designs, specifications, computer programs, technical reports, operating manuals, calculations, notes and other work submitted or which is specified to be delivered under this contract, whether or not complete (referred to in this subsection as "Subject Data"), shall be vested in the City or such other local, state or federal agency, if any, as may be provided by separate contract with the City.

All such Subject Data furnished by the Contractor pursuant to this contract, other than documents exclusively for internal use by the City, shall carry such notations on the front cover or a title page (or in such case of maps, in the same block) as may be requested by the City. The Contractor shall also place their endorsement on all Subject Data furnished by them. All such identification details shall be subject to approval by the City prior to printing.

The Contractor shall ensure that substantially the foregoing paragraphs are included in each subcontract for the work on the project.

2-17 Patents and Royalties

The costs involved in license fees, royalties or in defending claims for any patented invention, article, process or method that may be used in or connected with the work under this contract or with the use of complete work by the City, shall be paid by the Contractor. The Contractor and the Contractor's sureties shall, at their own cost, defend, indemnify and hold the City, together with its officers and employees, harmless against any and all demands made for such fees, royalties or claims brought or made by the holder of any invention or patent. Before final payment is made on the account of this contract, the Contractor shall, if requested by the City, furnish acceptable proof of a proper release of the City, its officers, agents and employees from all such fees or claims.

Should the Contractor, its agent, servants or employees, or any of them be enjoined from furnishing or using any invention, article, material, computer programs or equipment supplied or required to be supplied or used under the contract, the Contractor shall promptly substitute other articles, materials, computer programs or equipment in lieu thereof of equal efficiency, quality, finish, suitability and market value, and satisfactory in all respects to the City.

2-18 Disputes, Claims and Appeals

Questions or claims regarding meaning and intent of the contract or arising from this contract shall be referred by the Contractor in writing to the Public Works & Parks Maintenance Assistant Superintendent or Designee for decision within five (5) days of the date in which the Contractor knows or should know of the question or claim. The Public Works & Parks Maintenance Assistant Superintendent or Designee will ordinarily respond to the Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) day following receipt by the Public Works & Parks Maintenance Assistant Superintendent or Designee.

In the event the Contractor disagrees with any determination or decision of the Public Works & Parks Maintenance Assistant Superintendent or Designee, the Contractor shall, within fifteen (15) days of the date of such determination or decision, appeal the determination or decision in writing to the City Manager. Such written notice or appeal shall include all documents and other information necessary to substantiate the appeal. The City Manager or Designee will review the appeal and transmit a decision in writing to the Contractor within thirty (30) days from the date of receipt of the appeal. Failure of the Contractor to appeal the decision or determination of the Public Works & Parks Maintenance Assistant Superintendent or Designee within said 15-day period will constitute a waiver of the Contractor's right to thereafter assert any claim resulting from such determination or decision. Appeal to the City Manager shall be a condition precedent to litigation hereunder.

All claims, counterclaims, disputes and other matters in question between the City and the Contractor that are not resolved between the Public Works & Parks Maintenance Assistant Superintendent or Designee and the Contractor will be decided in the Superior Court of King County, Washington, which shall have exclusive jurisdiction and venue over all matters in question between the City and the Contractor. This contract shall be interpreted and construed in accordance with the laws of the State of Washington.

Pending final decision of the dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the direction of the Public Works & Parks Maintenance Assistant Superintendent or Designee. Failure to comply precisely with the time deadlines under the paragraph as to any claim, shall operate as a release of that claim and a presumption of prejudice to the City.

2-19 Recycled Products

The Contractor shall use recycled paper for proposals and for any printed or photocopied material created pursuant to a contract with the City whenever practicable and use both sides of paper sheets for reports submitted to the City whenever practicable.

In the event this RFB # 05-2011A covers the sale of product to the City that is capable of containing recycled materials, Contractor is hereby advised that the City intends to

procure products with recycled content, pursuant to the recycled content notice delivered with these bid documents. Contractor shall certify the percentage of recycled content and products sold to the City, including a percentage of post-consumer waste that is in the product. This certification is required to be in the form of a label on the product or a statement by the Contractor attached to the bid documents. The certification on multi-component or multi-material products shall verify the percentage and type of post-consumer waste and recycled content by volume contained in the major constituents of the product. The Contractor agrees to grant the City, as a procuring agency, permission to verify the certification of recycled content by review of the bidder's or manufacturer's records as a condition of any bid award, in the event of a bidder's protest, or other challenge to the bid accepted.

Attachment A**NO BID RESPONSE FORM (OPTIONAL)**

When submitting a "No Bid", mail or hand-deliver this completed form to John Blackburn at: 21650 11th Avenue, Des Moines, Washington 98198. Be sure the form is in a sealed envelope with the bid number and bid title indicated on the outside of the envelope. The form must be received by the date and time specified for the bid opening as indicated in Section 1-1. Failure to return this form if not submitting a formal bid, may result in your firm being removed from the City's master bidder's mailing list.

Bid Number: **RFB # 05-2011A**

Bid Title: **2011 Parks and Right of Way Landscape Maintenance**

- Cannot comply with specifications.
- Cannot meet delivery requirement.
- Do not regularly manufacture or sell the type of service or commodity involved.
- Other (please specify).

Explanation of reason(s) checked:

Check one of the following:

- WE DO
- WE DO NOT desire to be retained on the mailing list for future procurements of this service or commodity.

Firm Name: _____

Address: _____ **Phone:** _____

Signature

Date

Name (Type or Print)

Title

*Attachment B***BID FORM**

**CITY OF DES MOINES
2011 PARKS AND RIGHT OF WAY LANDSCAPE MAINTENANCE
BID FORM**

The City of Des Moines, Washington is seeking qualified firms to submit bids to provide parks and right of ways landscape maintenance services to the City of Des Moines on an annual basis. These services include provision of all labor and equipment necessary for the maintenance of Des Moines parks and right of ways including but not limited to the following:

1. TURF: mowing, trimming, edging, fertilize, herbicide;
2. TREES, SHRUBS, PLANTINGS BEDS: weed and litter removal, edging, trimming, pruning, pre-emergent herbicide;
3. HARD SURFACES: Edging; sweeping and blowing, pre-emergent.

Bidder: Northwest Landscape Services

Date: June 10, 2011

ITEM	BID AMOUNT
A) Total "BASE BID" Annual Cost: Projects #1 through #17 (see attached Bid Schedule)	\$ 30,016.76
B) Total "ALTERNATE 1" Annual Cost: Projects #18 through #22 (see attached Bid Schedule)	\$ 6,433.49
C) Total "ALTERNATE 2" Annual Cost: Projects #23 through #26 (see attached Bid Schedule)	\$ 4,617.42
D) Total "ALTERNATE 3" Annual Cost: Projects #27 through #29 (see attached Bid Schedule)	\$ 9,464.00
E) Total "ADDITIONAL SERVICE" Annual Cost: 200 "Extra Hours"	\$ 6,760.00
F) State Sales Tax @ 9.5%	\$ 5,442.70
TOTAL BID AMOUNT (including Washington state sales tax, all other government taxes, assessments and charges)	\$ 62,734.37

To City Council Members
City of Des Moines
21630 11th Ave South
Des Moines, Washington 98198

Pursuant to and in compliance with your request for bids for 2011 Parks and Right of Way Landscape Maintenance, and other documents relating thereto, the undersigned has carefully examined all of the bid and contract documents and conditions affecting the delivery, supply and maintenance of the 2011 Parks and Right of Way Landscape Maintenance, and hereby proposes to furnish all labor, materials and perform all work as required in strict accordance

*Attachment C***BID SCHEDULE**

SEE ATTACHED EXCEL SPREADSHEET LABELED AS:

ATTACHEMENT C BID SCHEDULE; AND APPENDIX B DETAILS
AND ANNUAL MAINTENANCE SCHEDULE

2011 PARKS AND RIGHT OF WAY LANDSCAPE MAINTENANCE
RFB #05-2011A

COMPLETE ATTACHEMENT C PORTION OF SPREADSHEET,
PRINT AND INSERT BEHIND THIS COVER PAGE

BASE BID

	Project #1	Project #2	Project #3	Project #4	Project #5	Project #6	Project #7	Project #8	Project #9
2	Big Catch Park 2180 Marine View Drive South (Plaza, Boat, 216th)	City Hall 21630 11th Avenue South	Public Works Eng. 21650 11th Avenue South	Police Dept. 21900 11th Avenue South	Field House (Upper) 1000 South 220th Street	South Marina Park 227th & Dock Street (Incl. 227th traffic islands)	Beach Park 22030 Cliff Avenue South	Overlook II 22200 5th Avenue South	Overlook I 223rd and 5th Avenue South
0	HOURS RATE 3.38 x \$33.80 = \$114.24	HOURS RATE 5.88 x \$33.80 = \$198.74	HOURS RATE 1.36 x \$33.80 = \$45.97	HOURS RATE 1.59 x \$33.80 = \$53.74	HOURS RATE 10.81 x \$33.80 = \$365.38	HOURS RATE 4.69 x \$33.80 = \$158.52	HOURS RATE 21.36 x \$33.80 = \$721.97	HOURS RATE 0.00 x \$33.80 = \$0.00	HOURS RATE 1.22 x \$33.80 = \$41.24
1	HOURS RATE 3.90 x \$33.80 = \$131.82	HOURS RATE 3.30 x \$33.80 = \$111.54	HOURS RATE 1.50 x \$33.80 = \$50.70	HOURS RATE 1.35 x \$33.80 = \$45.63	HOURS RATE 12.90 x \$33.80 = \$436.02	HOURS RATE 3.65 x \$33.80 = \$123.37	HOURS RATE 26.95 x \$33.80 = \$910.91	HOURS RATE 6.20 x \$33.80 = \$209.56	HOURS RATE 1.45 x \$33.80 = \$49.01
1	HOURS RATE 6.26 x \$33.80 = \$211.59	HOURS RATE 6.68 x \$33.80 = \$225.78	HOURS RATE 3.84 x \$33.80 = \$129.79	HOURS RATE 2.02 x \$33.80 = \$68.28	HOURS RATE 15.18 x \$33.80 = \$513.08	HOURS RATE 5.31 x \$33.80 = \$179.48	HOURS RATE 28.36 x \$33.80 = \$958.57	HOURS RATE 4.59 x \$33.80 = \$155.14	HOURS RATE 2.46 x \$33.80 = \$83.15
July	HOURS RATE 9.56 x \$33.80 = \$323.13	HOURS RATE 9.08 x \$33.80 = \$306.90	HOURS RATE 4.14 x \$33.80 = \$139.93	HOURS RATE 13.02 x \$33.80 = \$440.08	HOURS RATE 23.08 x \$33.80 = \$780.10	HOURS RATE 6.86 x \$33.80 = \$231.87	HOURS RATE 25.56 x \$33.80 = \$863.93	HOURS RATE 11.80 x \$33.80 = \$398.84	HOURS RATE 4.60 x \$33.80 = \$155.48
August	HOURS RATE 2.24 x \$33.80 = \$75.71	HOURS RATE 2.62 x \$33.80 = \$88.56	HOURS RATE 6.26 x \$33.80 = \$211.59	HOURS RATE 12.23 x \$33.80 = \$413.37	HOURS RATE 50.42 x \$33.80 = \$1,704.20	HOURS RATE 4.69 x \$33.80 = \$158.52	HOURS RATE 9.39 x \$33.80 = \$317.38	HOURS RATE 2.30 x \$33.80 = \$77.74	HOURS RATE 1.25 x \$33.80 = \$42.25
September	HOURS RATE 1.72 x \$33.80 = \$58.14	HOURS RATE 2.20 x \$33.80 = \$74.36	HOURS RATE 6.12 x \$33.80 = \$206.86	HOURS RATE 12.47 x \$33.80 = \$421.49	HOURS RATE 48.33 x \$33.80 = \$1,633.55	HOURS RATE 4.23 x \$33.80 = \$142.97	HOURS RATE 5.80 x \$33.80 = \$196.04	HOURS RATE 1.61 x \$33.80 = \$54.42	HOURS RATE 1.02 x \$33.80 = \$34.48
October	HOURS RATE 27.06 \$914.63	HOURS RATE 29.76 \$1,005.89	HOURS RATE 23.22 \$784.84	HOURS RATE 42.68 \$1,442.58	HOURS RATE 160.72 \$5,432.34	HOURS RATE 29.43 \$994.73	HOURS RATE 117.42 \$3,968.80	HOURS RATE 26.5 \$895.70	HOURS RATE 12 \$405.60
November	*TOTAL PROJECT HOURS / COST								
December	*TOTAL PROJECT HOURS / COST								

200 Extra Hours of Maintenance Labor: 200 hr x **\$33.80**
 (Hourly Labor Rate)

= **\$6,760.00**
 (Extra Hours Cost)

* TOTAL PROJECT HOURS / COST shall be based on the number of services (ie. Mowing, trimming, weeding, etc.) and associated labor hours provided each month, the same unit cost is applied equally to all items of work.
 ** All items of work must be completed within any given month in order to receive full payment for that month.

Attachment C
 Bid Schedule
 2011 Parks and Right of Way Landscape Maintenance
 RFB #05-2011A

BASE BID											
	Project #10	Project #11	Project #12	Project #13	Project #14	Project #15	Project #16	Project #17			
2	Water Tower Park 20802 5th Avenue South	Westwood Park 6th Avenue South & 192nd Street	Midway Park 2900 South 221st Street	Wooten Park 283rd Street & Redondo Beach Drive	Redondo Parking Lot Redondo Beach Drive & Redondo Way	Cecil Powell Park 250th & 13th Place South	City Park (Pond) Kent Des Moines Road & 22nd Place	City Park South 230th Street & 21st Avenue South			
0	HOURS RATE 11.44 x \$33.80 =	HOURS RATE 1.77 x \$33.80 =	HOURS RATE 17.82 x \$33.80 =	HOURS RATE 12.00 x \$33.80 =	HOURS RATE 1.22 x \$33.80 =	HOURS RATE 2.50 x \$33.80 =	HOURS RATE 1.65 x \$33.80 =	HOURS RATE 6.44 x \$33.80 =			
1	\$386.67	\$59.83	\$602.32	\$405.60	\$41.24	\$84.50	\$55.77	\$217.67			
1	\$471.51	\$69.29	\$736.84	\$490.10	\$33.80	\$96.33	\$65.91	\$268.71			
July	13.95 x \$33.80 =	2.05 x \$33.80 =	21.80 x \$33.80 =	14.50 x \$33.80 =	1.00 x \$33.80 =	2.85 x \$33.80 =	1.95 x \$33.80 =	7.95 x \$33.80 =			
August	\$471.51	\$69.29	\$736.84	\$490.10	\$33.80	\$96.33	\$65.91	\$268.71			
September	16.52 x \$33.80 =	4.03 x \$33.80 =	44.22 x \$33.80 =	24.56 x \$33.80 =	2.25 x \$33.80 =	6.42 x \$33.80 =	4.80 x \$33.80 =	9.94 x \$33.80 =			
	\$558.38	\$136.21	\$1,494.64	\$830.13	\$76.05	\$217.00	\$162.24	\$335.97			
October	12.87 x \$33.80 =	12.83 x \$33.80 =	18.12 x \$33.80 =	13.66 x \$33.80 =	19.30 x \$33.80 =	8.82 x \$33.80 =	5.50 x \$33.80 =	6.74 x \$33.80 =			
	\$435.01	\$433.65	\$612.46	\$461.71	\$652.34	\$298.12	\$185.90	\$227.81			
November	4.88 x \$33.80 =	7.12 x \$33.80 =	7.08 x \$33.80 =	7.94 x \$33.80 =	1.70 x \$33.80 =	14.93 x \$33.80 =	2.35 x \$33.80 =	3.01 x \$33.80 =			
	\$164.94	\$240.66	\$239.30	\$268.37	\$57.46	\$504.63	\$79.43	\$101.74			
December	2.37 x \$33.80 =	6.84 x \$33.80 =	3.10 x \$33.80 =	5.44 x \$33.80 =	1.92 x \$33.80 =	14.58 x \$33.80 =	2.05 x \$33.80 =	2.50 x \$33.80 =			
	\$80.11	\$231.19	\$104.78	\$183.87	\$64.90	\$492.80	\$69.29	\$84.50			
*TOTAL PROJECT HOURS / COST	62.03 \$2,096.61	34.64 \$1,170.83	112.14 \$3,790.33	78.1 \$2,639.78	27.39 \$925.78	50.1 \$1,693.38	18.3 \$618.54	36.58 \$1,236.40			

ALTERNATE 1												ALTERNATE 2														
Project #18	Project #19	Project #20	Project #21	Project #22	Project #23	Project #24	Project #25	Project #26	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE	HOURS	RATE						
Activity Center 2045 216th Avenue South	Field House (Lower) 1000 South 220th Street	Memorial Park Marine View Drive & Des Moines Memorial Drive	251st Entrance Way 251st & Marine View Drive	Sonju Park 24728 16th Avenue South	Midway Park (Meadow Only) 2900 South 221st Street	Massey Creek Plaza Kent Des Moines Road @ 8th-9th Avenue South	Parkside Park 244th & 25 Avenue South	Barnes Creek 15th Avenue South	16.22	x \$33.80	4.52	x \$33.80	2.36	x \$33.80	1.12	x \$33.80	3.30	x \$33.80	7.60	x \$33.80	1.00	x \$33.80	7.78	x \$33.80	3.12	x \$33.80
= \$548.24	= \$152.78	= \$79.77	= \$37.86	= \$111.54	= \$256.88	= \$33.80	= \$262.96	=																		
18.60	x \$33.80	2.90	x \$33.80	2.90	x \$33.80	1.10	x \$33.80	3.30	x \$33.80	6.60	x \$33.80	3.30	x \$33.80	6.60	x \$33.80	1.00	x \$33.80	7.78	x \$33.80	1.00	x \$33.80	7.78	x \$33.80	3.65	x \$33.80	
=	= \$187.59	= \$98.02	= \$37.18	= \$111.54	= \$223.08	= \$33.80	= \$262.96																			
21.78	x \$33.80	22.82	x \$33.80	6.56	x \$33.80	6.60	x \$33.80	5.80	x \$33.80	31.60	x \$33.80	2.00	x \$33.80	2.00	x \$33.80	2.00	x \$33.80	10.78	x \$33.80	2.00	x \$33.80	10.78	x \$33.80	9.02	x \$33.80	
=	= \$771.32	=	=	=	=	=	=	=	=	=	=	=	=	=	=	=	=	=	=	=	=	=	=	=	=	
16.38	x \$33.80	5.82	x \$33.80	2.36	x \$33.80	2.10	x \$33.80	6.30	x \$33.80	7.60	x \$33.80	2.50	x \$33.80	2.50	x \$33.80	2.50	x \$33.80	8.78	x \$33.80	2.50	x \$33.80	8.78	x \$33.80	6.02	x \$33.80	
=	= \$196.72	= \$79.77	= \$70.98	= \$212.94	= \$256.88	= \$84.50	= \$296.76																			
10.72	x \$33.80	2.53	x \$33.80	0.64	x \$33.80	1.55	x \$33.80	4.65	x \$33.80	4.30	x \$33.80	1.55	x \$33.80	1.55	x \$33.80	1.55	x \$33.80	3.00	x \$33.80	1.55	x \$33.80	3.00	x \$33.80	2.73	x \$33.80	
=	= \$85.51	= \$21.63	= \$52.39	= \$157.17	= \$145.34	= \$52.39	= \$101.40																			
7.34	x \$33.80	2.50	x \$33.80	0.10	x \$33.80	1.02	x \$33.80	3.80	x \$33.80	2.00	x \$33.80	1.00	x \$33.80	1.00	x \$33.80	1.00	x \$33.80	3.00	x \$33.80	1.00	x \$33.80	3.00	x \$33.80	2.00	x \$33.80	
=	= \$84.50	= \$3.38	= \$34.48	= \$128.44	= \$67.60	= \$67.60	= \$33.80																			
91.04	x \$3,077.15	43.74	x \$1,478.41	14.92	x \$604.30	13.49	x \$455.96	27.15	x \$917.67	59.7	x \$2,017.86	9.05	x \$305.89	41.12	x \$1,389.86	26.74	x \$903.81									
*TOTAL PROJECT HOURS / COST																										

Attachment C
 Bid Schedule
 2011 Parks and Right of Way Landscape Maintenance
 RFB #05-2011A

		ALTERNATE 3						TOTAL PROJECT COST PER MONTH		
		Project #27	Project #28	Project #29	BASE BID		ALTERNATES			TOTALS
		16th Avenue South 272nd Street to South 260th Street	Pacific Highway South 216th Street to Kent Des Moines Road	MVD & 7th Ave. South 216th Street to Kent Des Moines Road	HOURS	RATE	1	2	3	
2	0									
1	1									
July		0.00 x \$33.80 = \$0.00	0.00 x \$33.80 = \$0.00	0.00 x \$33.80 = \$0.00	0.00	\$33.80	\$930.18	\$659.10	\$0.00	\$5,142.67
August		0.00 x \$33.80 = \$0.00	0.00 x \$33.80 = \$0.00	0.00 x \$33.80 = \$0.00	0.00	\$33.80	\$4,301.05	\$649.97	\$0.00	\$6,014.03
September		29.00 x \$33.80 = \$980.20	### x \$33.80 = \$3,650.40	44.00 x \$33.80 = \$1,487.20	44.00	\$33.80	\$2,148.33	\$1,804.92	\$6,117.80	\$16,406.52
October		2.00 x \$33.80 = \$67.60	25.00 x \$33.80 = \$845.00	2.00 x \$33.80 = \$67.60	2.00	\$33.80	\$6,947.25	\$841.62	\$980.20	\$9,883.12
November		4.00 x \$33.80 = \$135.20	25.00 x \$33.80 = \$845.00	6.00 x \$33.80 = \$202.80	6.00	\$33.80	\$4,745.86	\$391.40	\$1,183.00	\$6,999.30
December		4.00 x \$33.80 = \$135.20	25.00 x \$33.80 = \$845.00	6.00 x \$33.80 = \$202.80	6.00	\$33.80	\$4,133.74	\$270.40	\$1,183.00	\$6,086.03
*TOTAL PROJECT HOURS / COST		39	183	58		\$1,960.40	\$30,016.77	\$4,617.42	\$9,464.00	\$50,531.68

*Attachment D***BID SIGNATURE PAGE**Date: 6/13/2011

The undersigned bidder hereby proposes and agrees to deliver the equipment and/or services pursuant to the 2011 Parks and Right of Way Landscape Maintenance Agreement and all other terms and conditions of this RFB # 05-2011A within ten (10) days of receipt of Notice to Proceed on such Agreement.

No bidder may withdraw his/her bid for a period of thirty (30) days after the day of bid opening.

The required bid security consisting of a certified check, bid bond, or cashier's check in an amount of not less than five percent (5%) of the total amount will be delivered to the City.

The undersigned individual represents and warrants that he or she is dully authorized to execute the bid on behalf of any partnership, joint venture or corporation.

LLC
 Corporation/Partnership/Individual
(Line through Two)

Northwest Landscape Services
 Company
 By: 
 (Signature)
 Its: Managing Partner
 (Title)

PO Box 864
Woodinville, WA 98072
 (Address)
425-481-0919
 (Telephone Number)

Attachment E

BID BOND FORM

Herewith find deposit in the form of a certified check, cashiers check, cash, or bid bond in the amount of \$ 3,250.00, which amount is not less than five percent (5%) of the total bid.

BID BOND

KNOW ALL PERSONS BY THESE PRESENTS that we, _____, as Principal, and _____, as Surety, are held and firmly bound unto the City of Des Moines, as Obligee, in the penal sum of _____ and ___/100 dollars (\$_____), for the payment of which the Principal and the Surety bond themselves, their heirs and executors, administrators, successors and assigns, jointly and severally, by these presents.

The condition of this obligation is such that if the Obligee shall make any award to the Principal for:

2011 Parks and Right of Way Landscape Maintenance Agreement

According to the terms of the proposal or bid made by the Principal therefore, and the Principal shall duly make and enter into a contract with the Obligee in accordance with the terms of said proposal or bid and award and shall give bond for the faithful performance thereof, with Surety or Sureties approved by the Obligee; or if the Principal shall in case of failure so to do, pay and forfeit to the Obligee the penal amount of the deposit specified in the call for bids, then this obligation shall be null and void; otherwise, it shall be, and remain in full force and effect, and the Surety shall forthwith pay and forfeit to the Obligee as penalty and liquidated damages, the amount of this bond.

SIGNED, SEALED AND DATED THIS ____ DAY OF _____, 201_.

Principal

Surety

Date: _____, 201_.

Received return of deposit in the sum of \$ _____.

*Attachment F***SUBCONTRACTOR OR SUPPLIERS LIST**

Prepared in Compliance with RCW 39.30.060

Project Name: 2011 Parks and Right of Way Landscape Maintenance

Failure to list subcontractors or suppliers who are proposed to supply material for or perform the work of heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW and electrical as described in Chapter 19.28 RCW, or identify the bidder for the work will result in your bid being non-responsive and therefore void.

Subcontractors or suppliers that are proposed to supply material for or perform the work of heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW, and electrical as described in Chapter 19.28 RCW must be named below, or name the bidder for the work.

The following listed bid items (listed in numerical sequence) for this project have been proposed for subcontracting to subcontractors as indicated.

SUBCONTRACTOR NAME	ITEM NUMBERS	ESTIMATED AMOUNT	WMBE QUALIFIED? (Y/N)
No Subcontractors will be used			

The following listed materials for this project have been proposed for material suppliers to provide as indicated.

SUPPLIER NAME	ITEM NUMBERS	ESTIMATED AMOUNT	WMBE QUALIFIED? (Y/N)
John Deere Landscapes	Irrigation Parts if needed	TBD	N
Wilbur Ellis	Chemicals for turf	TBD	N

Attachment G

City of Des Moines

COMBINED AFFIDAVIT AND CERTIFICATION FORM

Non-Collusion, Anti-Trust, Prevailing Wage (Non-Federal Aid),
Debarment and Certification of Lawful Employment

NON-COLLUSION AFFIDAVIT

Being first duly sworn, deposes and says, that he/she is the identical person who submitted the foregoing proposal or bid, and that such bid is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and further, that the deponent has not directly induced or solicited any other Bidder on the foregoing work equipment to put in a sham bid, or any other person or corporation to refrain from bidding, and that deponent has not in any manner sought by collusion to secure to himself/herself or to any other person any advantage over other Bidder or Bidders; and

CERTIFICATION RE: ASSIGNMENT OF ANTI-TRUST CLAIMS TO PURCHASER

Vendor and purchaser recognize that in actual economic practice, overcharges resulting from anti-trust violations are, in fact, usually borne by the purchaser. Therefore, vendor hereby assigns to purchaser any and all claims for such overcharges as to goods and materials purchased in connection with this order or contract, except as to overcharges resulting from anti-trust violations commencing after the date of the bid, quotation, or other event establishing the price under this order or contract. In addition, vendor warrants and represents that each of his suppliers and subcontractors shall assign any and all such claims to purchaser, subject to the aforementioned exception; and

PREVAILING WAGE AFFADAVIT FORM

I, the undersigned, having duly sworn, deposed say and certify that in connection with the performance of the work of this project, will pay each classification of laborer, work person, or mechanic employed in the performance of such work, not less than the prevailing rate of wage or not less than the minimum rate of wage as specified in the principal contract; that I have read the above and forgoing statement and certificate, know the contents thereof and the substance as set forth therein, is true to my knowledge and belief; and

DEBARMENT AFFIDAVIT

I certify that, except as noted below, the firm, association or corporation or any person in a controlling capacity associated therewith or any position involving the administration of federal funds; is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against said person, firm, association or corporation by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

CERTIFICATION OF LAWFUL EMPLOYMENT

The contractor hereby certifies that it has complied with all provisions of the Immigration and Nationality Act, now or as herein after amended, 8 USC Section 1101 et. seq., and that all employees, including subcontractor employees, are lawfully permitted to perform work in the United States as provided in this agreement with the City of Des Moines.

FOR: Non-Collusion Affidavit, Assignment of Anti-Trust Claims to Purchaser, Minimum Wage Affidavit, Debarment Affidavit and Certification of Lawful Employment.

**2011 Parks and Right of Way Landscape Maintenance
RFB # 05-2011A**

Northwest Landscape Services

Name of Bidder's Firm



Signature of Authorized Representative of Bidder
Tom DiMeco, Managing Partner

Subscribed and sworn to before me this 10th day of June, 2011.

Tammy M. Ashbridge
Tammy M. Ashbridge

(printed/typed name of notary)
Notary Public in and for the State of Washington

My commission expires: 5-29-14



Attachment H

CONTRACTOR'S COMPLIANCE STATEMENT
(President's Executive Order #11246)

Date: 6/10/11

This statement relates to a proposal contract with the City of Des Moines named

2011 Parks and Right of Way Landscape Maintenance
RFB # 05-2011A

I am the undersigned bidder or prospective contractor. I represent that:

I have, have not, participated in a previous contract or subcontract subject to the President's Executive Order #11246 (regarding equal employment opportunity / non-segregated facilities) or a preceding similar Executive Order.

Northwest Landscape Services
Name of Bidder

By: 
Signature Tom DiMeco

Its: Managing Partner
Title

PO Box 864

Woodinville, WA 98072
Address

425-481-0919
Phone Number

Attachment I

**MAINTENANCE/LABOR AGREEMENT
FOR
2011 PARKS AND RIGHT OF WAY LANDSCAPE MAINTENANCE**

This Maintenance/Labor Agreement ("Agreement") is dated effective this 28th day of June, 2011. The parties ("Parties") to this Agreement are the City of Des Moines, a Washington municipal corporation ("City"), and Northwest Landscape Services, a Limited Liability Company ("Contractor").

A. The City seeks the temporary services of a skilled independent contractor capable of working without direct supervision, in the capacity of providing landscape maintenance services for the City's parks and rights of way; and

B. The Contractor has the requisite skill and experience necessary to provide such services.

NOW, THEREFORE, the Parties agree as follows:

1. SERVICES BY CONTRACTOR

1.1 Description of Work. Contractor shall perform all work and furnish all tools, materials, supplies, equipment, labor and other items incidental thereto necessary to complete the 2011 Parks and Right of Way Landscape Maintenance services more specifically described in Appendix A, Technical Requirements, attached hereto and incorporated by this reference ("Services"), in a manner consistent with the accepted practices for other similar services, performed to the City's satisfaction, within the time period prescribed by the City and pursuant to the direction of the City Manager or his or her designee. The Services shall be performed in accordance with and as described in the Contract Documents, which include without limitation, this Agreement, Request for Bids, Bidder's Checklist, Instructions to Bidders, General Contractual Terms and Conditions, Bid Form, Bid Signature Page, Bid Bond, Combined Affidavit and Certification Form, Contractor's Compliance Statement, Contract Change Order Agreement attached as Exhibit A, Notice to Labor Unions or Other Employment Organizations Nondiscrimination in Employment attached as Exhibit B, Performance / Payment Bond attached hereto as Exhibit C, Details and Annual Maintenance Schedule attached hereto as Appendix B, current Prevailing Wage Rates attached as Appendix C, and Release of Liens and all other Appendices attached hereto.

1.2 Additional Services. The City may elect to have the Contractor perform additional work or services, in connection with this project, described in Appendix A, attached hereto and incorporated by this reference ("Additional Services"). The Contractor shall not proceed with the Additional Services until so authorized in writing by the City. Payment for all Additional Services performed under this Agreement shall be outlined below in paragraph 4.2.

1.3 Completion Date. The Work shall be commenced within five (5) days of receipt by the Contractor of the City's Notice to Proceed. The Services shall continue for a seven (7) to eight (8) month period unless the Contract is terminated earlier by the City. In the event any of the Services are not completed within the time specified by the City, Contractor agrees to pay to the City liquidated damages in the amount set forth below in paragraph 1.4.

1.4 Delivery and Liquidated Damages. Time is of the essence of the Agreement and each and all of its provisions in which performance is a factor. The Contractor will be held to strict compliance with the prescribed date(s) set forth in these contract documents. For each and every day that delivery is delayed beyond the specific weekly and/or monthly schedule, damage will be sustained by the City. Because of the difficulty in computing the actual damages and disadvantages to the City, and as a reasonable forecast of actual damages which the City will suffer by the delay in delivery, the parties agree that for each such delay the contractor agrees to pay liquidated damages calculated on the following formula:

(1) To pay (according to the following formula) liquidated damages for each day that scheduled items of work are not completed, and

(2) To authorize the City to deduct these liquidated damages from any money due or coming due to the Contractor.

LIQUIDATED DAMAGES FORMULA

LD = 0.11 multiplied by MCA

Where: LD = Liquidated damages per day (rounded to the nearest dollar).

MCA = Monthly Contract Amount.

When the Services are completed to the extent that the City is satisfied, the City may determine the Services are on schedule. Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete this entire Agreement.

1.5 Performance Standard. Contractor shall perform the Services in a manner consistent with accepted practices for other properly licensed contractors.

1.6 Compliance with Laws. Contractor shall perform the Services in accordance with all applicable federal, state and City laws, including but not limited to all City ordinances, resolutions, standards or policies, as now existing or hereafter adopted or amended, and obtain all necessary permits and pay all permit, inspection or other fees, at its sole cost and expense.

1.7 Change Orders. The City may, at any time, without notice to sureties, order changes within the scope of the Services. Contractor agrees to fully perform any such alterations or additions to the Services. All such change orders shall be in the form of the Contract Change Order Agreement attached hereto as Exhibit "A", which shall be signed by both the Contractor and the City, shall specifically state the change of the Services, the completion date for such changed Services, and any increase or decrease in the compensation to be paid to Contractor as a result of such change in the Services. Oral change orders shall not be binding upon the City unless confirmed in writing by the City. If any change hereunder causes an increases or decrease in the Contractor's cost of, or time required for, the performance or any part of the Services under this Agreement, an equitable adjustment will be made and the Agreement modified in writing accordingly.

If the Contractor intends to assert a claim for an equitable adjustment hereunder, it shall, within five (5) days after receipt of a written change order from the City or after giving the written notice required above, as the case may be, submit to the City a written statement

setting forth the general nature and monetary extent of such claim; provided the City, in its sole discretion, may extend such five (5) day submittal period upon request by the Contractor. The Contractor shall supply such supporting documents and analysis for the claims as the City may require to determine if the claims and costs have merit. No claim will be allowed for any costs incurred more than five (5) days before the Contractor gives written notice as required. No claim by the Contractor for an equitable adjustment hereunder will be allowed if asserted after final payment under this Agreement.

1.8 Work and Materials Omitted. The Contractor shall, when directed in writing by the City, omit Services and materials to be furnished under the Agreement and the value of the omitted Services and materials will be deducted from the Total Compensation and the delivery schedule will be reviewed if appropriate. The value of the omitted Services and materials will be a lump sum or unit price, as mutually agreed upon in writing by the Contractor and the City. If the parties cannot agree on an appropriate deduction, the City reserves the right to issue a unilateral change order adjusting the price and the delivery schedule. The Contractor shall not have the exclusive right to perform the Services and the City may contract to have the Services performed by third parties or by City employees.

1.9 Utility Location. Contractor is responsible for locating any underground utilities affected by the Services and is deemed to be an excavator for purposes of Chapter 19.122 RCW, as amended. Contractor shall be responsible for compliance with Chapter 19.122 RCW, including utilization of the "one call" locator system before commencing any excavation activities.

1.10 Air Environment. Contractor shall fully cover any and all loads of loose construction materials including without limitation, sand, dirt, gravel, asphalt, excavated materials, construction debris, etc., to protect said materials from air exposure and to minimize emission of airborne particles to the ambient air environment within the City of Des Moines.

2. Term.

The term of this Agreement shall commence upon the effective date of this Agreement and shall continue until the completion of the Services on December 31, 2011 ("Term"). The contract shall also include a satisfactory performance extension (at no additional bid pricing increase to the City) of up to twenty-four (24) months. The CITY will notify the Contractor in writing a minimum of thirty (30) days in advance of the contract termination date of the intent to extend the contract twenty-four (24) months based upon satisfactory performance.

3. Termination.

Prior to the expiration of the Term, this Agreement may be terminated immediately, with or without cause, by the City.

4. Compensation.

4.1 Total Compensation. In consideration of the Contractor performing the Services, the City agrees to pay the Contractor an amount not to exceed Thirty Nine Thousand Four Hundred Eighty and 76/100 Dollars (\$39,480.76), and Washington state sales tax equal to Three Thousand Seven Hundred Fifty and 67/100 Dollars (\$3,750.67).

4.2 Additional Services Compensation. In consideration of the Contractor performing the Additional Services pursuant to Section 1.2. which is described in Exhibit "A" attached hereto and incorporated by this reference, the City agrees to pay the Contractor an amount not to exceed Six Thousand Seven Hundred Sixty and 00/100 Dollars (\$6,760.00), for a total of Six Thousand Seven Hundred Sixty and 00/100 Dollars (\$6,760.00) calculated on the basis of an hourly labor charge of Thirty Three Dollars and 80/100 (\$33.80) per hour.

4.3 Method of Payment. Payment by the City for the Services will only be made after the Services have been performed, a voucher or invoice is submitted in the form specified by the City, and the same is approved by the appropriate City representative. Payment shall be made on a monthly basis, thirty (30) days after receipt of such voucher or invoice.

4.4 Nonpayment. The City shall have the right to withhold payment to the Contractor for any of the Services not completed in a satisfactory manner, in the City's sole discretion, which shall be withheld until such time as Contractor modifies or repairs the Services so that the Services are acceptable to the City.

4.5 Contractor Responsible for Taxes. The Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.

5. Compliance with Laws.

Contractor shall comply with and perform the Services in accordance with all applicable federal, state, and City laws including, without limitation, all City codes, ordinances, resolutions, standards and policies, as now existing or hereafter adopted or amended.

6. Warranty.

6.1 Requisite Skill. The Contractor warrants that it has the requisite training, skill and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to being registered to do business in the City of Des Moines by obtaining a City of Des Moines business registration. Contractor represents that it has visited the site and is familiar withal of the plans and specifications in connection with the completion of the Services.

6.2 Defective Services. The Contractor shall, at its sole cost and expense, correct all Services which the City deems to have defects in workmanship and material discovered within on (1) year after the City's final acceptance of the Services.

7. Independent Contractor/Conflict of Interest.

It is the intention and understanding of the Parties that the Contractor shall be an independent contractor and that the City shall be neither liable nor obligated to pay Contractor sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The Contractor shall pay all income and other taxes as due. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Contractor, shall not be deemed to convert this Agreement to an employment contract. It is recognized that Contractor may, or will be performing services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with

Contractor's ability to perform the Services. Contractor agrees to resolve any such conflicts of interest in favor of the City.

8. Indemnification.

8.1 Contractor Indemnification. The Contractor agrees to indemnify, defend and hold the City, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the Contractor, its partners, shareholders, agents, employees, or by the Contractor's breach of this Agreement. Contractor waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. Contractor's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs.

8.2 City Indemnification. The City agrees to indemnify, defend and hold the Contractor, its officers, directors, shareholders, partners, employees, and agents harmless from any and all claims, demands, losses, actions and liabilities (including costs and attorney fees) to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors, or omissions of the City, its employees or agents.

8.3 Survival. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

9. Equal Opportunity Employer.

In all Contractor services, programs or activities, and all Contractor hiring and employment made possible by or resulting from this Agreement, there shall be no discrimination by Contractor or by Contractor's employees, agents, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, 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. Contractor shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and, in the case of the Contractor's breach, may result in ineligibility for further City agreements.

10. Confidentiality.

All information regarding the City obtained by Contractor in performance of this Agreement shall be considered confidential. Breach of confidentiality by Contractor will be grounds for immediate termination.

11. Insurance.

11.1 Minimum Limits. The Contractor agrees to carry as a minimum, the following insurance, in such forms and with such carriers who have a rating, which is satisfactory to the City:

(1) Workers' compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington;

(2) Commercial general liability insurance with combined single limits of liability not less than \$2,000,000 for bodily injury, including personal injury or death, products liability and property damage.

(3) Automobile liability insurance with combined single limits of liability not less than \$2,000,000 for bodily injury, including personal injury or death and property damage.

11.2 Endorsements. Each insurance policy shall contain, or be endorsed to contain, the following provisions:

(1) The City, its officers, officials, employees, volunteers and agents shall each be named as additional insured.

(2) Coverage may not be terminated or reduced in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, to the City.

(3) Coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be in excess of Contractor's insurance.

(4) Coverage shall apply to each insured separately against whom claim is made or suit is brought.

(5) Coverage shall be written on an "occurrence" form as opposed to a "claims made" or "claims paid" form.

11.3 Verification. Contractor shall furnish the City with certificates of insurance evidencing the coverage required by this Section, which certificate must be executed by a person authorized by the insurer to bind coverage on its behalf. The City reserves the right to require complete certified copies of all required insurance policies, at any time.

11.4 Subcontractors. Contractors shall include all subcontractors as additional insured under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

11.5 Deductibles and Self Insured Retentions. Any deductibles or self-insured retentions must be disclosed by Contractor and approved in writing by the City. At the option of the City, Contractor shall either reduce or eliminate such deductibles or self-insured retentions or procure a bond guaranteeing payment for any amounts not covered by the insurance by reason of such deductibles or self-insured retentions.

11.6 Asbestos Abatement or Hazardous Materials. If asbestos abatement or hazardous materials work is performed, Contractor shall review coverage with the City's Risk Manager and provide scope and limits of coverage that are appropriate for the scope of Work and are satisfactory to the City. Contractor shall not commence any Work until its coverage has been approved by the Risk Manager.

11.7 Termination. The Contractor's failure to provide the insurance coverage required by this Section shall be deemed to constitute non-acceptance of this Contract by the Contractor and the City may then award this Contract to the next lower bidder.

12. Performance/Payment Bond.

Pursuant to RCW 39.08.010, Contractor shall post a Performance/Payment Bond in favor of the City, in the form attached to this Agreement as Exhibit "C" and incorporated by this reference, in a dollar amount satisfactory to the City; to guarantee Contractor's performance of the Work to the City's satisfaction; to insure Contractor's performance of all of the provisions of the Agreement; and to guarantee Contractor's payment of all laborers, mechanics, subcontractors and material persons. Contractor's obligations under this Agreement shall not be limited to the dollar amount of the bond.

13. Work Product.

All originals and copies of work product, including plans, sketches, layouts, designs, design specifications, records, files, computer disks, magnetic media or material which may be produced or modified by Contractor while performing the Services shall belong to the City. At the termination or cancellation of this Agreement, all originals and copies of any such work product remaining in the possession of Contractor shall be delivered to the City.

14. Books and Records.

The Contractor agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of the Services and maintain such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject, at all reasonable times, to inspection, review or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

15. Safety.

Contractor shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state and municipal safety and health laws and codes, including without limitation, all OSHA/WISHA requirements, Safety and Health Standards for Construction Work (Chapter 296-155 WAC), General Safety and Health Standards (Chapter 296-24 WAC), and General Occupational Health Standards (Chapter 296-62 WAC). Contractor shall erect and properly maintain, at all times, all necessary guards, barricades, signals and other safeguards at all unsafe places at or near the site for the protection of its employees and the public, safe passageways at all road crossings, crosswalks, street intersections, post danger signs warning against known or unusual hazards and do all other things necessary to prevent accident or loss of any kind. Contractor shall protect from damage all water, sewer, gas, steam or other pipes or conduits, and all hydrants and all other property that is likely to become displaced or damaged by the performance of the Services. The

Contractor shall, at its own expense, secure and maintain a safe storage place for its materials and equipment and is solely responsible for the same.

16. Prevailing Wages

16.1 Wages of Employees. This Agreement is subject to the minimum wage requirements of Chapter 39.12 of the Revised Code of Washington, as now existing or hereafter amended or supplemented. In the payment of hourly wages and fringe benefits to be paid to any of Contractor's laborers, work persons and/or mechanics, Contractor shall not pay less than the "prevailing rate of wage" for an hour's work in the same trade or occupation in the locality within the State of Washington where such labor is performed, as determined by the Industrial Statistician of the Department of Labor and Industries of the State of Washington, which current "prevailing rates of wage" are attached hereto as Appendix "C" and incorporated herein by this reference. Prevailing wages paid pursuant to this Agreement shall be the prevailing wage rates that are in effect on the date when the bids, proposals, or quotes were required to be submitted to the City.

16.2 Agreements Exceeding One Year. Pursuant to WAC 296-127-023, or hereafter amended, the City agrees to pay any increase in the current prevailing wages if and when this Contract is extended provided that the term of the Contract exceeds one year. The City further agrees to pay the current prevailing wages at the time of additional yearly extensions, and the Contractor agrees to pay its employees the increased prevailing wage.

16.3 Exemptions to Prevailing Wage. The prevailing wage requirements of Chapter 39.12 RCW, and as required in this Agreement do not apply to:

- a. Sole owners and their spouses;
- b. Any partner who owns at least 30% of a partnership;
- c. The President, Vice President and Treasurer of a corporation if each one owns at least 30% of the corporation.

16.4 Reporting Requirements. Contractor shall comply with all reporting requirements of the Department of Labor and Industries of the State of Washington. Upon the execution of this Agreement, Contractor shall complete and file a Statement of Intent to Pay Prevailing Wages with the Department of Labor and Industries. Upon completion of the Services, Contractor shall complete and file an Affidavit of Wages Paid with the Department of Labor and Industries. Contractor shall deliver copies of both the Statement of Intent to Pay Prevailing Wages and the Affidavit of Wages Paid, certified by the Department of Labor and Industries, to the City.

16.5 Disputes. In the event any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be resolved by the City and the Contractor, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries of the State of Washington and the decision therein shall be final and conclusive and binding on all parties involved in the dispute.

17. Failure to Pay.

In the event the Contractor shall fail to pay any subcontractor or laborers, fail to pay for any materials, or fail to pay any insurance premiums, the City may terminate this Agreement and/or

the City may withhold from the money which may be due the Contractor an amount necessary for the payment of such subcontractors, laborers, materials or premiums.

18. Clean Up.

At any time ordered by the City and immediately after completion of the Services, the Contractor, shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Services. In the event the Contractor fails to perform the necessary clean up, the City may, but in no event is it obligated to, perform the necessary clean up and the costs thereof shall be immediately paid by the Contractor to the City and/or the City may deduct its costs from any remaining payments due to the Contractor.

19. Non-Appropriation of Funds.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to make payments for Services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

20. General Provisions.

20.1 Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

20.2 Modification. No provision of this Agreement, including this provision, may be amended or modified except by written agreement signed by the Parties.

20.3 Full Force and Effect. Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

20.4 Assignment. Neither the Contractor nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

20.5 Successors in Interest. Subject to the foregoing Subsection, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns.

20.6 Attorney Fees. In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses. The venue for any dispute related to this Agreement shall be King County, Washington.

20.7 No Waiver. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. 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.

20.8 Governing Law. This Agreement shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington.

20.9 Authority. Each individual executing this Agreement on behalf of the City and Contractor represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Contractor or the City.

20.10 Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth below. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth below. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

20.11 Captions. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement.

20.12 Performance. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Contractor's performance of this Agreement.

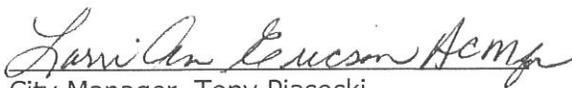
20.13 Conflicting Provisions. In the event of a conflict between the terms and provisions of any of this Agreement, the City Manager or his or her designee shall issue an interpretation of the controlling document, which interpretation shall be final and binding.

20.14 Remedies Cumulative. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

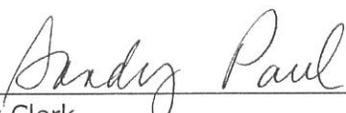
20.15 Counterparts. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

DATED the day and year set forth above.

CITY OF DES MOINES

By: 
City Manager, Tony Piasecki
21630 11th Avenue South
Des Moines, WA 98198

ATTEST:



City Clerk,

**EXHIBIT A
CITY OF DES MOINES
CONTRACT CHANGE ORDER AGREEMENT**

PROJECT NUMBER _____ CHANGE ORDER NUMBER _____ EFFECTIVE DATE _____

PROJECT TITLE _____ CONTRACTOR _____

SUMMARY OF PROPOSED CHANGES:

The time provided for completion in the Contract is Unchanged Increased Decreased by _____ Calendar Days. This Document shall become an Amendment to the Contract and all provisions of the Contract not amended herein will apply to this Change Order.

Will this change affect expiration or extent of Insurance coverage? Yes No
If "Yes" Will the Policies Be Extended? Yes No

PRICE CHANGE LUMP SUM: INCREASE \$ _____ DECREASE \$ _____
UNIT PRICE: _____

THE ITEMS ARE APPROXIMATE OR ESTIMATED QUANTITIES INVOLVED IN THIS CHANGE

ITEM NO.	ITEM	QUANTITY	UNIT PRICE	ADD OR DELETE
----------	------	----------	------------	---------------

TOTAL NET CONTRACT: INCREASE \$ _____ DECREASE \$ _____

STATEMENT:

Payment for the above work will be in accordance with applicable portions of the standard specifications, and with the understanding that all materials, workmanship and measurements shall be in accordance with the provisions of the standard specifications, the contract plans, and the special provisions governing the types of construction.

CONTRACTOR'S SIGNATURE _____ DEPT. DIRECTOR/MANAGER SIGNATURE _____ DATE _____

DEPARTMENT RECAP TO DATE:

***Adjustments:**

ORIGINAL CONTRACT AMOUNT	\$ _____
PREVIOUS CHANGE ORDERS	\$ _____
THIS CHANGE ORDER	\$ _____
*ADJUSTMENTS	\$ _____
NEW CONTRACT AMOUNT	\$ _____

ADJUSTMENTS

CHANGE ORDER ESTIMATE IS HEREBY € INCREASED \$ _____
€ DECREASED \$ _____
PAY THIS ADJUSTED AMOUNT \$ _____

DEPARTMENT DIRECTOR'S SIGNATURE _____

EXHIBIT B

**NOTICE TO LABOR UNIONS OR OTHER EMPLOYMENT ORGANIZATIONS
NONDISCRIMINATION IN EMPLOYMENT**

TO: ALL EMPLOYEES

AND TO: _____
(Name of Union or Organization)

The undersigned currently holds contract(s) with _____ involving funds or credit of the City of Des Moines, Washington, or (a) subcontract(s) with a prime contractor holding such contract(s).

You are advised that, under the provisions of the above contract(s) or subcontract(s) and in accordance with Section _____ of Executive Order _____ dated _____, the undersigned is obliged not to discriminate against any employee or applicant of employment because of race, color, creed or national origin. This obligation not to discriminate in employment includes, but is not limited to, the following:

EMPLOYMENT, UPGRADING, TRANSFER OR DEMOTION

RECRUITMENT AND ADVERTISING

RATES OF PAY OR OTHER FORMS OF COMPENSATION

SELECTION FOR TRAINING INCLUDING APPRENTICESHIP, LAYOFF OR TERMINATION

This notice is furnished to you pursuant to the provisions of the above contract(s) or subcontractor(s) and Executive Order _____.

Copies of this Notice will be posted by the undersigned in conspicuous places available to employees or applicants for employment.

Complaints may be submitted to: _____

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

(Contractor or subcontractor)

Date

EXHIBIT C

CITY OF DES MOINES
PERFORMANCE/PAYMENT BOND

Bond No. 751974P

KNOW ALL PEOPLE BY THESE PRESENTS:

We, the undersigned Northwest Landscape Services, ("Principal") and Developers Surety and Indemnity Company, the undersigned corporation organized and existing under the laws of the State of Iowa and legally doing business in the State of Washington as a surety ("Surety"), are held and firmly bonded unto the City of Des Moines, a Washington municipal corporation ("City") in the penal sum of Forty-three Thousand Two Hundred Thirty-two Dollars and no/100 (\$43,232.00), (an amount equal to one hundred and twenty-five percent (125%) of the annualized Total Bid Amount) for the payment of which we firmly bind ourselves and our legal representatives, heirs, successors and assigns, jointly and severally.

This obligation is entered into an Agreement with the City dated June 28th, 2011 for 2011 Parks and Right of Way Landscape Maintenance.

NOW, THEREFORE, if the Principal shall perform all the provisions of the Agreement in the manner and within the time period prescribed by the City, or within such extensions of time as may be granted under the Agreement, and shall pay all laborers, mechanics, subcontractors and material men or women, and all persons who shall supply the Principal or subcontractors with provisions and supplies for the carrying on of said work, and shall hold the City, their officials, agents, employees and volunteers harmless from any loss or damage occasioned to any person or property by reason of any carelessness or negligence on the part of the Principal, or any subcontractor in the performance of said work, and shall indemnify and hold the City harmless from any damage or expense by reason of failure of performance as specified in the Agreement within a period of one (1) year after its final acceptance thereof by the City, then and in the event this obligation shall be void; but otherwise, it shall be and remain in full force and effect.

And the Surety, for value received, hereby further stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alterations or additions to the terms of the Agreement or to the Work.

The Surety hereby agrees that modifications and changes may be made in terms and provisions of the Agreement without notice to Surety, and any such modifications or changes increasing the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this Performance Bond in a like amount, such increase, however, not to exceed twenty-five percent (25%) of the original amount of this bond without the consent of the Surety.

Within forty-five (45) days of receiving notice that the Principal has defaulted on all or part of the terms of the Agreement, the Surety shall make a written commitment to the City that it will either: (a) cure the default itself within a reasonable time period, or (b) tender to the city, the amount necessary for the City to remedy the default, including legal fees incurred by the City, or (c) in the event that Surety's evaluation of the dispute is not complete or in the event the Surety disputes the City's claim of default, the Surety shall notify the City of its finding and its intent, if any, to interplead. The Surety shall then fulfill its obligations under this bond, according to the option it has elected. Should Surety elect option (a) to cure the default, the penal sum of the Bond shall be reduced in an amount equal to the costs actually incurred by the Surety in curing the default. If the Surety elects option (b), then upon completion of the necessary work, the City shall notify the Surety of its actual costs. The City shall return, without interest, any overpayment made by the Surety and the Surety shall pay to the City any actual costs which exceed the City estimate, limited to the bond amount. Should the Surety elect option (c), the Parties shall first complete participation in mediation, described in the below paragraph, prior to any interplead action.

In the event a dispute should arise between the Parties to this Bond with respect to the City's declaration of default by the Principal, the Parties agree to participate in at least four hours of mediation in accordance with the mediation procedures of United States Arbitration and Mediation ("USA&M"). The Parties shall proportionately share in the cost of the mediation. The mediation shall be administered by the Seattle USA&M office, 4300 Two Union Square, 601 Union Street, Seattle, Washington 98101-2327. The Surety shall not interplead prior to completion of the mediation.

DATED this 29th day of June, 2011.

CORPORATE SEAL OF PRINCIPAL:

PRINCIPAL
Northwest Landscape Services

By: TH
(Name of Person Executing Bond)

Its: Managing Partner
(Title)

7627 West Bostian Road
Woodinville, WA 98072
(Address)

(425) 709-0919
(Phone)

CERTIFICATE AS TO CORPORATE SEAL

I hereby certify that I am the Managing Partner of the Corporation named as Principal in the within bond; that Tom DiMeco, who signed the said bond on behalf of the Principal, was Managing Partner of the said Corporation; that I know his or her signature thereto is genuine, and that said bond was duly signed, sealed, and attested for and in behalf of said Corporation by authority of its governing body.

TH
TITLE: Managing Partner

CORPORATE SEAL OF SURETY:

SURETY
Developers Surety and Indemnity Company

By: Elizabeth R. Hahn
Attorney-in-Fact
(Attach Power of Attorney)

Elizabeth R. Hahn, Attorney-in-Fact
(Name of Person Executing Bond)
2233 112th Ave NE

Bellevue, WA 98004
(Address)
(425) 709-3600
(Phone)

APPROVED AS TO FORM:

Pat Bosmans FOR
Pat Bosmans, City Attorney

POWER OF ATTORNEY FOR
DEVELOPERS SURETY AND INDEMNITY COMPANY
INDEMNITY COMPANY OF CALIFORNIA
PO Box 19725, IRVINE, CA 92623 (949) 263-3300

KNOW ALL BY THESE PRESENTS that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, do each hereby make, constitute and appoint:

Jana M. Roy, Karen P. Dever, Lillian Tse, Scott McGilvray, Jill A. Boyle, Benjamin L. Wolfe, Elizabeth R. Hahn, Susan B. Larson, Scott Fisher, Stuart A. O'Farrell, Deanna M. Meyer, jointly or severally

as their true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations, as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.

This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolutions adopted by the respective Boards of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, effective as of January 1st, 2008.

RESOLVED, that a combination of any two of the Chairman of the Board, the President, Executive Vice-President, Senior Vice-President or any Vice President of the corporations be, and that each of them hereby is, authorized to execute this Power of Attorney, qualifying the attorney(s) named in the Power of Attorney to execute, on behalf of the corporations, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of either of the corporations be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporations when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA have severally caused these presents to be signed by their respective officers and attested by their respective Secretary or Assistant Secretary this January 1st, 2008.

By: *Daniel Young*
Daniel Young, Vice-President

By: *SV Pate*
Stephen T. Pate, Senior Vice-President



State of California
County of Orange

On August 13th, 2008 before me, Jenny TT Nguyen, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Daniel Young and Stephen T. Pate
Name(s) of Signer(s)

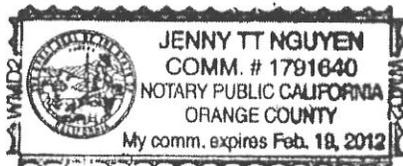
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Jenny TT Nguyen*
Jenny TT Nguyen, Notary Public

CERTIFICATE



Place Notary Seal Above

The undersigned, as Secretary or Assistant Secretary of DEVELOPERS SURETY AND INDEMNITY COMPANY or INDEMNITY COMPANY OF CALIFORNIA, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked and, furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, this 29th day of June, 2011

By: *Gregg Okura*
Gregg Okura, Assistant Secretary

APPENDIX A

TECHNICAL REQUIREMENTS

A. Site (Project) Locations

PARKS AND FACILITY LANDSCAPES

BASE BID

<u>PROJECT #</u>	<u>NAME</u>	<u>ADDRESS</u>
1	Big Catch Park	21800 Marine View Drive South (Plaza, Boat, 216th)
2	City Hall	21630 11th Avenue South
3	Public Works Engineering	21650 11th Avenue South
4	Police Department	21900 11th Avenue South
5	Field House (Upper)	1000 South 220th Street
6	South Marina Park	227th & Dock Street (Include islands on South 227th St.)
7	Beach Park	22030 Cliff Avenue South
8	Overlook II	22200 5th Avenue South
9	Overlook I	223rd and 5th Avenue South
10	Water Tower Park	20802 5th Avenue South
11	Westwood Park	6th Avenue South & 192nd Street
12	Midway Park	2900 South 221st Street
13	Wooton Park	283rd Street & Redondo Beach Drive
14	Redondo Parking Lot	Redondo Beach Drive & Redondo Way South
15	Cecil Powell Park	250th & 13th Place South
16	City Park (Retention)	Kent Des Moines Road & 22nd Place
17	City Park	South 230th Street & 21st Avenue South

ALTERNATE 1

18	Activity Center	2045 South 216th Street
19	Field House (Lower)	1000 South 220th Street
20	Memorial Park	Marine View Drive & Des Moines Memorial Drive
21	251st Entrance Way	251st & Marine View Drive
22	Sonju Park	24728 16th Avenue South

ALTERNATE 2

23	Midway Park (Meadow)	2900 South 221st Street
24	Massey Creek Plaza	Kent Des Moines Road & 8th-9th Avenue South
25	Parkside Park	244th & 25 Avenue South
26	Barnes Creek	15th Avenue South

STREETSCAPES (MEDIANS AND PLANTER STRIPS)

ALTERNATE 3

27	16th Avenue South	Center Medians and Sidewalk Planters From: South 272nd Street to South 260th Street
28	Pacific Highway South	Center Medians and Sidewalk Planters From: South 216th Street to Kent Des Moines Road
29	MVD & 7th Ave. South	Sidewalk Planters From: South 216th Street to Kent Des Moines Road

B. Definitions

1. Owners, Public Works Department, City and/or City of Des Moines and their authorized representatives shall be understood to mean one and the same.
2. Contract Administrator shall be the City of Des Moines Parks Maintenance Division's duly authorized representative.
3. Approved means approved by the Owner or the Contract Administrator.
4. Approved equal or equivalent, as hereinafter used, shall mean a material or method equal to, or better than the required materials or methods as approved by the City.
5. As shown shall mean as shown on the Contract Drawings, maps, or details.
6. Specifications shall mean these specifications, the "Maintenance Specifications" and all addenda thereto.
7. Grounds maintenance and landscape maintenance means the work and provisions described by the Maintenance/Labor Agreement and all addenda thereto.
8. Native trees shall mean those trees which are indigenous or natural to the site.
9. Ornamental Trees shall mean those trees which are not indigenous or natural to the site, and are located as part of the designed landscape.

C. Maintenance Specifications

1. The Contractor will furnish all labor, tools, specialized equipment, materials, supervision, transportation, and disposal of waste material generated by the work to perform landscape maintenance services as described within this "Appendix A" with frequencies specified within the Monthly Maintenance Schedules of Project #s 1 through 29.
2. All field work shall be performed under the supervision of a qualified horticulturist. Operators will be licensed for all functions, including pesticide, fertilizer, and herbicide application, and flagging card when required.
3. The Contractor will ensure that employees comply with all applicable City of Des Moines and Washington State regulations and practices with respect to work performed for the City.
4. Any Contractor having employees working on or near a street shall comply with the City of Des Moines, Washington State regulations and the current Manual on Uniform Traffic Control Devices pertaining to safety equipment, warning signs and traffic control. The following regulations¹ must be observed:
 - a. Workers must wear reflective safety vests at all times.
 - b. Trucks, trailers and work areas must be coned at all times. Minimum cone height is 28-inch cones with reflective tape.
 - c. Traffic warning signs must be positioned on the Right-of-Way to forewarn traffic of workers in the area. Minimum sign size is 36-inches square with five inch (5") black letters on orange background. A "WORKERS AHEAD" sign is sufficient if landscape work can be confined to one side of the street behind the curb. "WORKERS AHEAD" signs should be displayed from both directions

¹ Current version of the Manual on Uniform Traffic Control Devices

if operations encroach on the center median or center median and both sides of the street.

If the landscape operation dictates that a lane be closed of multi-laned streets, the signing should be as follows and per the current Manual on Uniform Traffic Control Devices:

- a. "WORKERS AHEAD"
- b. "RIGHT\LEFT LANE CLOSED AHEAD"
- c. Lane reduction symbol
- d. Sequential arrow signs
- e. Cones/barricades as required

These safety regulations are mandated by the State Department of Labor and Industries and are subject to change. Failure to comply with proper safety procedures may result in contract cancellation.

No lanes shall be closed without first providing notice to and receiving the approval of the City's Public Works Department.

5. The Contractors personnel will conduct themselves on site in a professional manner at all times.
6. The Contract Administrator will inspect work performed by the Contractor on a regular basis. In the event of work performance deficiencies, the Contract Administrator will notify the Contractor. Notification may be verbal or written.

The City may choose to:

- a. Collect liquidated damages as described in paragraph 1.4 of the Maintenance/Labor agreement (Attachment I);
 - b. Withhold payment;
 - c. Require the Contractor to rectify the deficiency within 48 hours.
7. The Contractor shall submit, on the Friday before the next scheduled work week, a completed weekly work schedule showing the work that is to be done the following week as set forth in the Annual Maintenance Schedules (Work/Inspection Schedule attached). The Contractor's supervisor must call in every morning that work is scheduled to be performed on this contract, stating the project location and scheduled work. The supervisor must be on site whenever the Contractor's crews are working.
 8. Equipment intensive work such as mowing, edging and blowing done at this site shall not commence before 7:00 a.m. on weekdays and shall not continue after 7:00 p.m., (weekend work not allowed without prior approval) and it is advisable that work be performed on or adjacent to primary or major arterial roads be performed during non-peak traffic times.
 9. Report any damage to, or potential hazards, involving City property immediately to the City of Des Moines Public Works Department, telephone 206-870-6525. After hours emergencies should be reported to the Police/Fire Communications Center, telephone 911.

10. Hazardous conditions shall be immediately remedied or secured to prevent further damage and/or protect public from injury. It is the Contractor's responsibility to provide close supervision of maintenance operations and management of the site.
11. Incidents, altercations or accidents involving the public, Contractor employees or City employees shall be reported to the Contract Administrator in a timely manner. The Contract Administrator, at his or her discretion, may require a written report from the Contractor describing the incident or accident.
12. Any damage to City structures or plant material due to Contractor negligence will be remedied by the Contractor, at his or her expense, in a timely manner.

D. Turf

1. Turf areas to be mowed include all park lawns, medians, utility strips from curb to sidewalk, and outside edge of sidewalk equal to 24" width unless otherwise specified. All turf shall be mowed to a height of two inches. Collection of grass clippings is required only to prevent grass clumps from being left on the turf.
2. All turf around posts, poles, fences, trees, vaults, valve boxes and other obstructions shall be sprayed (4" width maximum) with a vegetation eliminator (to be approved by Contract Administrator) and as specified in the Annual Maintenance Schedules. Vegetation elimination includes any vegetation encroaching on sidewalks, curbs, walkways, or into the street.
3. Turf around shrubs shall be trimmed as specified in the Annual Maintenance Schedules. Trimming shall include any vegetations encroaching on sidewalks, walkways, or curbs.
4. All turf areas shall be edged at all parks, sidewalks, walkways, planter beds, curbs and medians on a schedule specified in the Annual Maintenance Schedules. Edging also includes tree pits. Extreme caution should be used to prevent chipping of concrete structures by edging equipment.
5. All turf areas shall be fertilized with an approved fertilizer on a schedule specified in Annual Maintenance Schedules. Total application of turf fertilizer shall be applied at the rate of four pounds of nitrogen per 1,000 square feet of turf per year. The spring fertilizer shall be "25-3-10" with 70% slow release (polyon coating) plus 5% non-staining iron or approved equal. The fall fertilizer shall be "22-2-22" with 70% slow release (polyon coating) or approved equal. Contractor is responsible to ensure 100% coverage.
6. All turf areas shall receive an approved broadleaf herbicide (approved by Contract Administrator) on a schedule specified in the Annual Maintenance Schedules. Contractor is responsible to ensure 100% coverage.
7. All turf areas and brush located beyond 24" behind sidewalks or planted landscape strips to the fence/property line is to be mowed to a height of no more than four inches on a schedule specified in the Annual Maintenance Schedules. This work is identified and paid for under the "rough mow" bid item. All required maintenance frequencies must be evenly spaced throughout the maintenance cycle for each month of the contract. A minimum of seven (7) days separation is required for all tasks.

E. Trees, Shrubs and Ground Cover Beds

1. Beds and median areas shall be kept in weed free condition. All beds shall be weeded by mechanical and/or chemical means. The City reserves the right to limit the use of specific herbicides and/or applications of said herbicides. Herbicide shall be used only with the approval of the Contract Administrator.
2. Any damage to desirable plant material due to Contractor negligence or misuse of pesticides will be remedied by the Contractor, at his or her expense, in a timely manner.
3. Ground cover shall be edged at all sidewalks, curbs and medians.
4. Vegetation/ground covers shall be trimmed to prevent encroachment in to streets, sidewalks, trails, walkways, maintained areas, shrubs, and trees.
5. Vegetation shall be trimmed to prevent the limitation of sightlines along trails and/or streets. Vertical pedestrian and trail clearance is **eight to twelve** feet (8' - 12') and horizontal clearance is approximately one foot beyond the outside sidewalk edge. Horizontal clearance may vary depending on style of construction, obstructions and property boundaries.
6. Shrubs shall be trimmed or sheared on all sides to maintain desired shape and function as needed to provide a neat, trim appearance. This includes all shrubs in the median islands.
7. Trees shall be pruned to remove singular broken branches or perform minor clearance pruning. Minimum clearance height for tree branches is fourteen (14) feet above the paved surface of the street and eight (8) to twelve (12) feet over the surface of the public sidewalk or pedestrian way.
8. Tree suckers and volunteer seedlings shall be removed.
9. Singular branches which are hanging below the overall tree canopy and are an impediment to pedestrian traffic or maintenance activities may be pruned back to the first lateral.
10. Trees which require minor clearance pruning shall be pruned to the closest lateral or, if such pruning will result in stubbing the branch, prune branch flush with tree trunk.
11. The Contractor shall be responsible for notifying the Contract Administrator of any significant tree hazards including, but not limited to: dead native and ornamental trees, broken limbs, disease and insect infestations.
12. Ornamental trees without tree wells are to be vegetation free 6 to 12 inches from the tree base.
13. Beds/medians may receive an approved pre-emergent herbicide on a schedule specified in Annual Maintenance Schedule and in accordance with the manufacturer's recommendations.
14. Any damage to desirable plant material due to Contractor negligence or misuse of pesticides will be remedied by the Contractor, at his or her expense, in a timely manner.

F. Hard Surfaces

1. Sidewalks, curbs and other hard surfaces shall be kept free of leaves, litter and debris on an as-needed basis. The use of power blowers is acceptable, **however, accumulations of debris must be removed from the site and legally disposed of and not blown onto adjacent property or onto adjacent street surfaces.** This work shall be considered incidental to other work items.
2. All vegetation in sidewalks, curbs and other hard surfaces shall receive an approved (by Contract Administrator) vegetation eliminator application and be removed.

G. Other Services

1. All litter, leaves, debris and animal feces shall be removed from turf, beds and hard surface areas. Litter shall be removed from the site for disposal by the Contractor.
2. Windfall branches, leaves and debris shall be removed from all right-of-way areas for disposal by the Contractor. Wind fallen trees are not included in contract.

H. Additional Maintenance Labor

1. Additional work may be requested in writing from the City, limited to a total of two hundred (200) hours per contract year and reimbursed on an hourly basis. Hourly work rates includes all cost for materials, labor, and equipment for work described in Section D ("Turf"), E ("Trees, Shrubs and Ground Cover Beds"), F ("Hard Surfaces"), and G ("Other Services"). Hours will be reimbursed beginning from the time arrived at the worksite.

PROJECT #1
Big Catch Park 2180 Marine View Drive South (Plaza, Boat, 216th)

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing						4	4	5	4	4	1	
D2 Vegetation Elimination									1			
D3 Trimming						4	4	5	4	4	1	
D4 Edging						2	2	2	1	1		
D5 Fertilize									1			
D6 Herbicide									1			
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup						1						1
E3 Edging Ground Cover												
E4 Vegetation Trimming											1	
E6 Trimming Shrubs												
E7 Tree Pruning												
E13 Vegetation Elimination									1			
F. Hard Surfaces												
F1 Sweeping/Blowing						4		5	4	4	1	
F2 Weeds/Pre-emergent									1			
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	3	3
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month						15	17	18	15	6	4	
Exclusions/Notes: Exclude planter pots and "Boat" planter.												

PROJECT #2
City Hall 21630 11th Avenue South

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing							4	5	4	4	1	
D2 Vegetation Elimination									1			
D3 Trimming							4	5	4	4	1	
D4 Edging							2	2	1	1		
D5 Fertilize									1			
D6 Herbicide									1			
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup							1					1
E3 Edging Ground Cover							1			1		
E4 Vegetation Trimming												
E6 Trimming Shrubs										1		
E7 Tree Pruning												
E13 Vegetation Elimination									1			
F. Hard Surfaces												
F1 Sweeping/Blowing							4	5	4	4	1	
F2 Weeds/Pre-emergent									1			
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	4	4
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month							16	17	18	16	7	5
Exclusions/Notes:												

PROJECT #3
Public Works Engineering 21650 11th Avenue South

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing						4	5	4	4	1		
D2 Vegetation Elimination						4	5	4	4	1		
D3 Trimming						2	2	1	1			
D4 Edging								1				
D5 Fertilize								1				
D6 Herbicide								1				
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup						1						1
E3 Edging Ground Cover												
E4 Vegetation Trimming										1		
E6 Trimming Shrubs												
E7 Tree Pruning												
E13 Vegetation Elimination								1				
F. Hard Surfaces												
F1 Sweeping/Blowing						4	5	4	4	1		
F2 Weeds/Pre-emergent								1				
G. Other												
G1&2 Litter Pickup/Windfall Debris									1	4	4	
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month						15	17	18	15	7	5	

Exclusions/Notes:

PROJECT #4
Police Department 21900 11th Avenue South

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing							4	5	4	4	1	
D2 Vegetation Elimination									1			
D3 Trimming							4	5	4	4	1	
D4 Edging							2	2	1	1		
D5 Fertilize									1			
D6 Herbicide									1			
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup							1					1
E3 Edging Ground Cover												
E4 Vegetation Trimming												
E6 Trimming Shrubs										1		
E7 Tree Pruning												
E13 Vegetation Elimination									1			
F. Hard Surfaces												
F1 Sweeping/Blowing							4	5	4	4	1	
F2 Weeds/Pre-emergent									1			
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	4	4
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month							15	17	18	15	7	5
Exclusions/Notes:												

PROJECT #5
Field House (Upper) 1000 South 220th Street

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing							4	5	4	4	1	
D2 Vegetation Elimination									1			
D3 Trimming							4	5	4	4	1	
D4 Edging							2	2	1	1		
D5 Fertilize									1			
D6 Herbicide									1			
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup							1					1
E3 Edging Ground Cover												
E4 Vegetation Trimming												
E6 Trimming Schrub										1		
E7 Tree Pruning												
E13 Vegetation Elimination									1			
F. Hard Surfaces												
F1 Sweeping/Blowing							4	5	4	4	1	
F2 Weeds/Pre-emergent									1			
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	4	4
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month							15	17	18	15	7	5
Exclusions/Notes:												

PROJECT #6
South Marina Park 227th & Dock Street (Include islands on South 227th Street)

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing							4	5	4	4	1	
D2 Vegetation Elimination									1			
D3 Trimming							4	5	4	4	1	
D4 Edging							2	2	1	1		
D5 Fertilize									1			
D6 Herbicide									1			
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup							1					1
E3 Edging Ground Cover							1			1		
E4 Vegetation Trimming												
E6 Trimming Shrubs										1		
E7 Tree Pruning												
E13 Vegetation Elimination									1			
F. Hard Surfaces												
F1 Sweeping/Blowing							4	5	4	4	1	
F2 Weeds/Pre-emergent									1			
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	4	4
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month							16	17	18	16	7	5
Exclusions/Notes:												

PROJECT #7
Beach Park 22030 Cliff Avenue South

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing						4	4	5	4	4	1	
D2 Vegetation Elimination									1			
D3 Trimming						4	4	5	4	4	1	
D4 Edging						2	2	2	1	1		
D5 Fertilize									1			
D6 Herbicide												
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup						1						1
E3 Edging Ground Cover								1		1		
E4 Vegetation Trimming											1	
E6 Trimming Shrubs											1	
E7 Tree Pruning												
E13 Vegetation Elimination									1			
F. Hard Surfaces												
F1 Sweeping/Blowing							4	5	4	4	1	
F2 Weeds/Pre-emergent												
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	4	4
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
Total Items of Work Per Month							15	18	16	16	7	5

Exclusions/Notes: Sensitive area due to proximity of Puget Sound. Any chemical use to be approved by Contract Administrator.

PROJECT #8
Overlook II 22200 5th Avenue South

Service Items (See Appendix A)		Frequency (Trips) per Month											
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf													
D1	Mowing						4	5	4	4	1		
D2	Vegetation Elimination								1				
D3	Trimming						4	5	4	4	1		
D4	Edging						2	2	1	1			
D5	Fertilize								1				
D6	Herbicide								1				
D7	Rough Mow												
E. Trees, Shrubs and Ground Cover Beds													
E1	Weeding and Litter Pickup						1						1
E3	Edging Ground Cover												
E4	Vegetation Trimming***							1		1			
E6	Trimming Shrubs									1			
E7	Tree Pruning												
E13	Vegetation Elimination									1			
F. Hard Surfaces													
F1	Sweeping/Blowing						4	5	4	4	1		
F2	Weeds/Pre-emergent								1				
G. Other													
G1&2	Litter Pickup/Windfall Debris									1	3	3	
H. Additional Maintenance Labor													
H1	Extra Labor Hours												
As requested in writing from the City													
Total Items of Work Per Month													
							15	18	18	16	6	4	
Exclusions/Notes: ***E4 Vegetation Trimming: includes hillside on west slope of park on Cliff Avenue.													

PROJECT #9
Overlook I 223rd and 5th Avenue South

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing						4	4	5	4	4	1	
D2 Vegetation Elimination							1					
D3 Trimming						4	4	5	4	4	1	
D4 Edging						2	2	2	1	1		
D5 Fertilize									1			
D6 Herbicide									1			
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup						1						1
E3 Edging Ground Cover												
E4 Vegetation Trimming												
E6 Trimming Shrubs										1		
E7 Tree Pruning												
E13 Vegetation Elimination									1			
F. Hard Surfaces												
F1 Sweeping/Blowing							4	5	4	4	1	
F2 Weeds/Pre-emergent									1			
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	2	2
H. Additional Maintenance Labor												
H1 Extra Labor Hours										As requested in writing from the City		
Total Items of Work Per Month							15	17	18	15	5	3
Exclusions/Notes:												

PROJECT #10
Water Tower Park 20802 5th Avenue South

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing							4	5	4	4	1	
D2 Vegetation Elimination									1			
D3 Trimming							4	5	4	4	1	
D4 Edging							2	2	1	1		
D5 Fertilize									1			
D6 Herbicide									1			
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup							1					1
E3 Edging Ground Cover												
E4 Vegetation Trimming												
E6 Trimming Shrubs										1		
E7 Tree Pruning												
E13 Vegetation Elimination									1			
F. Hard Surfaces												
F1 Sweeping/Blowing							4	5	4	4	1	
F2 Weeds/Pre-emergent									1			
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	3	3
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month							15	17	18	15	6	4
Exclusions/Notes:												

PROJECT #11

Westwood Park 6th Avenue South & 192nd Street

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing							4	5	4	4	1	
D2 Vegetation Elimination							4	5	4	4	1	
D3 Trimming							2	2	1	1		
D4 Edging									1			
D5 Fertilize									1			
D6 Herbicide									1			
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup							1					1
E3 Edging Ground Cover												
E4 Vegetation Trimming										1		
E6 Trimming Shrubs												
E7 Tree Pruning												
E13 Vegetation Elimination									1			
F. Hard Surfaces												
F1 Sweeping/Blowing							4	5	4	4	1	
F2 Weeds/Pre-emergent									1			
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	3	3
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month												
							15	17	18	15	6	4
Exclusions/Notes:												

PROJECT #12
Midway Park 2900 South 221st Street

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing						4	4	5	4	4	1	
D2 Vegetation Elimination						4	4	5	4	4	1	
D3 Trimming						2	2	2	1	1		
D4 Edging									1			
D5 Fertilize									1			
D6 Herbicide									1			
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup						1						1
E3 Edging Ground Cover												
E4 Vegetation Trimming										1		
E6 Trimming Shrubs												
E7 Tree Pruning												
E13 Vegetation Elimination									1			
F. Hard Surfaces												
F1 Sweeping/Blowing							4	5	4	4	1	
F2 Weeds/Pre-emergent									1			
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	3	3
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month							15	17	18	15	6	4
Exclusions/Notes:												

PROJECT 13

Wooten Park 283rd Street & Redondo Beach Drive

Service Items (See Appendix A)		Frequency (Trips) per Month															
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC				
D. Turf																	
D1	Mowing						4	5	4	4	4	1					
D2	Vegetation Elimination								1								
D3	Trimming						4	5	4	4	1						
D4	Edging						2	2	1	1							
D5	Fertilize								1								
D6	Herbicide								1								
D7	Rough Mow																
E. Trees, Shrubs and Ground Cover Beds																	
E1	Weeding and Litter Pickup						1							1			
E3	Edging Ground Cover																
E4	Vegetation Trimming										1						
E6	Trimming Shrubs																
E7	Tree Pruning																
E13	Vegetation Elimination									1							
F. Hard Surfaces																	
F1	Sweeping/Blowing						4	5	4	4	4	1					
F2	Weeds/Pre-emergent								1								
G. Other																	
G1&2	Litter Pickup/Windfall Debris										1	4	4				
H. Additional Maintenance Labor																	
H1	Extra Labor Hours																
												As requested in writing from the City					
Total Items of Work Per Month												15	17	18	15	7	5
Exclusions/Notes:																	

PROJECT #14

Redondo Parking Lot Redondo Beach Drive & Redondo Way

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing												
D2 Vegetation Elimination												
D3 Trimming												
D4 Edging												
D5 Fertilize												
D6 Herbicide												
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup						1						1
E3 Edging Ground Cover												
E4 Vegetation Trimming									1			
E6 Trimming Shrubs												
E7 Tree Pruning												
E13 Vegetation Elimination								1				
F. Hard Surfaces												
F1 Sweeping/Blowing***							4	5	4	4	1	
F2 Weeds/Pre-emergent									1			
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	3	3
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month												
5 5 6 6 4 4												
Exclusions/Notes: ***F1 Sweeping/Blowing: Only @ immediate area around planters.												

PROJECT #15
Cecil Powell Park 250th & 13th Place South

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing						4	5	4	4	4	1	
D2 Vegetation Elimination								1				
D3 Trimming						4	5	4	4	1		
D4 Edging						2	2	1	1			
D5 Fertilize								1				
D6 Herbicide								1				
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup						1						1
E3 Edging Ground Cover												
E4 Vegetation Trimming										1		
E6 Trimming Schrubs												
E7 Tree Pruning												
E13 Vegetation Elimination								1				
F. Hard Surfaces												
F1 Sweeping/Blowing						4	5	4	4	4	1	
F2 Weeds/Pre-emergent								1				
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	4	4
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
	As requested in writing from the City											
Total Items of Work Per Month						15	17	18	15	7	5	
Exclusions/Notes: This park has three (3) separate areas on 251st: 1. Main Park; 2. Area surrounding park sign; 3. Streetscape planters on south side of 251st Street.												

PROJECT #16

City Park (Pond) Kent Des Moines Road & 22nd Place

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing						4	5	4	4	4	1	
D2 Vegetation Elimination								1				
D3 Trimming						4	5	4	4	1		
D4 Edging						2	2	1	1			
D5 Fertilize								1				
D6 Herbicide								1				
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup						1						1
E3 Edging Ground Cover												
E4 Vegetation Trimming										1		
E6 Trimming Shrubs												
E7 Tree Pruning												
E13 Vegetation Elimination								1				
F. Hard Surfaces												
F1 Sweeping/Blowing						4	5	4	4	4	1	
F2 Weeds/Pre-emergent								1				
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	2	2
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month						15	17	18	15	15	5	3
Exclusions/Notes:												

PROJECT #17
City Park _____ South 230th Street & 21st Avenue South

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing							4	5	4	4	1	
D2 Vegetation Elimination									1			
D3 Trimming							4	5	4	4	1	
D4 Edging							2	2	1	1		
D5 Fertilize									1			
D6 Herbicide									1			
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup												1
E3 Edging Ground Cover												
E4 Vegetation Trimming												
E6 Trimming Shrubs												
E7 Tree Pruning												
E13 Vegetation Elimination												
F. Hard Surfaces												
F1 Sweeping/Blowing							4	5	4	4	1	
F2 Weeds/Pre-emergent									1			
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	3	3
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month							14	17	17	14	6	4
Exclusions/Notes:												

PROJECT 18
Activity Center 2045 216th Avenue South

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing							4	5	4	4	1	
D2 Vegetation Elimination									1			
D3 Trimming							4	5	4	4	1	
D4 Edging							2	2	1	1		
D5 Fertilize									1			
D6 Herbicide									1			
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup							1					1
E3 Edging Ground Cover												
E4 Vegetation Trimming												
E6 Trimming Shrubs												
E7 Tree Pruning												
E13 Vegetation Elimination									1			
F. Hard Surfaces												
F1 Sweeping/Blowing							4	5	4	4	1	
F2 Weeds/Pre-emergent							1					
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	4	4
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month							16	17	17	14	7	5
Exclusions/Notes: Pond and garden area are maintained by volunteers. Any work performed by contractor in these areas that may affect these areas must be approved by City.												

PROJECT #19
Field House (Lower) 1000 South 220th Street

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing							4	5	4	4	1	
D2 Vegetation Elimination									1			
D3 Trimming							4	5	4	4	1	
D4 Edging							2	2	1	1		
D5 Fertilize									1			
D6 Herbicide									1			
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup												1
E3 Edging Ground Cover												
E4 Vegetation Trimming												
E6 Trimming Shrubs										1		
E7 Tree Pruning												
E13 Vegetation Elimination									1			
F. Hard Surfaces												
F1 Sweeping/Blowing							4	5	4	4	1	
F2 Weeds/Pre-emergent									1			
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	3	3
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month							14	17	18	15	6	4
Exclusions/Notes:												

PROJECT #20

Memorial Park Marine View Drive & Des Moines Memorial Drive (Triangle Lawn w/Flag)

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing							4	5	4	4	1	
D2 Vegetation Elimination									1			
D3 Trimming							4	5	4	4	1	
D4 Edging							2	2	1	1		
D5 Fertilize									1			
D6 Herbicide									1			
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup												
E3 Edging Ground Cover												
E4 Vegetation Trimming												
E6 Trimming Shrubs												
E7 Tree Pruning												
E13 Vegetation Elimination												
F. Hard Surfaces												
F1 Sweeping/Blowing							4	5	4	4	1	
F2 Weeds/Pre-emergent												
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	1	1
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month							14	17	16	14	4	1
Exclusions/Notes:												

PROJECT #21
251st Entrance Way ___ 251st & Marine View Drive

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing							2	2	2	2	1	
D2 Vegetation Elimination									1			
D3 Trimming							2	2	2	2	1	
D4 Edging							2	2	2	2	1	
D5 Fertilize												
D6 Herbicide												
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup							1					1
E3 Edging Ground Cover									1			
E4 Vegetation Trimming												
E6 Trimming Shrubs									1			
E7 Tree Pruning												
E13 Vegetation Elimination												
F. Hard Surfaces												
F1 Sweeping/Blowing								2	2	2	2	1
F2 Weeds/Pre-emergent												
G. Other												
G1&2 Litter Pickup/Windfall Debris											1	1
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month							9	8	11	9	5	2
Exclusions/Notes:												

PROJECT #22
Sonju Park 247 16th Avenue South

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing						2	2	2	2	2	1	
D2 Vegetation Elimination									1			
D3 Trimming						2	2	2	2	2	1	
D4 Edging						2	2	2	2	2	1	
D5 Fertilize												
D6 Herbicide												
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup												1
E3 Edging Ground Cover									1			
E4 Vegetation Trimming												
E6 Trimming Schrubs									1			
E7 Tree Pruning												
E13 Vegetation Elimination												
F. Hard Surfaces												
F1 Sweeping/Blowing						2	2	2	2	2	1	
F2 Weeds/Pre-emergent												
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	1	1
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month						8	8	8	11	9	5	2
Exclusions/Notes:												

PROJECT #23
Midway Park (Meadow) 2900 South 221st Street

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing							2	2	2	2	1	
D2 Vegetation Elimination									1			
D3 Trimming							2	2	2	2	1	
D4 Edging							2	2	2	2	1	
D5 Fertilize												
D6 Herbicide												
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup							1					1
E3 Edging Ground Cover									1			
E4 Vegetation Trimming												
E6 Trimming Shrubs									1			
E7 Tree Pruning												
E13 Vegetation Elimination												
F. Hard Surfaces												
F1 Sweeping/Blowing								2	2	2	2	1
F2 Weeds/Pre-emergent												
G. Other												
G1&2 Litter Pickup/Windfall Debris											1	1
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month							9	8	11	9	5	2
Exclusions/Notes: *** D7 Rough Mow: Meadow area = ~20' east of park path/walkway up to PSE poles.												

PROJECT #24

Massey Creek Plaza Kent Des Moines Road between 8th-9th Avenue South

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing						2	2	2	2	2	1	
D2 Vegetation Elimination								1				
D3 Trimming						1	1	1	1	1	1	
D4 Edging												
D5 Fertilize												
D6 Herbicide									1			
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup												
E3 Edging Ground Cover												
E4 Vegetation Trimming												
E6 Trimming Shrubs												
E7 Tree Pruning												
E13 Vegetation Elimination												
F. Hard Surfaces												
F1 Sweeping/Blowing												
F2 Weeds/Pre-emergent												
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	1	1
H. Additional Maintenance Labor												
H1 Extra Labor Hours										As requested in writing from the City		
Total Items of Work Per Month						3	3	3	4	5	3	1
Exclusions/Notes:												

PROJECT #25
Parkside Park__244th & 25 Avenue South

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing						2	2	2	2	2		
D2 Vegetation Elimination									1			
D3 Trimming						2	2	2	2			
D4 Edging												
D5 Fertilize												
D6 Herbicide												
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup												
E3 Edging Ground Cover												
E4 Vegetation Trimming								1				
E6 Trimming Shrubs												
E7 Tree Pruning												
E13 Vegetation Elimination												
F. Hard Surfaces												
F1 Sweeping/Blowing						2	2	2	2	2		
F2 Weeds/Pre-emergent												
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	3	3
H. Additional Maintenance Labor												
H1 Extra Labor Hours										As requested in writing from the City		
Total Items of Work Per Month						6	6	6	8	7	3	3
Exclusions/Notes:												

PROJECT #26
Barnes Creek 15th Avenue South

Service Items (See Appendix A)		Frequency (Trips) per Month												
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
D. Turf														
D1	Mowing							4	5	4	4	4	1	
D2	Vegetation Elimination									1				
D3	Trimming							4	5	4	4	1		
D4	Edging							2	2	1	1			
D5	Fertilize									1				
D6	Herbicide									1				
D7	Rough Mow													
E. Trees, Shrubs and Ground Cover Beds														
E1	Weeding and Litter Pickup***													
E3	Edging Ground Cover													
E4	Vegetation Trimming										1			
E6	Trimming Scrubs										1			
E7	Tree Pruning													
E13	Vegetation Elimination									1				
F. Hard Surfaces														
F1	Sweeping/Blowing							4	5	4	4	1		
F2	Weeds/Pre-emergent									1				
G. Other														
G1&2	Litter Pickup/Windfall Debris										1	2	2	
H. Additional Maintenance Labor														
H1	Extra Labor Hours													
As requested in writing from the City														
Total Items of Work Per Month								14	17	18	16	5	2	
Exclusions/Notes: ***E1 Weeding and Litter Pickup: Litter pickup only.														

PROJECT #27

16th Avenue Center Medians and Sidewalk Planters From: South 272nd Street to South 260th Street

Service Items (See Appendix A)		Frequency (Trips) per Month															
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC				
D. Turf																	
D1	Mowing																
D2	Vegetation Elimination																
D3	Trimming																
D4	Edging																
D5	Fertilize																
D6	Herbicide																
D7	Rough Mow																
E. Trees, Shrubs and Ground Cover Beds																	
E1	Weeding and Litter Pickup											1					
E3	Edging Ground Cover											1					
E4	Vegetation Trimming											1					
E6	Trimming Shrubs																
E7	Tree Pruning																
E13	Pre-emergent Herbicide											1					
F. Hard Surfaces																	
F1	Sweeping/Blowing											1					
F2	Weeds/Pre-emergent											1					
G. Other																	
G1&2	Litter Pickup/Windfall Debris												1	2			
H. Additional Maintenance Labor																	
H1	Extra Labor Hours																
As requested in writing from the City																	
Total Items of Work Per Month												0	0	6	1	2	2
Exclusions/Notes: SEE PROVIDED MAP OF 16TH AVENUE SOUTH (EXHIBIT "A" TO PROJECT #27)																	

PROJECT #28

Pacific Highway Center Medians and Sidewalk Planters From: South 216th Street to Kent Des Moines Road

Service Items (See Appendix A)	Frequency (Trips) per Month											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
D. Turf												
D1 Mowing												
D2 Vegetation Elimination												
D3 Trimming												
D4 Edging												
D5 Fertilize												
D6 Herbicide												
D7 Rough Mow												
E. Trees, Shrubs and Ground Cover Beds												
E1 Weeding and Litter Pickup									1			
E3 Edging Ground Cover									1			
E4 Vegetation Trimming									1			
E6 Trimming Shrubs												
E7 Tree Pruning												
E13 Pre-emergent Herbicide									1			
F. Hard Surfaces												
F1 Sweeping/Blowing									1			
F2 Weeds/Pre-emergent									1			
G. Other												
G1&2 Litter Pickup/Windfall Debris										1	1	1
H. Additional Maintenance Labor												
H1 Extra Labor Hours												
As requested in writing from the City												
Total Items of Work Per Month	0	0	0	0	0	0	0	0	0	6	1	1

Exclusions/Notes: SEE PROVIDED MAP OF PACIFIC HIGHWAY SOUTH (EXHIBIT "A" TO PROJECT #28)

PROJECT #29

Marine View Drive & 7th Ave. South Sidewalk Planters From: South 216th Street to Kent Des Moines Road

Service Items (See Appendix A)		Frequency (Trips) per Month														
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC			
D. Turf																
D1	Mowing															
D2	Vegetation Elimination															
D3	Trimming															
D4	Edging															
D5	Fertilize															
D6	Herbicide															
D7	Rough Mow															
E. Trees, Shrubs and Ground Cover Beds																
E1	Weeding and Litter Pickup											1				
E3	Edging Ground Cover											1				
E4	Vegetation Trimming											1				
E6	Trimming Shrubs															
E7	Tree Pruning															
E13	Pre-emergent Herbicide											1				
F. Hard Surfaces																
F1	Sweeping/Blowing												1			
F2	Weeds/Pre-emergent												1			
G. Other																
G1&2	Litter Pickup/Windfall Debris												1	3		
H. Additional Maintenance Labor																
H1	Extra Labor Hours															
Total Items of Work Per Month		0	0	0	0	0	0	0	0	0	0	0	6	1	3	3
Exclusions/Notes: SEE PROVIDED MAP OF MARINE VIEW DRIVE AND 7TH AVENUE SOUTH (EXHIBIT "A" TO PROJECT #29).																

APPENDIX C

PREVAILING WAGES AND BENEFIT CODE KEY

<u>County</u>	<u>Trade</u>	<u>Job Classification</u>	<u>Wage</u>
King	Landscape Construction	Irrigation Or Lawn Sprinkler Installers	\$13.56
King	Landscape Construction	Landscape Equipment Operators Or Truck Drivers	\$28.17
King	Landscape Construction	Landscaping or Planting Laborers	\$17.87

APPENDIX D

STATEMENT OF BIDDER'S QUALIFICATIONS

Each bidder submitting a proposal on work included in these Bid and Contract Documents and Specifications shall prepare and submit as part of this bid the following schedule:

1. Name of bidder: Northwest Landscape Services

2. Business address and telephone number: PO Box 864, 7627 West Bostian Way Woodinville, WA 98072

3. How many years has said bidder been engaged in the contracting business under present firm name: 20+

4. Contracts now in hand (gross amount): \$ 740,000.00

5. General character of work performed by said company: Professional Commercial Landscape Maintenance Services

6. List of more important projects constructed by said company, including approximate costs and dates: Please see attached list of references

7. List of company's major equipment: Please see attached equipment List

8. Bank references:

 Banner Bank

 3001 112th Ave. N.E. #100

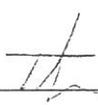
 Bellevue, WA 98004 425-576-4374

9. Dept. of Labor and Industries' firm number: 572 880-01

10. Dept. of Revenue registration number: 26-0482138

Northwest Landscape Services

 Name of Bidder

By: 

Title: Managing Partner

Date: 6/10/11

DESCRIPTIONS (Continued from Page 1)

attached.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
BLANKET ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE (OPTIONAL)

Name of Additional Insured Person(s) Or Organizations
(As required by written contract/agreement per Paragraph A. below.)

Location(s) of Covered Operations
(As per the written contract/agreement, provided the location is within the "coverage territory" of this Coverage Part.)

(Coverage under this endorsement is not affected by an entry or lack of entry in the Schedule above.)

A. Section II - Who Is An Insured is amended to include as an additional insured any person(s) or organization(s), including any person or organization shown in the Schedule above, whom you are required to add as an additional insured on this Coverage Part under a written contract or written agreement, provided:

a. The written contract or written agreement was executed prior to:

1. The "bodily injury" or "property damage"; or
2. The offense that caused the "personal and advertising injury"

for which the additional insured seeks coverage under this Coverage Part; and

b. The written contract or written agreement pertains to your ongoing operations or "your work" for the additional insured(s).

B. The insurance provided to the additional insured is limited as follows:

1. The person or organization is an additional insured only with respect to liability for "bodily injury," "property damage," or "personal and advertising injury" caused in whole or in part by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf

in the performance of your ongoing operations for the additional insured(s) or

c. "Your work" that is included in the "products-completed operations hazard" and performed for the additional insured, but only if this Coverage Part provides such coverage, and only if the written contract or written agreement requires you to provide the additional insured such coverage.

2. However, we will not provide the additional insured any broader coverage or any higher limit of insurance than the least of those:

- a. Required by the written contract or written agreement;
- b. Described in B.1. above; or
- c. Afforded to you under this policy.

3. This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract or agreement requires this insurance to be primary. In that event, this insurance will be primary relative to insurance which covers the additional insured as a named insured. We will not require contribution from such insurance if the written contract or written agreement also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or



additional insured, this insurance will be excess.

- 4. The insurance provided to the additional insured terminates when your operations for the additional insured are complete. But if the written contract or written agreement specifies a date until which this insurance must apply, then this insurance terminates:
 - a. On the date specified in the written contract or written agreement; or
 - b. When this policy expires or is cancelled, whichever occurs first.
- C. With respect to the insurance afforded to the additional insured, the following additional exclusions apply.

This insurance does not apply to:

- 1. "Bodily injury," "property damage," or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 - b. Supervisory, inspection, architectural or engineering activities.
- 2. "Bodily injury," "property damage," or "personal and advertising injury" arising out of any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this Coverage Part.

D. SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

- 1. The **Duties In The Event of Occurrence, Offense, Claim or Suit** condition is amended to add the following additional conditions applicable to the additional insured:

An additional insured under this endorsement will as soon as practicable:

- (1) Give us written notice of an "occurrence" or an offense which may result in a claim or "suit" under this insurance, and of any claim or "suit" that does result;
- (2) Tender the defense and indemnity of any claim or "suit" to any other insurer or self insurer whose policy or program applies to a loss we cover under this Coverage Part;
- (3) Except as provided in Paragraph B.3 of this endorsement, agree to make available any other insurance the additional insured has for a loss we cover under this Coverage Part; and
- (4) Send us copies of all legal papers received, and otherwise cooperate with us in the investigation, defense, or settlement of the claim or "suit."

We have no duty to defend or indemnify an additional insured under this endorsement until we receive from the additional insured written notice of a claim or "suit."

- 2. With respect only to the insurance provided by this endorsement, the first sentence of Paragraph 4.a. of the Other Insurance Condition is deleted and replaced with the following:

4. Other Insurance

a. Primary Insurance

This insurance is primary and non-contributory except when rendered excess by this endorsement, or when Paragraph b. below applies.

- E. The provisions of the written contract or written agreement do not in any way broaden or amend this Coverage Part.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Arts Commission Appointments

FOR AGENDA OF: December 6, 2012

ATTACHMENTS:

- 1. Arts Commission Applications:
 - Gene Achziger
 - John Hicks
 - Adrian VanderHoeven

DEPT. OF ORIGIN: Parks, Recreation & Senior Services

DATE SUBMITTED: November 21, 2012

CLEARANCES:

- Legal NA
- Finance NA
- Marina NA
- Parks, Recreation & Senior Services NA
- Planning, Building & Public Works NA
- Police NA
- Courts NA

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to recommend City Council approval of three appointments to the City of Des Moines Arts Commission.

Motion: "I move to confirm the Mayoral appointments of Gene Achziger and John Hicks to the Des Moines Arts Commission effective January 1, 2013 which will expire on December 31, 2015 and Adrian VanderHoeven to fill an unexpired term effective immediately which will expire on December 31, 2013."

Background

The City Council adopted Ordinance No. 06-1393 establishing the Des Moines Arts Commission in November 30, 2006. The nine Arts Commission positions were appointed in February 2007. The terms were staggered so that six positions are retained each year and three positions expire each year on December 31.

The Arts Commission was created to:

- (1) Represent the interest of the city in matters of the arts, to be a spokesgroup for the arts in the city and to keep the city council informed on all such related matters.
- (2) Evaluate, prioritize, and make recommendations on funding for cultural arts needs within the city.
- (3) Review and recommend works of art for the city, especially works to be acquired through appropriations set aside from municipal construction projects. Local artists will be encouraged and given equal consideration for these projects.
- (4) Inform, assist, sponsor or coordinate with arts organizations, artists, or others interested in the cultural advancement of the community.
- (5) Encourage and aid programs for the cultural enrichment of the citizens of Des Moines and encourage more public visibility of the arts.
- (6) Develop cooperation with schools, local, regional, state and national arts organizations.
- (7) Obtain private, local, regional, state or federal funds to promote arts projects within the Des Moines community.

Discussion

This agenda seeks confirmation of the Mayoral appointment of applicants Gene Achziger and John Hicks to the Des Moines Arts Commission effective January 1, 2013, which will expire on December 31, 2015. Mr. Achziger and Mr. Hicks are residents of Des Moines. This agenda also seeks the appointment of applicant and Adrian VanderHoeven to fill an unexpired one-year-term which will expire on December 31, 2013. Mr. VanderHoeven is the owner of the Village Frame and Gallery in Des Moines and is a resident of Federal Way. DMMC 4.56.040 allows for up to two non-resident appointments on the Arts Commission. There are currently no other non-residents on the Commission.

Alternatives

None provided.

Financial Impact

No financial impact.

Recommendation/Concurrence

The Des Moines Arts Commission members and the Parks, Recreation and Senior Services Director support the appointments to the Arts Commission.

Mayor Kaplan reviewed the applications and is in agreement with the recommendation made by the Arts Commission and staff to appoint the candidates.



CITY OF DES MOINES
APPLICATION FOR APPOINTEE OFFICE
 21630 11th Avenue South
 Des Moines, WA 98198

Recvd. _____

Please Check

NAME: GENE ACHZIGER
 ADDRESS: 28708 SANDVIEW DR. S
 CITY, ZIP: DES MOINES, WA 98198
 PHONE: Home 253-941-3785 Work 206-878-3291
 LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 36 years
 REGISTERED VOTER? yes

- Civil Service Commission
- Planning Agency
- Library Board
- Human Services
- Senior Services
- Arts Commission

EMPLOYMENT SUMMARY LAST FIVE YEARS: Seattle Post-Intelligencer; Student; Freelance Graphic Artist/Designer; Instructor at Highline Community College

Are you related to anyone presently employed by the City or a member of a City Board? no
 If yes, explain: _____

Do you currently have an owning interest in either real property (other than your primary residence or a business) in the Des Moines planning area? no If so, please describe: _____

IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING A SEPARATE PAPER IF NECESSARY.

1. Why do you wish to serve in this capacity and what can you contribute?
To help bring about some order and strategic planning with regard to marketing and promoting public events in the city of Des Moines. I have background in both Journalism and Graphic design which can be utilized to market effectively.
2. What problems, programs or improvements are you most interest in?
Marketing Des Moines events and promoting the community.
3. Please list any Des Moines elective/appointive offices you have run/applied for previously.
Commissioner / Des Moines Pool Metropolitan Park District
Vice President of Des Moines Legacy Foundation
Board member, Destination Des Moines



CITY OF DES MOINES
APPLICATION FOR APPOINTIVE OFFICE
21630 11th Avenue South
Des Moines, WA 98198

Recvd. _____ 116

Please Check

- Civil Service Commission
- Planning Agency
- Library Board
- Human Services
- Senior Services
- Arts Commission

NAME: John Anthony Hicks
 ADDRESS: 19516 5th Ave S
 CITY, ZIP: Des Moines, WA 98148
 PHONE: Home (206) 878-7863 Work (206) 423-7784
 LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 15 Years
 REGISTERED VOTER? Yes

EMPLOYMENT SUMMARY LAST FIVE YEARS:
Engineering Resources Remediation Group (ERRG-Environmental Construction) and then the
US Army Corps of Engineers for the last 3.5 years in the Navigation Section

Are you related to anyone presently employed by the City or a member of a City Board? No
 If yes, explain: _____

Do you currently have an owning interest in either real property (other than your primary residence or a business) in the Des Moines planning area? No If so, please describe: _____

IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING A SEPARATE PAPER IF NECESSARY.

1. Why do you wish to serve in this capacity and what can you contribute? _____
I am interested in serving on the Arts Commission due to my long standing appreciation of public art and a strong desire to serve the community. I am experienced in judging of commercial and public art for City of Snohomish and Issaquah in addition to being a metal sculptor. My experience in the building of diverse teams and working in a cooperative environment should be helpful in this commission role.

2. What problems, programs or improvements are you most interest in? _____
As mentioned above, I would like to serve on the Arts Commission and would look forward to working on Public Art issues. Public/shared art helps tie a community together no matter what economic conditions or cultural backgrounds we as individuals have. I am pragmatic and execution minded, but have not lost my ability to envision (and sometimes convert) ideas into physical realities.

3. Please list any Des Moines elective/appointive offices you have run/applied for previously. _____
I have not run or applied for any Des Moines elective offices



CITY OF DES MOINES
APPLICATION FOR APPOINTEE OFFICE
21630 11th Avenue South
Des Moines, WA 98198

Recvd. _____

Please Check

- Civil Service Commission
- Planning Agency
- Library Board
- Human Services
- Senior Services
- Arts Commission

NAME: Adrian A. VanderHoever
 ADDRESS: 2313 South 380th st.
 CITY, ZIP: Federal Way WA 98003
 PHONE: Home 253 835-1821 Work 253 202-5338
 LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 7yrs
 REGISTERED VOTER? yes
 EMPLOYMENT SUMMARY LAST FIVE YEARS: owner of Village Frame + Gallery Des Moines, WA.

Are you related to anyone presently employed by the City or a member of a City Board? No
 If yes, explain: _____

Do you currently have an owning interest in either real property (other than your primary residence or a business) in the Des Moines planning area? yes If so, please describe: owner of Village Frame and Galler 22507 Marine View Dr. South

IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING A SEPARATE PAPER IF NECESSARY.

1. Why do you wish to serve in this capacity and what can you contribute? I have an interest in the improvement of the Des Moines community. I have a degree in Art and feel my input would be an asset to the community

2. What problems, programs or improvements are you most interest in? NOT SURE

3. Please list any Des Moines elective/appointive offices you have run/applied for previously. NONE

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Settlement of Beach Park Auditorium
Project Claims

FOR AGENDA OF: December 6, 2012

ATTACHMENTS:

- 1. Settlement Agreement and Mutual Release
Of Claims

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: November 29, 2012

CLEARANCES:

- Legal JG
- Finance N/A
- Marina N/A
- Parks, Recreation & Senior Services N/A
- Planning, Building & Public Works N/A
- Police NA
- Courts NA

APPROVED BY CITY MANAGER
FOR SUBMITTAL 

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval for the City Manager to sign the Settlement Agreement and Mutual Release of Claims to finalize the Beach Park Auditorium Project as agreed to in mediation between the City of Des Moines, Nordic Construction, and BOLA Architecture and Planning.

Suggested Motion

Motion: I move to authorize the City Manager to sign the attached Settlement Agreement and Mutual Release of Claims, substantially in the form as attached, with respect to claims arising out of the design and construction of the Des Moines Beach Park Auditorium.

Background

A successful mediation was held on October 15, 2012 between the City of Des Moines, Nordic Construction, and BOLA Architecture and Planning and its sub consultants with respect to claims arising out of the design and construction of the Des Moines Beach Park Auditorium. This mediation resulted in a CR2A Agreement that was signed between the parties contingent on City Council approval. The attached Agreement is a formal acknowledgement of the terms of the settlement.

Discussion

City Council was previously informed in Executive Session of the terms of the Agreement. This Agreement details and finalizes the terms agreed to in mediation and will result in a release and discharge of any and all future claims between the parties related to this project.

All parties have approved the terms of the settlement through their attorneys.

Financial Impact

The budget for the Des Moines Beach Park Auditorium Project has sufficient funds remaining to cover the costs of this settlement. Without settling the project, the City would quickly exceed the settlement amount as well as the budgeted amount remaining to complete the project. This settlement results in a relatively low cost conclusion to a long and drawn out project.

Additionally, approximately \$48,000 of the \$78,000 the City will pay to Nordic consists of money owed to Nordic outside of the main dispute and would have had to have been paid to Nordic regardless of the outcome of the litigation. Of the remainder owed to Nordic, BOLA is contributing \$15,000.

Recommendation or Conclusion

It is highly recommended that the Council approve the attached Agreement and direct the City Manager to sign it.

Concurrence

Administration and City Attorney concur.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims (“Agreement”) is entered into by and between the City of Des Moines (“the City”), Nordic Construction, Inc. (“Nordic” or “the Contractor”), and BOLA Architecture and Planning and its subconsultants (“BOLA” or “the Designer”) (collectively the “Parties”) with respect to claims arising out of the design and construction of the Des Moines Beach Park Auditorium (the “Auditorium” or “Project”).

RECITALS

A. The Des Moines Beach Park Auditorium was originally constructed in the 1950’s. The Project consists of a single-story, lightly-framed structure.

B. On or about August 2005, the City and BOLA executed a written contract for certain architectural and engineering services associated with the rehabilitation of the Auditorium. Geotechnical services were excluded from BOLA’s scope of work.

C. On or about October 2009, the City awarded a public works contract to Cherry Street Builders (“CSB”). CSB abandoned the Project and was ultimately terminated by the City.

D. On our about September 2010, the City retained Nordic to complete construction.

E. Various disputes arose between the Parties, including the City’s claim for alleged construction defects and claims for unpaid amounts due to the Nordic and BOLA under the terms of their respective contracts.

F. The parties to this Agreement, for the sole purpose of avoiding the uncertainties, inconveniences and expenses of litigation, wish to fully resolve, compromise, and settle any and all claims of any nature between them arising from the services and/or work provided by Nordic and BOLA on the Project.

AGREEMENT

THEREFORE, for consideration of the performance of this Agreement, and the foregoing recitals, which are incorporated herein, the Parties agree as follows:

1. Payment Terms:

1.1 The City will pay Nordic \$78,000, including sales tax, in satisfaction of all claims by Nordic on the Project, including but not limited to claims for contract balance, change orders, interest, and attorney’s fees. Nordic will submit all paperwork and documentation for Project close out as required by the contract and State and local law, including but not limited to a Certificate of Occupancy to facilitate payment of the \$78,000. The City will release Nordic for any and all remaining warranty and other claims on the Project, both contractual and otherwise, such that Nordic will have no further obligation except as set forth in this Agreement. Nordic will release the City and BOLA from all claims, known and unknown, relating to the Project.

1.2 The City will pay BOLA \$23,815 in contract balance. BOLA will release the City from any liability, contractual or otherwise, known or unknown, relating to the Project. BOLA shall pay the City \$36,500 in full and final settlement of any and all claims asserted by the City. The City will release BOLA from any liability, contractual or otherwise, known or unknown, relating to the Project. The City further agrees to keep the settlement terms confidential to the extent allowed by law and agrees not to disparage BOLA.

2. Mutual Release of All Claims by All Parties: Upon payment and the conditions set forth in Paragraph 1, the Parties agree to release and forever discharge any and all claims by and between them, and their related or successor corporations or companies, parent companies, subsidiaries, affiliates, divisions, owners, members, partners, shareholders, officers, directors, employees, agents, heirs, attorneys, assigns, successors, and insurers from any and all past, present, or future claims, demands, rights, actions or causes of actions, whether known or unknown, including but not limited to claims asserted for breach of contract, contractual, implied or equitable indemnity, negligence, property damage, personal injuries, loss of use, loss of enjoyment, stigma damages, diminution in value, additional insured claims, attorney's fees, and expert expenses and costs, on account of or in any way arising out of the design or construction of the Project, including consequences that may exist, but which at this time are unknown and/or unanticipated and which may develop at some time in the future, and all unforeseen developments arising from known damages, including any claims brought in, or which could have been brought in the pending dispute or future legal action.

3. Full and Final Release of All Claims: This Agreement shall be a full, final, and binding settlement and final discharge of all claims between the Parties to this Agreement arising in any way out of the Project, whether or not specifically alleged or presently known.

4. No Admission of Liability: Nothing contained in this Agreement is intended to constitute an admission of liability by any Party with respect to any of the claims released, waived, and discharged. It is expressly understood and agreed that BOLA and Nordic expressly deny liability for any claims related to the services provided on the Project; that the compromise and settlement of this claim is not an admission of liability, breach of contract, or negligence; and that this Agreement shall in no way be construed as an admission of liability at any time or in any manner whatsoever.

5. Authority: The Parties covenant, represent, and warrant that each entity has all authority necessary to execute this Agreement. Upon execution, this Agreement will be fully binding and enforceable in accordance with its terms. No other consents or approvals of any other or third parties are required or necessary for this Agreement to be so binding.

6. Assignment: The Parties represent and warrant that no claim subject to this Agreement has been assigned or transferred to any to any third party.

7. Free and Voluntary Agreement: The Parties acknowledge and warrant that each has been represented by independent legal counsel of their choice throughout all negotiations that preceded the execution of this Agreement. Each party has read all of this Agreement or had the Agreement explained by its respective attorneys. The Parties having been fully advised as to the legal effect of this Agreement, execute this instrument freely and voluntarily for the purpose of making a full and final compromise and settlement of any and all claims, which were alleged or could have been alleged between them in the pending dispute or future legal action.

8. Cooperation: The Parties agree to execute and deliver all documents and to cooperate and perform all additional actions that may be reasonably necessary to carry out the provisions of this Agreement and to give full force and effect to the terms and intent of this Agreement.

9. Dispute Resolution: Any disputes regarding the terms, performance, or enforcement of this Agreement shall be determined by Chris Soelling, acting as the sole arbitrator. Mr. Soelling's decision will be final, binding, and not subject to appeal.

10. Attorney's Fees: If any party to this Agreement commences litigation to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to its reasonable costs, litigation expenses, and attorney's fees from the non-prevailing party.

11. Counterparts: This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

12. Binding Effect: The terms and releases contained in this Agreement shall obligate and inure to the benefit of each of the parties to this Agreement and to each of their respective related or successor corporations or companies, parent companies, subsidiaries, affiliates, divisions, owners, members, partners, shareholders, officers, directors, employees, agents, heirs, attorneys, assigns, successors, and insurers.

13. Entire Agreement and Integration: This instrument contains the entire Agreement and understanding between the Parties and supersedes and replaces all prior negotiations, proposed agreements and agreements, whether written or oral. The Parties acknowledge that they are not executing this Agreement in reliance on any promise, representation, or warranty as an inducement to execute this Agreement not otherwise contained herein. This Agreement may not be supplemented, modified, or amended in any manner except by written agreement between the Parties.

THE UNDERSIGNED DECLARES UNDER THE PENALTY OF PERJURY THAT HE/SHE IS AUTHORIZED TO EXECUTE THIS AGREEMENT AND THAT THE TERMS OF THIS SETTLEMENT HAVE BEEN COMPLETELY READ AND ARE FULLY UNDERSTOOD AND VOLUNTARILY ACCEPTED FOR THE PURPOSE OF MAKING A FULL AND FINAL COMPROMISE, ADJUSTMENT, AND SETTLEMENT OF ALL MATTERS SET FORTH ABOVE, AND FOR THE EXPRESS PURPOSE OF PRECLUDING FOREVER ANY ADDITIONAL CLAIMS ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE MATTERS DESCRIBED ABOVE.

CITY OF DES MOINES

NORDIC CONSTRUCTION

Title:

Title:

Date:

Date:

BOLA ARCHITECTURE + PLANNING

Title:

Date:

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 2012 Budget Amendments

FOR AGENDA OF: December 6, 2012

ATTACHMENTS:

- Attachment 1 - Draft Ordinance No. 12-207
- Attachment 2 – Appendix A
- Attachment 3 – 2012 Budget Amendments

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: November 21, 2012

CLEARANCES:

- Finance PB
- Legal PB
- Marina N/A
- Parks, Recreation & Senior Services N/A
- Planning, Building & Public Works N/A
- Police N/A
- Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval of 2012 budget amendments as described in Attachment 1. At the November 29, 2012 City Council meeting, Draft Ordinance No. 12-207 was passed to a second reading for enactment on December 6, 2012. The 2012 adopted budget was previously amended by Ordinance No. 1547.

Suggested Motion:

1. "I move to enact Draft Ordinance No. 12-207, relating to municipal finance, amending the 2012 budget adopted in Ordinance No. 1529, as amended by Ordinance No. 1547."

Background

The 2012 budget was adopted by Ordinance No. 1529, and amended by Ordinance No. 1547. Budget amendments are required only when the appropriation level in a fund is being changed. Staff recommends a budget amendment when the source for a proposed expenditure is from a fund's ending fund balance.

Discussion

The budget amendments as listed in Attachment 1 reflect decisions that require additional revenues and appropriations. The table below summarizes the final 2012 amended budget.

All Funds:	Amended Budget	Draft Ord 12-207 Amendments	Amended Budget
Beginning Fund Balance	\$ 10,276,715	\$ -	\$ 10,276,715
Revenues	47,417,411	(104,628)	47,312,783
Expenditures	50,225,468	329,576	50,555,044
Ending Fund Balance	\$ 7,468,658	\$ (434,204)	\$ 7,034,454

Recommendation

Staff recommends that the City Council approve Draft Ordinance No. 12-207. Budget amendments are required only when the appropriation level in a fund is being changed. Per RCW 35A.33.120, adoption of a budget amendment ordinance requires an affirmative vote of one more than the majority of all members of the City Council (5 votes): 1) if an emergency is declared and the City Council approved expenditures incident to the emergency event, and 2) if appropriations are being decreased in any fund.

**FINANCE DIRECTOR'S FIRST DRAFT 11/20/12
DRAFT ORDINANCE NO. 12-207**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to municipal finance, amending Ordinance No. 1529 (uncodified) (Budget 2012), and authorizing certain expenditures in the amounts specified in this ordinance.

WHEREAS, the City Council finds that current revenue and expenditure reports for the City differ from forecasts used to create the 2012 budget, enacted by Ordinance No. 1529, as amended by Ordinance No. 1547, and further finds that such differences justify certain adjustments regarding obligations incurred and expenditures of proceeds for fiscal year 2012, all as described as follows:

Fund	Description	Expenditure Adjustments	Revenue Adjustments
001-General Fund	Reduce one-time sales taxes for Artemis	\$ -	\$ (40,818)
001-General Fund	Reduce one-time land clearing permits for Artemis		(7,701)
001-General Fund	Add revenues for WASPC equipment grant		1,000
001-General Fund	Add revenues for Normandy Park Prosecution Services		4,168
001-General Fund	Reduce one-time engineering plan review fees for Artemis		(154,169)
001-General Fund	Reduce one-time plan check fees for Artemis		(286,313)
001-General Fund	Increase transfer-in from Levy Lid Lift Fund		136,753
001-General Fund	Increase appropriations for Normandy Park Prosecution Services Contract-Salaries	3,424	
001-General Fund	Increase appropriations for Normandy Park Prosecution Services Contract-Benefits	614	
001-General Fund	Increase appropriations for Normandy Park Prosecution Services Contract-Travel	130	
001-General Fund	Add appropriations for Fisher Property lease payment for City parking lot	1,212	
001-General Fund	Add appropriations for equipment funded by WASPC grant	1,000	
001-General Fund	Add appropriations for collision software database	10,000	
001-General Fund	Reduce transfer-out for ASE program to fund collision software database	(10,000)	
001-General Fund	Decrease Ending Fund Balance	(353,460)	
109-Transportation Impact Fee Fund	Increase Impact Fees		133,890
109-Transportation Impact Fee Fund	Increase Ending Fund Balance	133,890	
111-Hotel-Motel Tax Fund	Increase Hotel-Motel Taxes		1,723
111-Hotel-Motel Tax Fund	Increase appropriations for governmental professional services	1,723	
112-Police Services Restoration Fund	Increase property taxes for revised estimate		12,880
112-Police Services Restoration Fund	Add revenues for ICMA forfeitures		7,533
112-Police Services Restoration Fund	Revise appropriations to yearend estimate-Admin Salaries	(1,015)	
112-Police Services Restoration Fund	Revise appropriations to yearend estimate-Admin Benefits	(841)	
112-Police Services Restoration Fund	Revise appropriations to yearend estimate-Patrol Salaries	(85,759)	
112-Police Services Restoration Fund	Revise appropriations to yearend estimate-Patrol Benefits	(15,961)	
112-Police Services Restoration Fund	Revise appropriations to yearend estimate-Patrol Supplies	(16)	
112-Police Services Restoration Fund	Revise appropriations to yearend estimate-Patrol Fuel	(3,508)	
112-Police Services Restoration Fund	Revise appropriations to yearend estimate-Patrol Small Tools	(1,500)	
112-Police Services Restoration Fund	Revise appropriations to yearend estimate-Patrol Professional Services	(1,000)	
112-Police Services Restoration Fund	Revise appropriations to yearend estimate-Patrol Communication	(2,740)	
112-Police Services Restoration Fund	Revise appropriations to yearend estimate-Patrol Travel	(4,000)	
112-Police Services Restoration Fund	Increase transfer to General Fund	136,753	
310-Municipal Capital Improvements Fund	Add insurance recovery revenues for Auditorium project		36,500
310-Municipal Capital Improvements Fund	Add appropriations for Auditorium project	36,500	
401-Marina Revenue Fund	Add capital contributions for purchase of 11-passenger electric cart		4,400
401-Marina Revenue Fund	Add appropriations for purchase of 11-passenger electric cart	7,610	
401-Marina Revenue Fund	Decrease Ending Fund Balance	(3,210)	
451-Surface Water Mgt Capital Fund	Add revenues from Lakehaven Utility District for Redondo Heights Culvert Repl project		26,518
451-Surface Water Mgt Capital Fund	Add appropriations for Redondo Heights Culvert Replacement project	228,200	
451-Surface Water Mgt Capital Fund	Decrease Ending Fund Balance	(201,682)	
500-Equipment Rental Operations Fund	Add revenues for insurance recoveries		9,266
500-Equipment Rental Operations Fund	Add revenues for tsf-in from Eqp Rental Repl Fund for 1995 SWM Dump Truck repairs		9,742
500-Equipment Rental Operations Fund	Increase appropriations for insurance covered repairs	9,266	
500-Equipment Rental Operations Fund	Add appropriations for 1995 SWM Dump Truck repairs	9,742	
501-Equipment Rental Replacement Fund	Add appropriations for tsf-out to Eqp Rental Ops Fund for 1995 SWM Dump Truck repairs	9,742	
501-Equipment Rental Replacement Fund	Decrease Ending Fund Balance	(9,742)	
TOTAL ADJUSTMENTS		\$ (104,628)	\$ (104,628)

ATTACHMENT 1

DRAFT Ordinance No. 12-207
Page 2 of 3

WHEREAS, the City Council finds that the 2012 budget amendments to the City's budget are in the public interest; now therefore,

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

Sec. 1. Findings. Each and every of the findings expressed in the recitals to this ordinance are hereby adopted and incorporated by reference.

Sec. 2. Amendment to 2012 Budget. Exhibit "A" of Ordinance No. 1529 (uncodified) (2012 Budget), as amended by Ordinance No. 1547, is amended by Appendix "A" attached to this Ordinance and incorporated herein by this reference as though fully set out.

Sec. 3. Ratification and Confirmation. All acts taken by City officers and staff prior to the enactment of this ordinance that are consistent with and in furtherance of the purpose or intent of this ordinance are hereby ratified and confirmed by the City Council.

Sec. 4. 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 or 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 deems control.

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

PASSED BY the City Council of the City of Des Moines this ___ day of _____, 2012 and signed in authentication thereof this ___ day of _____, 2012.

M A Y O R

DRAFT Ordinance No. 12-207
Page 3 of 3

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____, 2012

DRAFTORD/12-207

CITY OF DES MOINES
DRAFT ORDINANCE NO. 12-207
APPENDIX A 2012 BUDGET

FINAL ANNUAL APPROPRIATION FUNDS:	Expenditure	Ending Fund Balance	Total	Revenue	Beginning Fund Balance	Total
001 General Fund	16,257,553	676,924	16,934,477	15,945,106	989,371	16,934,477
101 Street Fund	1,054,697	240,692	1,295,389	1,060,573	234,816	1,295,389
107 Police Drug Seizure Fund	15,000	15,835	30,835	15,026	15,809	30,835
111 Hotel/Motel Tax Fund	18,070	4,407	22,477	17,755	4,722	22,477
112 Police Services Restoration Fund	1,272,052	-	1,272,052	928,913	343,139	1,272,052
211 1995 GO Bond - Police Facility	33,777	-	33,777	535	33,242	33,777
212 LID Fund	4,066	749	4,815	4,815	-	4,815
219 2008 GO & Ref Bond - Trans Capital Imprv	327,913	21,219	349,132	327,940	21,192	349,132
220 Debt Service Fund	88,471	2	88,473	88,471	2	88,473
401 Marina Revenue Fund	7,314,669	1,235,867	8,550,536	7,092,776	1,457,760	8,550,536
403 Marina Repair and Replacement	20,000	327,424	347,424	1,873	345,551	347,424
450 Surface Water Operations Fund	2,962,327	894,556	3,856,883	2,565,460	1,291,423	3,856,883
500 Equip Rental Operations	568,769	133,763	702,532	550,004	152,528	702,532
501 Equip Rental Replacement	189,937	1,331,133	1,521,070	118,199	1,402,871	1,521,070
506 Facility Repair and Replacement Fund	117,253	44,982	162,235	109,734	52,501	162,235
510 Computer Equipment Operations Fund	530,851	67,097	597,948	484,843	113,105	597,948
511 Computer Equipment Capital Fund	225,414	212,796	438,210	93,514	344,696	438,210
520 Self-Insurance Fund	745,295	24,774	770,069	606,339	163,730	770,069
530 Unemployment Insurance Fund	100,000	146,257	246,257	55,843	190,414	246,257
SUB-TOTAL	31,846,114	5,378,477	37,224,591	30,067,719	7,156,872	37,224,591

CONTINUING APPROPRIATION FUNDS (MEMO ONLY):

109 Transportation Impact Fee Fund	391,317	142,695	534,012	200,744	333,268	534,012
310 Municipal Capital Improvements	975,384	302,735	1,278,119	1,034,356	243,763	1,278,119
319 Transportation Capital Imprv Fund, 2008B	15,370,673	296,859	15,667,532	14,444,572	1,222,960	15,667,532
404 Marina Depreciation & Improvement	4,367	-	4,367	307	4,060	4,367
406 Marina Depreciation & Improvement, 2008A	805,889	92,425	898,314	611,096	287,218	898,314
451 Surface Water Capital Fund	1,161,300	821,263	1,982,563	953,989	1,028,574	1,982,563
SUB-TOTAL	18,708,930	1,655,977	20,364,907	17,245,064	3,119,843	20,364,907
TOTAL	50,555,044	7,034,454	57,589,498	47,312,783	10,276,715	57,589,498

**2012 BUDGET AMENDMENTS
DRAFT ORDINANCE 12-207**

Fund 001 General Fund:	Account No.	2012 Amended Budget	Draft Ord 12-207 Budget Amendments	2012 Amended Budget
Beginning Fund Balance	001.000.000.308.70.00.00	\$ 989,371	\$ -	\$ 989,371
Revenues		15,627,296	-	15,627,296
<u>Revenue Budget Amendments:</u>				
Reduce one-time sales taxes for Artemis (defer to 2013)	001.000.000.313.00.10.00	40,818	(40,818)	-
Reduce one-time land clearing permits for Artemis (defer to 2013)	001.000.000.322.90.02.01	91,237	(7,701)	83,536
Add revenues for WASPC equipment grant	001.000.000.337.37.07.00	-	1,000	1,000
Add revenues for Normandy Park Prosecution Services	001.000.000.341.49.00.01	-	4,168	4,168
Reduce one-time engineering plan review fees for Artemis (defer to 2013)	001.000.000.343.20.03.01	154,169	(154,169)	-
Reduce one-time plan check fees for Artemis (defer to 2013)	001.000.000.345.83.00.03	286,313	(286,313)	-
Increase transfer-in from Levy Lid Lift Fund	001.000.000.397.00.13.00	92,353	136,753	229,106
Total Revenues		16,292,186	(347,080)	15,945,106
Total Revenues & Beginning Fund Balance		\$ 17,281,557	\$ (347,080)	\$ 16,934,477
Expenditures		\$ 15,576,510	\$ -	\$ 15,576,510
<u>Expenditure Budget Amendments:</u>				
Increase appropriations for Normandy Park Prosecution Services Contract	001.220.026.515.10.10.00	341,064	3,424	344,488
Increase appropriations for Normandy Park Prosecution Services Contract	001.220.026.515.10.20.00	120,379	614	120,993
Increase appropriations for Normandy Park Prosecution Services Contract	001.220.026.515.10.43.00	2,615	130	2,745
Add appropriations for Fisher Property lease payment for City parking lot	001.300.028.518.30.45.06	-	1,212	1,212
Add appropriations for equipment funded by WASPC grant	001.380.005.521.22.35.00	-	1,000	1,000
Add appropriations for collision software database	001.385.030.594.44.64.41	-	10,000	10,000
Reduce transfer-out for ASE Program to fund collision software database	001.680.041.597.44.00.00	210,605	(10,000)	200,605
Total Expenditures		16,251,173	6,380	16,257,553
Ending Fund Balance	001.700.042.508.80.00.00	1,030,384	(353,460)	676,924
Total Expenditures & Ending Fund Balance		\$ 17,281,557	\$ (347,080)	\$ 16,934,477

Fund 111 Hotel/Motel Tax Fund:	Account No.	2012 Amended Budget	Draft Ord 12-207 Budget Amendments	2012 Amended Budget
Beginning Fund Balance	111.000.000.308.70.00.00	\$ 4,722	\$ -	\$ 4,722
Revenues		5	-	5
<u>Revenue Budget Amendments:</u>				
Increase Hotel-Motel Taxes	111.000.000.313.30.00.00	16,027	1,723	17,750
Total Revenues		16,032	1,723	17,755
Total Revenues & Beginning Fund Balance		\$ 20,754	\$ 1,723	\$ 22,477
Expenditures		\$ -	\$ -	\$ -
<u>Expenditure Budget Amendments:</u>				
Increase appropriations Governmental Professional Services	111.000.000.557.30.51.00	16,347	1,723	18,070
Total Expenditures		16,347	1,723	18,070
Ending Fund Balance	111.000.000.508.80.00.00	4,407	-	4,407
Total Expenditures & Ending Fund Balance		\$ 20,754	\$ 1,723	\$ 22,477

2012 BUDGET AMENDMENTS
DRAFT ORDINANCE 12-207

Fund 112 Police Services Restoration Fund:		2012 Amended Budget	Draft Ord 12-207 Budget Amendments	2012 Amended Budget
Account No.				
Beginning Fund Balance	112.000.000.308.70.00.00	\$ 343,139		\$ 343,139
Revenues		19,700		19,700
Revenue Budget Amendments:				
Increase property taxes for revised estimate	112.000.000.311.00.00.00	888,800	12,880	901,680
Add revenues for ICMA forfeitures	112.000.000.369.90.15.00	-	7,533	7,533
Total Revenues		908,500	20,413	928,913
Total Revenues & Beginning Fund Balance		\$ 1,251,639	\$ 20,413	\$ 1,272,052
Expenditures				
Expenditure Budget Amendments:				
Revise to yearend estimate - Admin Salaries	112.340.030.521.10.10.00	49,843	(1,015)	48,828
Revise to yearend estimate - Admin Benefits	112.340.030.521.10.20.00	17,053	(841)	16,212
Revise to yearend estimate - Patrol Salaries	112.360.030.521.22.10.00	571,314	(85,759)	485,555
Revise to yearend estimate - Patrol Benefits	112.360.030.521.22.20.00	233,160	(15,961)	217,199
Revise to yearend estimate - Patrol Supplies	112.360.030.521.22.31.00	1,000	(16)	984
Revise to yearend estimate - Patrol Fuel	112.360.030.521.22.32.01	31,868	(3,508)	28,360
Revise to yearend estimate - Patrol Small Tools	112.360.030.521.22.35.00	2,000	(1,500)	500
Revise to yearend estimate - Patrol Professional Services	112.360.030.521.22.41.00	1,000	(1,000)	-
Revise to yearend estimate - Patrol Communciation	112.360.030.521.22.42.00	9,000	(2,740)	6,260
Revise to yearend estimate - Patrol Travel	112.360.030.521.22.43.00	5,000	(4,000)	1,000
Increase transfer to General Fund	112.360.030.597.21.00.00	92,353	136,753	229,106
Total Expenditures		1,251,639	20,413	1,272,052
Ending Fund Balance	112.000.000.508.80.00.00	-	-	-
Total Expenditures & Ending Fund Balance		\$ 1,251,639	\$ 20,413	\$ 1,272,052

Fund 401 Marina Revenue Fund:		2012 Amended Budget	Draft Ord 12-207 Budget Amendments	2012 Amended Budget
Account No.				
Beginning Fund Balance	401.000.000.308.70.00.00	\$ 1,457,760		\$ 1,457,760
Revenues		7,088,376	-	7,088,376
Revenue Budget Amendments:				
Add capital contributions for purchase of 11 passenger electric cart	401.000.000.379.00.00.00	-	4,400	4,400
Total Revenues		7,088,376	4,400	7,092,776
Total Revenues & Beginning Fund Balance		\$ 8,546,136	\$ 4,400	\$ 8,550,536
Expenditures				
Expenditure Budget Amendments:				
Add appropriations for purchase of 11 passenger Electric Cart	401.200.000.594.75.64.00	-	7,610	7,610
Total Expenditures		7,307,059	7,610	7,314,669
Ending Fund Balance	401.350.000.508.80.00.00	1,239,077	(3,210)	1,235,867
Total Expenditures & Ending Fund Balance		\$ 8,546,136	\$ 4,400	\$ 8,550,536

Fund 500 Equipment Rental Operations Fund:		2012 Amended Budget	Draft Ord 12-207 Budget Amendments	2012 Amended Budget
Account No.				
Beginning Fund Balance	500.000.000.308.70.00.00	\$ 152,528	\$ -	\$ 152,528
Revenues		506,996	-	506,996
Revenue Budget Amendments:				
Add revenues for insurance recoveries	500.000.000.395.20.00.00	-	9,266	9,266
Transfer-in from Eqp Rental Replacement Fund-1995 SWM Dump Truck	500.000.000.397.48.00.00	24,000	9,742	33,742
Total Revenues		530,996	19,008	550,004
Total Revenues & Beginning Fund Balance		\$ 683,524	\$ 19,008	\$ 702,532
Expenditures				
Expenditure Budget Amendments:				
Increase appropriations for insurance covered repairs	500.000.052.548.60.48.00	38,000	9,266	47,266
Add appropriations for 1995 SWM Dump Truck repairs	500.000.052.548.60.48.21	29,000	9,742	38,742
Total Expenditures		549,761	19,008	568,769
Ending Fund Balance	500.000.052.508.80.00.00	133,763	-	133,763
Total Expenditures & Ending Fund Balance		\$ 683,524	\$ 19,008	\$ 702,532

2012 BUDGET AMENDMENTS
DRAFT ORDINANCE 12-207

		2012 Amended Budget	Draft Ord 12-207 Budget Amendments	2012 Amended Budget
Fund 501 Equipment Rental Replacement Fund:				
Beginning Fund Balance	Account No. 501.000.000.308.70.00.00	\$ 1,402,871		\$ 1,402,871
Revenues		118,199	-	118,199
Total Revenues		118,199	-	118,199
Total Revenues & Beginning Fund Balance		\$ 1,521,070	\$ -	\$ 1,521,070
Expenditures		\$ 156,195	\$ -	\$ 156,195
<u>Expenditure Budget Amendments:</u>				
Add appropriations for tsf-out to Eqp Rental Ops Fund-1995 SWM Dump Truck	501.000.000.597.48.00.00	24,000	9,742	33,742
Total Expenditures		180,195	9,742	189,937
Ending Fund Balance	501.000.000.508.80.00.00	1,340,875	(9,742)	1,331,133
Total Expenditures & Ending Fund Balance		\$ 1,521,070	\$ -	\$ 1,521,070

CAPITAL IMPROVEMENT FUNDS:

		2012 Amended Budget	Draft Ord 12-207 Budget Amendments	2012 Amended Budget
Fund 109 Transportation Impact Fee Fund:				
Beginning Fund Balance	Account No. 109.000.000.308.70.00.00	\$ 333,268	\$ -	\$ 333,268
Revenues		1,700	-	1,700
<u>Revenue Budget Amendments:</u>				
Increase Impact Fees		65,154	133,890	199,044
Total Revenues		66,854	133,890	200,744
Total Revenues & Beginning Fund Balance		\$ 400,122	\$ 133,890	\$ 534,012
Expenditures		\$ 391,317	\$ -	\$ 391,317
Total Expenditures		391,317	-	391,317
Ending Fund Balance	109.000.000.508.80.00.00	8,805	133,890	142,695
Total Expenditures & Ending Fund Balance		\$ 400,122	\$ 133,890	\$ 534,012

		2012 Amended Budget	Draft Ord 12-207 Budget Amendments	2012 Amended Budget
Fund 310 Municipal Capital Improvement Fund:				
Beginning Fund Balance	Account No. 310.000.000.308.70.00.00	\$ 243,763	\$ -	\$ 243,763
Revenues		997,856	-	997,856
<u>Revenue Budget Amendments:</u>				
Add insurance recovery revenues for Auditorium	310.000.000.395.20.00.00	-	36,500	36,500
Total Revenues		997,856	36,500	1,034,356
Total Revenues & Beginning Fund Balance		\$ 1,241,619	\$ 36,500	\$ 1,278,119
Expenditures		\$ 744,274	\$ -	\$ 744,274
<u>Expenditure Budget Amendments:</u>				
Add appropriations to Auditorium project	310.050.100.594.76.62.00	194,610	36,500	231,110
Total Expenditures		938,884	36,500	975,384
Ending Fund Balance	310.850.000.508.80.00.00	302,735	-	302,735
Total Expenditures & Ending Fund Balance		\$ 1,241,619	\$ 36,500	\$ 1,278,119

		2012 Amended Budget	Draft Ord 12-207 Budget Amendments	2012 Amended Budget
Fund 451 Surface Water Management Capital Fund:				
Beginning Fund Balance	Account No. 451.000.000.308.70.00.00	\$ 1,028,574	\$ -	\$ 1,028,574
Revenues		927,471	-	927,471
<u>Revenue Budget Amendments:</u>				
Add revenues from Lakehaven Utl District for Redondo Hts Culvert Repl	451.000.000.337.03.00.00	-	26,518	26,518
Total Revenues		927,471	26,518	953,989
Total Revenues & Beginning Fund Balance		\$ 1,956,045	\$ 26,518	\$ 1,982,563
Expenditures		\$ 413,100	\$ -	\$ 413,100
<u>Expenditure Budget Amendments:</u>				
Add appropriations for Redondo Heights Culvert Repl project	451.818.000.595.40.63.00	520,000	228,200	748,200
Total Expenditures		933,100	228,200	1,161,300
Ending Fund Balance	451.000.000.508.80.00.00	1,022,945	(201,682)	821,263
Total Expenditures & Ending Fund Balance		\$ 1,956,045	\$ 26,518	\$ 1,982,563

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Marina and Beach Park Development Plan

FOR AGENDA OF: December 6, 2012

ATTACHMENTS:

DEPT. OF ORIGIN: Marina

- 1. Marina and Beach Park Development Options
- 1. Des Moines Marina & Beach Park Implementation Plan Elements

DATE SUBMITTED: November 15, 2012

CLEARANCES:

- Legal N/A
- Finance N/A
- Marina [Signature]
- Parks, Recreation & Senior Services [Signature]
- Planning, Building & Public Works DEL
- Police N/A
- Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this report is for the City Council to continue its discussion on the Marina and Beach Park Development Plan. Council direction is requested as it relates to:

- 1. A preferred development option (Option 2-3 blend)
- 2. Development phasing
- 3. Strategies to address near-term and long-term parking needs and management
- 4. Long-term implementation plan
- 5. Other issues important to the Council

Background

The *Marina and Beach Park Development Plan* project objectives are to develop the City's waterfront properties in a manner that:

- Revitalizes City's Waterfront
- Attracts Both Local Citizens and Tourists
- Generates Economic Activity in an Underused Area
- Enriches Surrounding Area With an Attractive and Vibrant District

- Enhances City Revenues
- Creates a New Vision Through a Public Planning Process

The Advisory Committee was formed by Des Moines City Council to provide input in the process to determine potential land uses and development options for the Marina floor that support the Marina, Beach Park and the Marina District Neighborhood. The stakeholders come from a variety of backgrounds that represent the citizens at large, business community, Marina tenants, condo residents, Planning Agency, City Council, and City staff. The City has partnered with GeoMetrics LLC, LMN Architects and BERK to provide the supporting market analysis, comparative financial and fiscal analysis of development concepts, and a project implementation plan.

Over the past eight months, the City has sponsored five (5) Marina & Beach Park Development Advisory Committee meetings and two (2) open houses to provide an opportunity for public input. The following information has been developed in support of these efforts:

- Marina & Beach Park Development Advisory Committee – Meeting #1 - #5 agenda packets, presentations, and meeting summaries;
- Open House #1 and #2 – handouts, public comments, public process survey and survey results;
- *Marina & Beach Park Development Plan Site Analysis Report* (City of Des Moines, April 2012);
- *Draft Market Analysis Summary, Marina & Beach Park Development Plan* (BERK and Columbia Hospitality, May 2012); and
- *Financial and Fiscal Analysis Summary* (BERK, September 2012).

This information is available electronically on the City's website at:

<http://www.desmoinesmarina.com/local-info/marina-and-beach-park-advisory-committee>

The Advisory Committee, with input from City staff, consultants and the community, identified four development options that present a range of land uses that include mixed use office, restaurant, retail, hotel, marine services, marine industrial, parking garage and public open space (Attachment 1). LMN Architects developed conceptual visualizations of the development options along with building specifications to be analyzed for financial and fiscal considerations. BERK prepared a market analysis and a comparative financial and fiscal analysis of the site development concepts.

October 23, 2012 – the Advisory Committee met to discuss the public comments received at Open House #2 and to confirm a preferred development option recommendation to the City Council. The consensus of the Committee is for Council to consider a blend of Option 2 and 3, recognizing that the market will ultimately determine feasibility of some uses and that development should be phased over time. One Committee member expressed a preference for Option 4 and another Committee member could not support any of the options. Three Committee members were unable to attend.

November 1, 2012 – Council was briefed on the four land use options under consideration as part of the Marina and Beach Park Development Plan. BERK provided an overview of the Market Analysis and the comparative Fiscal Analysis and Tony Hettler gave an overview of the Advisory Committee's recommendation for a preferred land use option – a blend of Option 2 and Option 3).

Discussion

A goal for tonight's meeting is for Council to provide staff direction regarding a preferred development option and path for moving forward. Key questions for Council consideration include:

1. *What does an Option 2-3 blend look like in terms of land uses and public amenities?*
2. *What elements should be included in a first phase of development?*
3. *What are some strategies to address near-term and long-term parking needs and management? What additional information is needed to better understand the parking issue?*
4. *What elements should be included in a long-term implementation plan? Items currently identified include:*
 - Draft phasing plan
 - Marina and Beach Park Marketing Plan
 - Draft Lease Agreement(s) in coordination with City for land lease agreements
 - Draft Development Agreements (if any) between City of Des Moines and potential users
5. *What other issues are important to the Council?*

The Implementation Plan for the Marina and Beach Park is a process that facilitates the transition from the research and planning process to the leasing and development of the property. While the planning process researched the potential uses and evaluated the various development options as to their financial performance and returns to the City, there are several steps that must be completed to bring the property to market. Attachment 2 highlights the process that will be used in accomplishing this task.

Alternatives

Council has an option of accepting or further modifying the Option 2-3 blended alternative as recommended by the Marina and Beach Park Advisory Committee.

Financial Impact

Development of the Marina upland area provides an opportunity to generate economic activity, enhance City revenues and help sustain the Marina operations.

Recommendation or Conclusion

Council direction is requested regarding how to proceed with the Council validation of a preferred land use option for development of the Marina upland area and implementation plan.

Concurrence

N/A

MARINA AND BEACH PARK DEVELOPMENT OPTIONS

The Marina and Beach Park Advisory Committee, with input from City staff, consultants and the community, has identified the following development options to be included in the Comparative Evaluation Report being prepared by the City's consultant BERK.

OPTION 1

This option emphasizes a large central gathering location that has direct access to views of the marina that could be activated by temporary uses and programmed activities. The L-shaped hotel allows for a protected patio along the water. Marina related retail and services anchor the southern portion of the development. It includes a stair climb/elevator access to Cliff Avenue that could be incorporated into, or adjacent to a building. This option assumes income streams to offset the cost of public amenities.

- MIXED USE OFFICE - 6,000 SF RETAIL; 36,000 SF OFFICE
- RESTAURANT AND RETAIL - 7,000 SF RESTAURANT; 3,200 SF RETAIL
- CENTRAL PLAZA - 20,000 SF
- HOTEL - 50,000 SF, 100+ ROOMS
- MARINE SERVICES - 20,000 SF

OPTION 2

This option introduces a parking structure that is accessible from Cliff Avenue, strengthening the connection to downtown and provides a grand pedestrian overlook accessible from Cliff Avenue or the marina floor. It includes a stair climb/elevator that integrated into the parking structure, retail on the ground floor fronting Dock Street with parking behind, and income streams to offset the development cost. The large central gathering plaza, hotel, and marina services are similar to Option 1.

- PARKING GARAGE AND RETAIL - 155 STALL PARKING GARAGE; 10,000 SF RETAIL
- RESTAURANT AND RETAIL - 7,000 SF RESTAURANT; 3,200 SF RETAIL
- CENTRAL PLAZA - 20,000 SF
- HOTEL - 50,000 SF, 100+ ROOMS
- MARINE SERVICES - 20,000 SF

OPTION 3

This option reconfigures the hotel to bridge over Dock Avenue, lessening any potential view impact of existing neighbors. A stair climb/elevator is also included with income streams to offset the cost. The central gathering location is widened along the water with retail, hotel and restaurant uses to help activate it. A marina related retail building is located along the water with a large surface parking area to the east.

- MIXED USE OFFICE - 6,000 SF RETAIL; 36,000 SF OFFICE
- RESTAURANT - 7,000 SF
- CENTRAL PLAZA -- 25,000 SF
- HOTEL - 38,000 SF, 75+ ROOMS
- MARINA RETAIL - 10,000 SF; 100 PARKING STALLS
- MARINE SERVICES - 20,000 SF

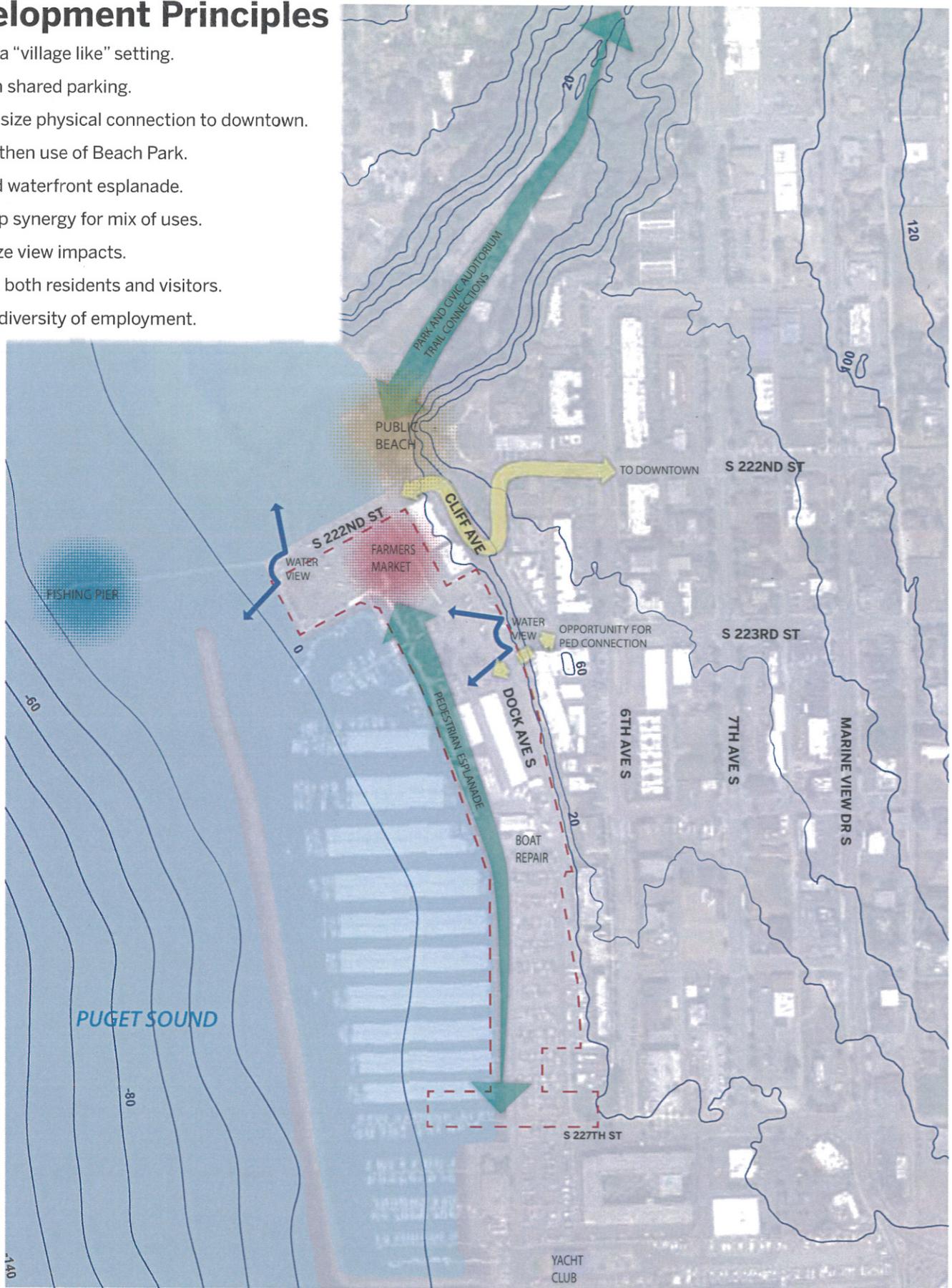
OPTION 4

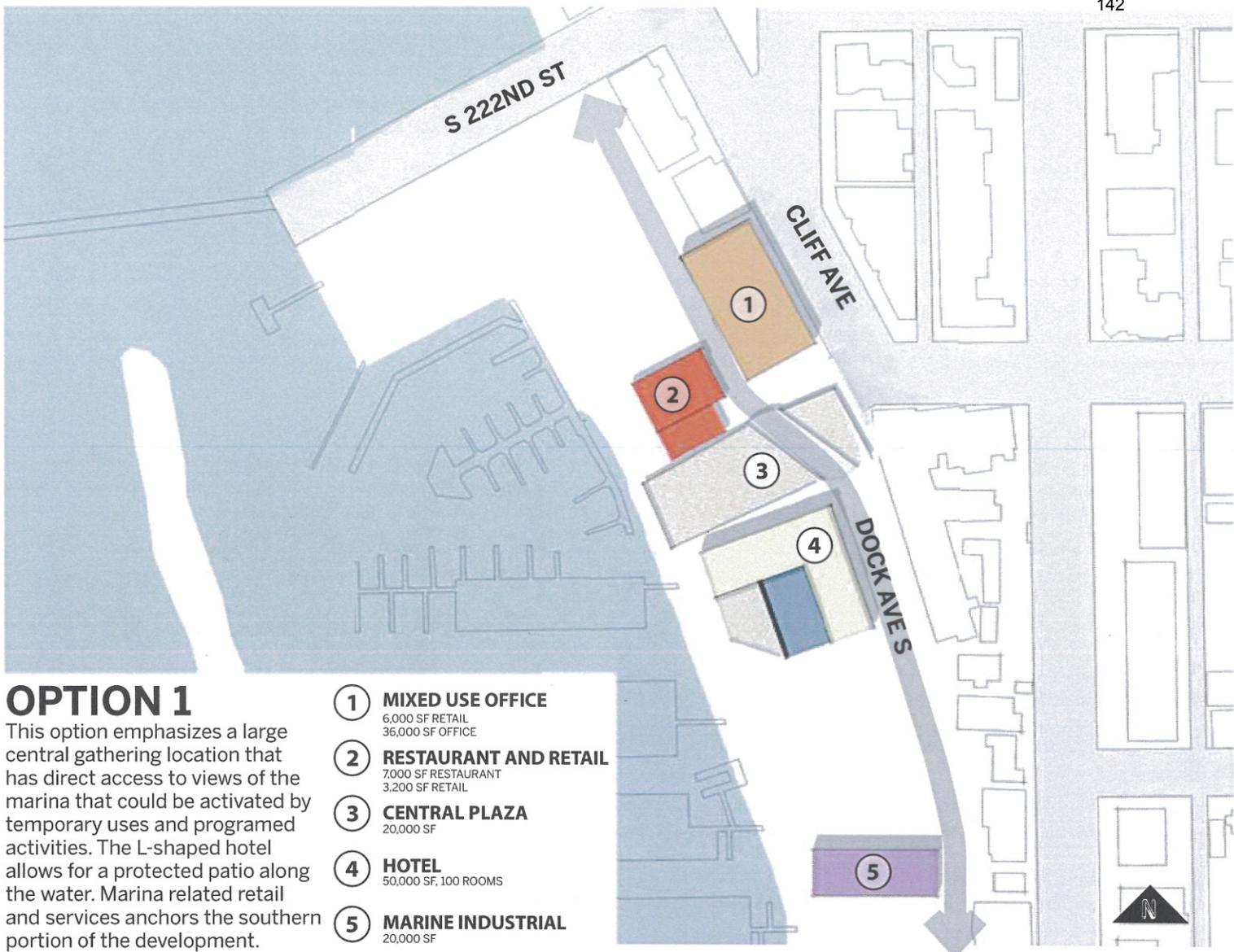
This option represents a reduced development scenario that implements the 2007 *Marina Master Plan*. Under this option, a new commercial building with a restaurant, deli or small scale grocer with an outdoor deck would be located in the area north of the Harbormasters Office, and a Marine Hardware/Retail and Marina Maintenance building would be located immediately south of the boat yard. The first floor of the Harbormasters Office would be renovated to include public restrooms, showers, and laundry facilities for guest moorage users and the current maintenance shop would be relocated to the new building in the south Marina area. Associated parking requirements would be accommodated within the existing north and south parking lots.

- MARINA RESTAURANT/GROCER – 6,000 SF RETAIL; 1,500 SF DECK
- MARINE HARDWARE/RETAIL AND MAINTENANCE FACILITY – 5,000 SF

Development Principles

1. Create a "village like" setting.
2. Rely on shared parking.
3. Emphasize physical connection to downtown.
4. Strengthen use of Beach Park.
5. Expand waterfront esplanade.
6. Develop synergy for mix of uses.
7. Minimize view impacts.
8. Attract both residents and visitors.
9. Foster diversity of employment.

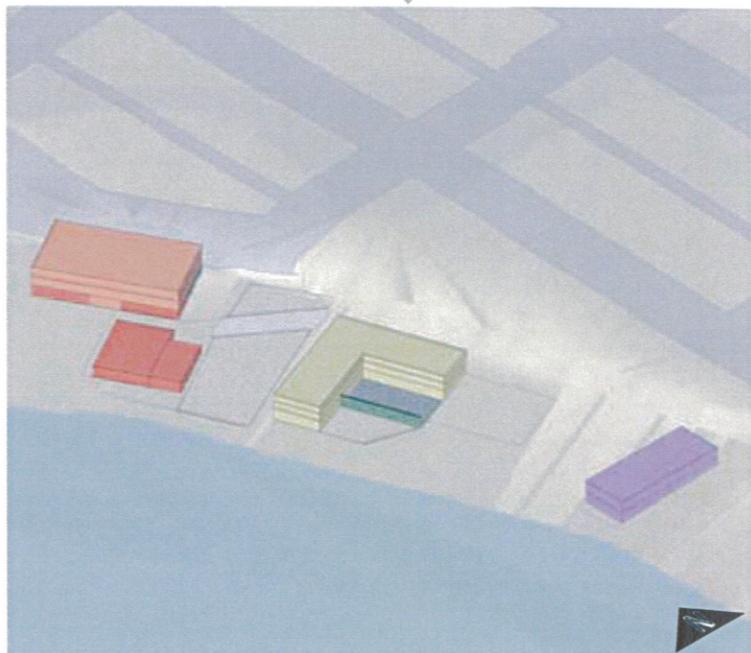
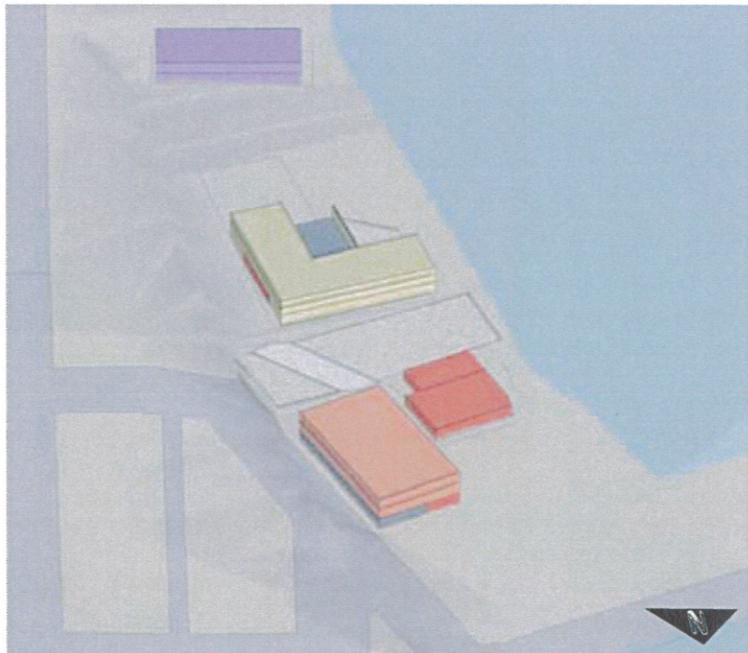


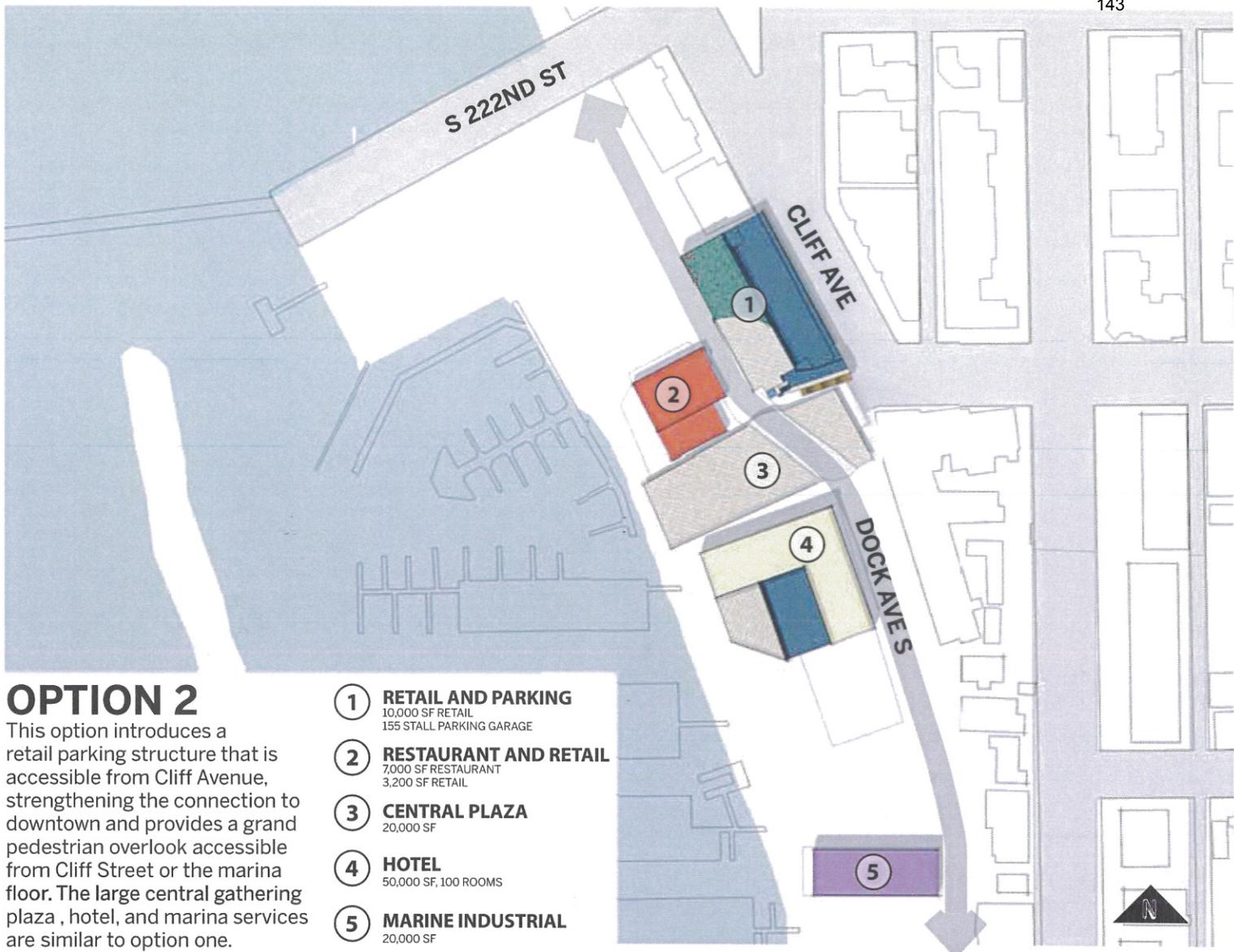


OPTION 1

This option emphasizes a large central gathering location that has direct access to views of the marina that could be activated by temporary uses and programed activities. The L-shaped hotel allows for a protected patio along the water. Marina related retail and services anchors the southern portion of the development.

- ① **MIXED USE OFFICE**
6,000 SF RETAIL
36,000 SF OFFICE
- ② **RESTAURANT AND RETAIL**
7,000 SF RESTAURANT
3,200 SF RETAIL
- ③ **CENTRAL PLAZA**
20,000 SF
- ④ **HOTEL**
50,000 SF, 100 ROOMS
- ⑤ **MARINE INDUSTRIAL**
20,000 SF

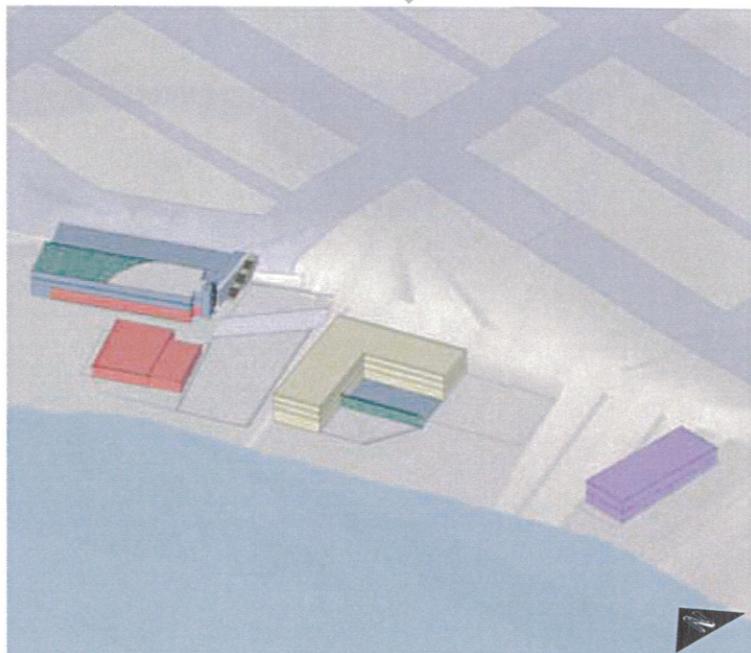
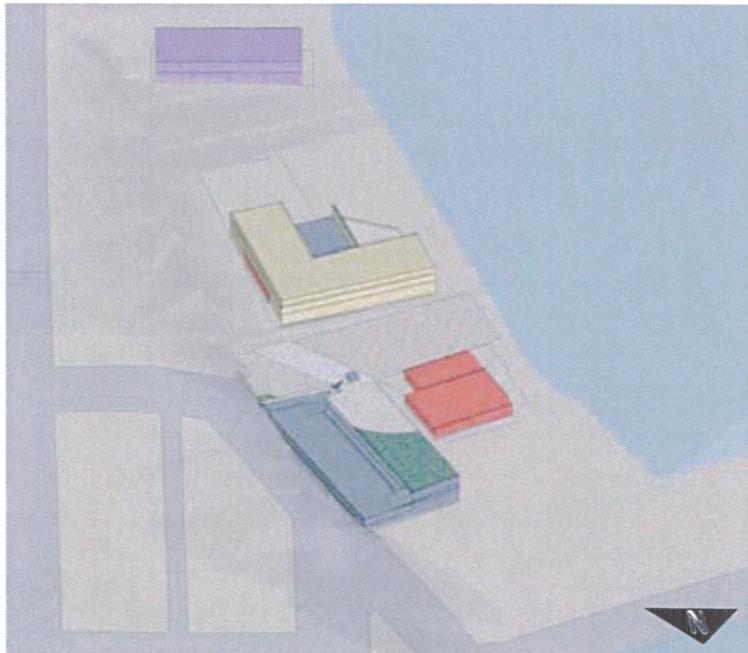


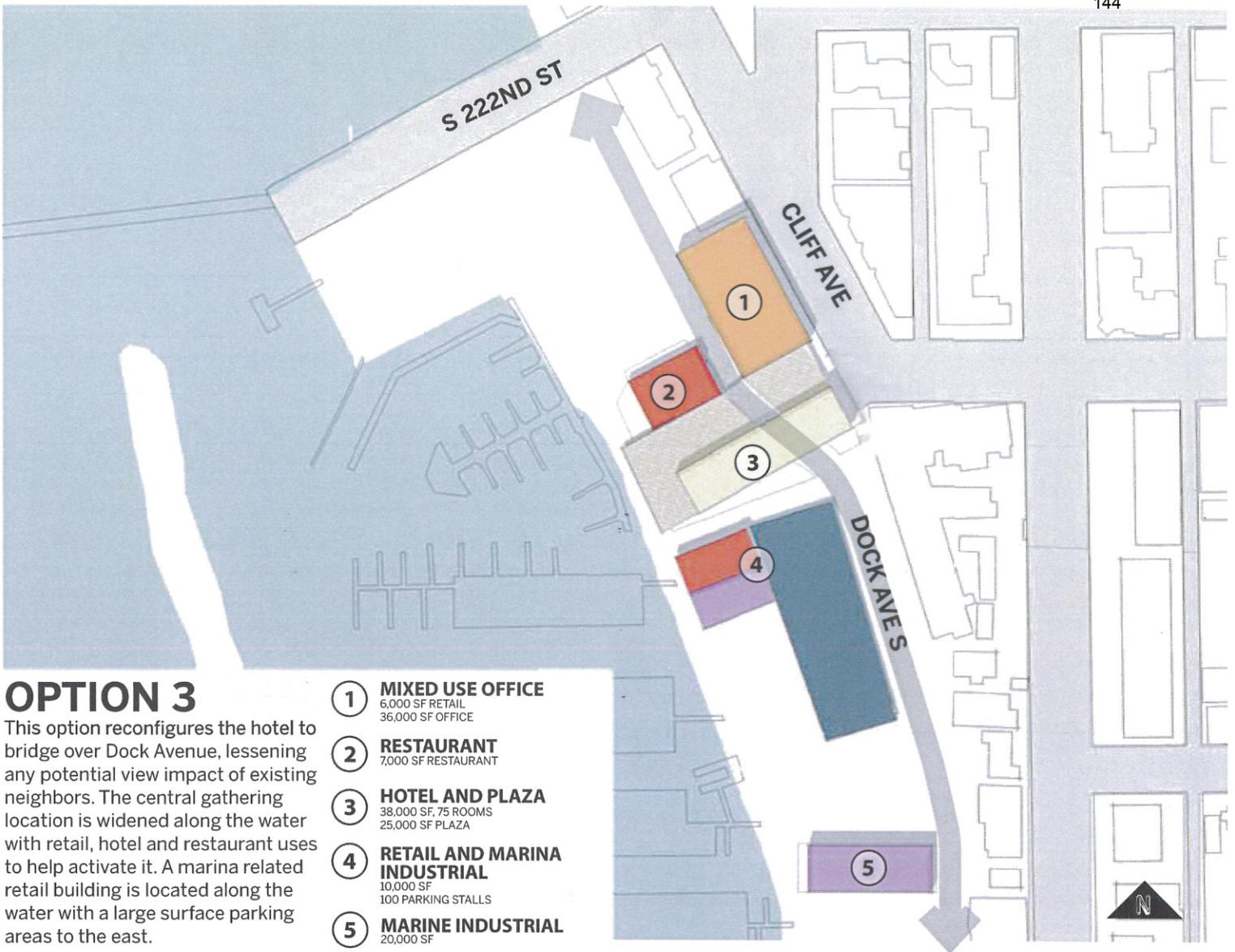


OPTION 2

This option introduces a retail parking structure that is accessible from Cliff Avenue, strengthening the connection to downtown and provides a grand pedestrian overlook accessible from Cliff Street or the marina floor. The large central gathering plaza, hotel, and marina services are similar to option one.

- ① **RETAIL AND PARKING**
10,000 SF RETAIL
155 STALL PARKING GARAGE
- ② **RESTAURANT AND RETAIL**
7,000 SF RESTAURANT
3,200 SF RETAIL
- ③ **CENTRAL PLAZA**
20,000 SF
- ④ **HOTEL**
50,000 SF, 100 ROOMS
- ⑤ **MARINE INDUSTRIAL**
20,000 SF

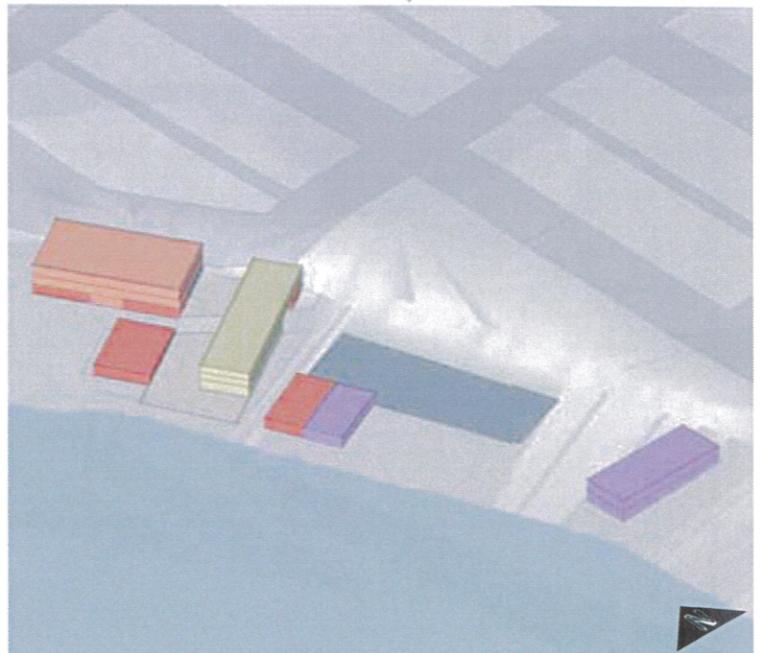
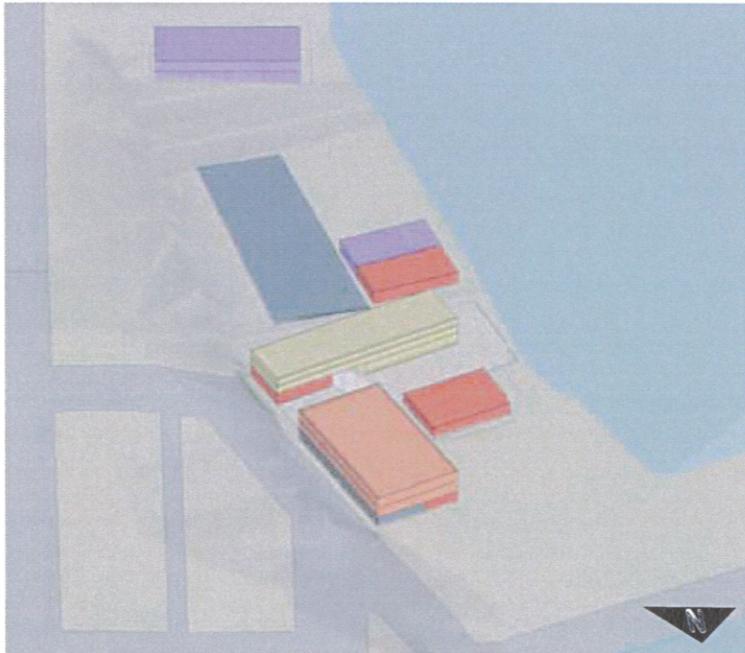


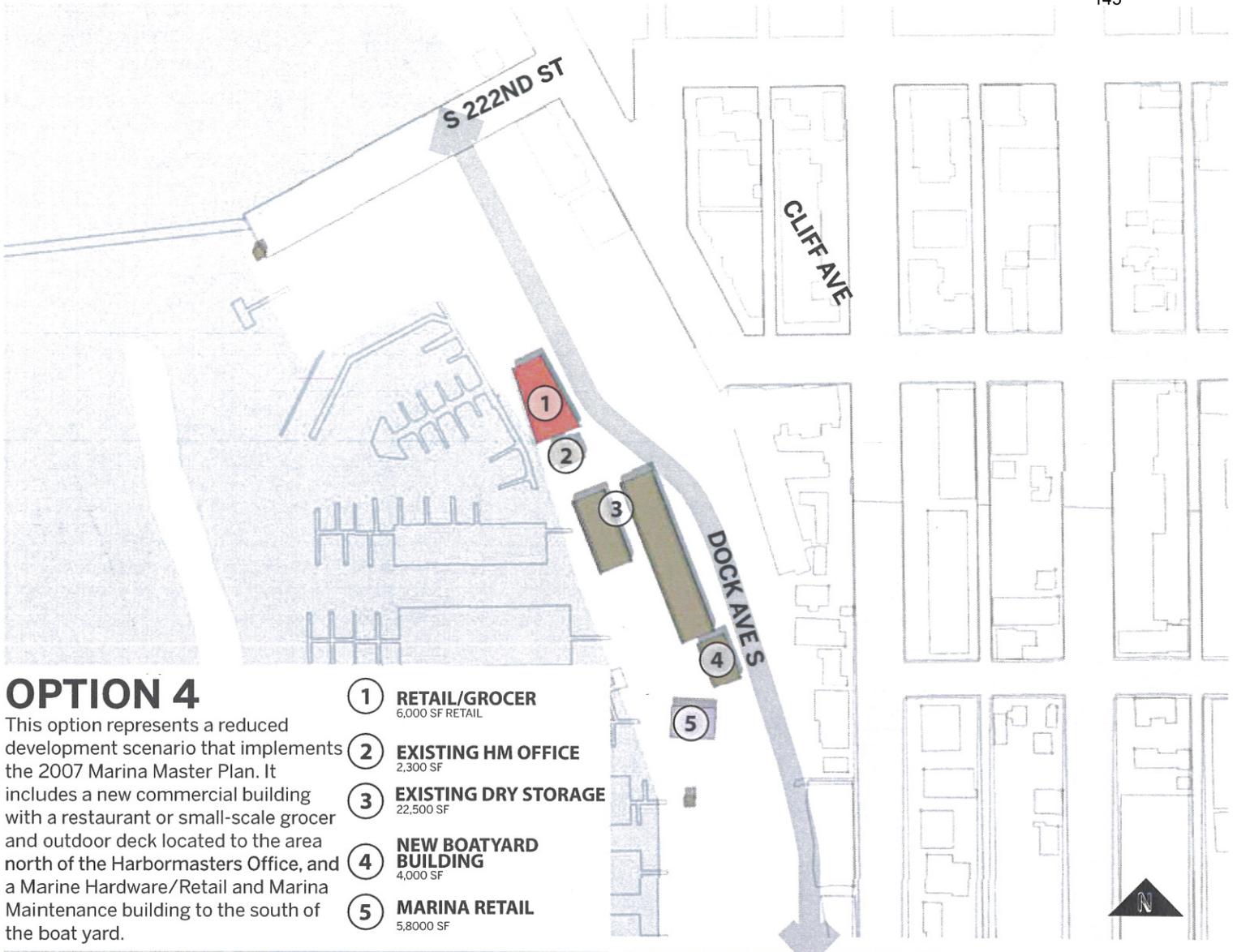


OPTION 3

This option reconfigures the hotel to bridge over Dock Avenue, lessening any potential view impact of existing neighbors. The central gathering location is widened along the water with retail, hotel and restaurant uses to help activate it. A marina related retail building is located along the water with a large surface parking areas to the east.

- ① **MIXED USE OFFICE**
6,000 SF RETAIL
36,000 SF OFFICE
- ② **RESTAURANT**
7,000 SF RESTAURANT
- ③ **HOTEL AND PLAZA**
38,000 SF, 75 ROOMS
25,000 SF PLAZA
- ④ **RETAIL AND MARINA INDUSTRIAL**
10,000 SF
100 PARKING STALLS
- ⑤ **MARINE INDUSTRIAL**
20,000 SF

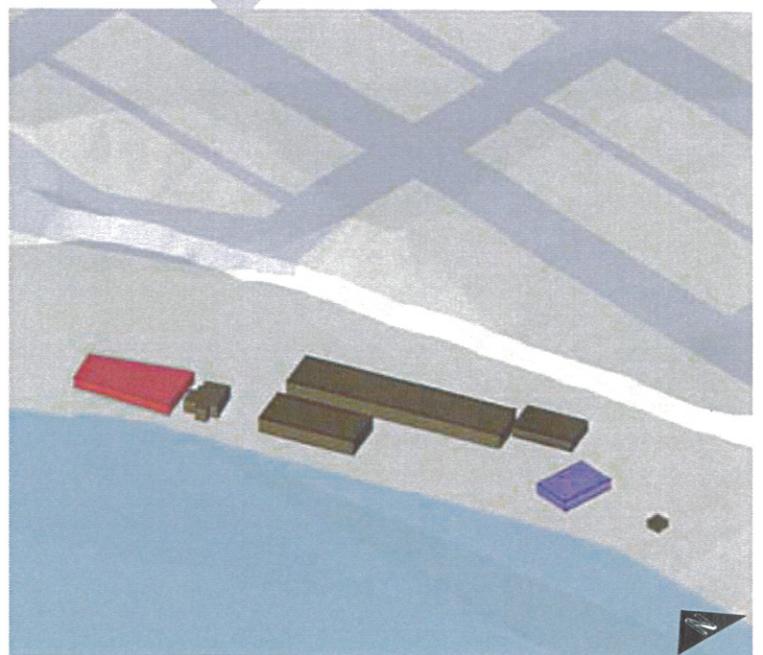
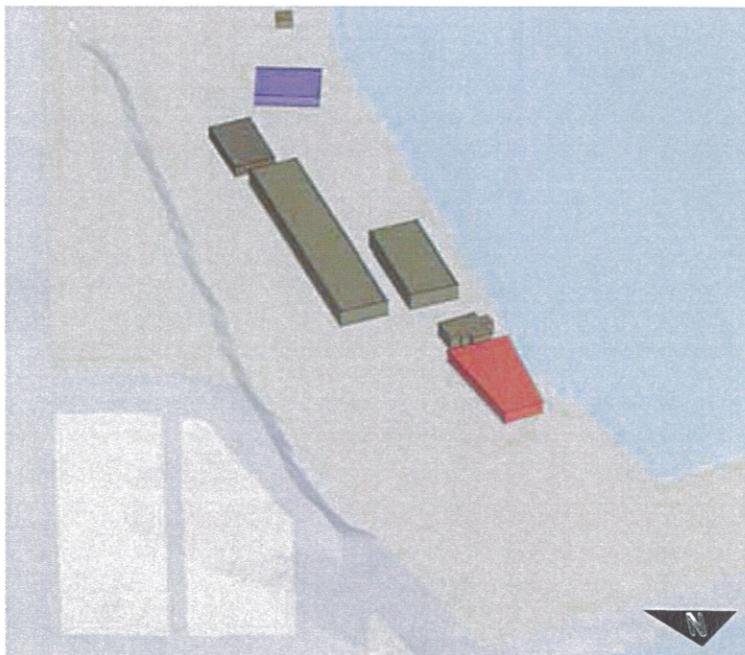




OPTION 4

This option represents a reduced development scenario that implements the 2007 Marina Master Plan. It includes a new commercial building with a restaurant or small-scale grocer and outdoor deck located to the area north of the Harbormasters Office, and a Marine Hardware/Retail and Marina Maintenance building to the south of the boat yard.

- ① **RETAIL/GROCER**
6,000 SF RETAIL
- ② **EXISTING HM OFFICE**
2,300 SF
- ③ **EXISTING DRY STORAGE**
22,500 SF
- ④ **NEW BOATYARD BUILDING**
4,000 SF
- ⑤ **MARINA RETAIL**
5,8000 SF



Des Moines Marina & Beach Park Implementation Plan Elements

Summary: The Implementation Plan for the Des Moines Marina and Beach Park is a process that facilitates the transition from the research and planning process to the leasing and development of the property. While the planning process researched the potential uses and evaluated the various development options as to their financial performance and returns to the City, there are several steps that must be completed to bring the property to market. The following highlights the process that will be used in accomplishing this task.

Task 1: This step will identify timelines and process needed to make changes (where needed) to the City's Land Use Plans or Regulations prior to leasing the property to a tenant. For example, one issue that needs to be addressed is a requirement under state law that requires that the leased property must be a legal lot of record. An entity cannot lease property with just metes and bounds. Successful completion of this task will assure that the leased parcel(s) will comply with existing regulations and can be financed.

Task 2: Based on the market research and the comparative financial analysis, the preferred development option will likely be phased due to market demand, development climate, financial availability and the attractiveness of the development scenario. In creating a phasing plan, consideration should be given to those land uses that have a synergistic effect in attracting other users in the development and as such, should be considered the initial leading contenders. However, this characteristic must be balanced with market research data and other factors when considering site phasing. Task 2 will result in a draft phasing plan for the development.

Task 3: Once the phasing plan has been developed and approved, the next step is creation of a Marketing Plan for the property. Again, based on market research and the comparative analysis, attraction of the uses will likely require different approaches. For example, some land uses may be best attracted by the City offering the parcel through a RFQ/RFP (Request for Qualification/Request for Proposals). Other land uses may require a targeted approach whereby the parcels are taken to individual developers or owner-operators to attract interest.

Task 4: The City of Des Moines will be entering long term ground or space leases with sophisticated and knowledgeable developers or owner-operators. Thus, the city's lease agreement will need to be reviewed and modified as necessary to give the city full protection and minimum exposure under the agreement between the parties. The draft agreement will be created in coordination between the city staff and consultants. In addition, a document assigning the lease to the tenant's lender will be needed in order for the tenant to finance the improvements placed on the leased parcel. Creation of these documents will represent completion of this Task.

Task 5: Other documents that are typically used in the course of land or space leases may be needed. These include Development Agreements, Reciprocal Easement Agreements, Options to Lease, Right of Entry, Hold Harmless Agreements, etc. These agreements will be developed by Des Moines staff and the consultant.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Adoption of Year 2013 Budget

FOR AGENDA OF: December 6, 2012

ATTACHMENTS:

- 1. Draft Ordinance No. 12-192
- 2. Appendix A
- 3. General & Street Funds 2013 Preliminary Budget Balancing Strategies

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: November 30, 2012

CLEARANCES:

- Legal _____
- Finance _____
- Marina N/A
- Parks, Recreation & Senior Services N/A
- Planning, Building & Public Works N/A
- Police N/A
- Courts N/A

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

Adoption of the Year 2013 Budget.

Suggested Motion:

"I move to enact Draft Ordinance No. 12-192 adopting the final budget for the City of Des Moines, Washington, for the fiscal year ending December 31, 2013."

Background

The budget has been discussed over the last several months. The 2013 budget is summarized in Appendix A.

The General and Street Funds Balancing Strategies include all changes recommended by the City Manager as of November 30, 2012.

Recommendation

It is recommended that the City Council adopt Draft Ordinance No. 12-192.

FINANCE DIRECTOR'S FIRST DRAFT 10/25/2012

DRAFT ORDINANCE NO. 12-192

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON adopting the final budget for the City of Des Moines, Washington, for the fiscal year ending December 31, 2013, in summary form, ratifying and confirming revenues and expenditures previously implemented for fiscal year 2012, as such revenues and expenditures form the basis for development of the budget for fiscal year 2013, approving revenues and expenditures for fiscal year 2013, and temporarily suspending the effect of any ordinance, code provision or other City requirement with which the fund adjustments and transfers proposed by the City Manager for the 2012 budget might be inconsistent.

WHEREAS, the City Manager for the City of Des Moines has prepared and submitted a preliminary budget for the fiscal year ending December 31, 2013 to the City Council and has filed this budget with the Finance Director, and

WHEREAS, the City Council finds that the City Manager's proposed budget for fiscal year 2013 reflects revenues and expenditures that are intended to ensure provision of vital municipal services at acceptable levels, and

WHEREAS, the City Council finds that the City Manager's proposed budget for fiscal year 2013 appropriately relies upon anticipated year-end balances derived from revenues and expenditures previously approved and authorized by the City Council as part of the City's budget for fiscal year 2012, and

WHEREAS, the City Council finds that the fund adjustments and transfers proposed by the City Manager for fiscal year 2012 are necessary and in the public's interest, and

WHEREAS, by motion regularly passed, the Des Moines City Council scheduled a public hearing for November 8, 2012, to take public comment with respect to the proposed 2013 budget, and

WHEREAS, notice of the public hearing was given to the public in accordance with law and a public hearing was held on the 8th day of November, 2012, and all persons wishing to be heard were heard; now therefore,

ATTACHMENT 1

Ordinance No. _____
 Page 2 of 3

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

Sec. 1. The findings set forth in the preamble to this ordinance are hereby adopted and incorporated by reference.

Sec. 2. Based on the findings adopted herein, the City Council temporarily suspends the effect of any ordinance, code provision or other City requirement with which the fund adjustments and transfers proposed by the City Manager for the 2011 budget might be inconsistent.

Sec. 3. The fund adjustments and transfers proposed by the City Manager for fiscal year 2012, which are incorporated in the preliminary budget for fiscal year 2013, are hereby authorized and approved by the City Council.

Sec. 4. Because the City's budget for fiscal year 2013 relies upon anticipated year-end fund balances or shortages derived from revenues collected and expenditures incurred in fiscal year 2012, the City Council hereby ratifies and confirms all revenues, from whatever source derived, and expenditures incurred by the City to the extent such revenues and expenditures are in accordance with the City's budget for fiscal year 2012 or any subsequent budget amendments formally approved by the City Council.

Sec. 5. The City Council hereby adopts, affirms and approves any and all revenues, from whatever source derived, and expenditures as referenced in the attached budget for fiscal year 2013.

Sec. 6. The final budget for the City of Des Moines' fiscal year 2013 is hereby adopted and approved in summary form as set forth in the attached Appendix "A", which is by this reference incorporated herein.

Sec 7. Severability - Construction.

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

ATTACHMENT 1

Ordinance No. _____
Page 3 of 3

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

Sec 8. Effective date. This ordinance shall take effect and be in full force (5) five days after its passage, approval and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this _____ day of _____, 2012 and signed in authentication thereof this _____ day of _____, 2012.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

ATTACHMENT 1

DRAFT ORDINANCE NO. 12-192
 APPENDIX A 2013 BUDGET
 Per CM Recommendations Recap

FINAL	Ending Fund			Total	Revenue	Beginning Fund Balance	Total
	Expenditure	Balance					
ANNUAL APPROPRIATION FUNDS:							
001	General Fund	17,157,790	1,168,031	18,325,821	17,348,769	977,052	18,325,821
101	Street Fund	1,067,513	270,350	1,337,863	1,116,837	221,026	1,337,863
107	Police Drug Seizure Fund	15,000	8,465	23,465	15,006	8,459	23,465
111	Hotel/Motel Tax Fund	17,247	5,691	22,938	17,308	5,630	22,938
211	1995 GO Bond - Police Facility	-	55	55	55	-	55
212	LID Fund	3,719	-	3,719	3,719	-	3,719
219	2008 GO & Ref Bond - Transportation Capital Imprv	314,663	20,804	335,467	314,244	21,223	335,467
220	Miscellaneous Debt Service Fund	87,858	2	87,860	87,858	2	87,860
401	Marina Revenue Fund	4,198,861	1,214,470	5,413,331	4,112,525	1,300,806	5,413,331
403	Marina Repair and Replacement Fund	20,000	305,980	325,980	200	325,780	325,980
450	Surface Water Operations Fund	2,945,143	933,453	3,878,596	2,604,178	1,274,418	3,878,596
500	Equip Rental Operations Fund	531,714	171,116	702,830	569,202	133,628	702,830
501	Equip Rental Replacement Fund	93,000	1,371,832	1,464,832	96,585	1,368,247	1,464,832
506	Facility Repair and Replacement Fund	75,794	50,624	126,418	75,912	50,506	126,418
510	Computer Equipment Operations Fund	524,751	79,799	604,550	479,951	124,599	604,550
511	Computer Equipment Capital Fund	188,939	217,377	406,316	115,593	290,723	406,316
520	Self-Insurance Fund	601,900	11,016	612,916	582,895	30,021	612,916
530	Unemployment Insurance Fund	70,000	178,250	248,250	55,147	193,103	248,250
	SUB-TOTAL	27,913,891	6,007,316	33,921,207	27,595,984	6,325,223	33,921,207
CONTINUING APPROPRIATION FUNDS (MEMO ONLY):							
109	Transportation Impact Fee Fund	172,641	166,501	339,142	173,641	165,501	339,142
310	Municipal Capital Improvements Fund	1,620,400	68,615	1,689,015	1,556,282	132,733	1,689,015
319	Transportation Capital Improvement Fund, 2008B	17,306,319	201,724	17,508,043	16,887,570	620,473	17,508,043
406	Marina Depreciation & Improvement Fund, 2008A	706,389	5,241	711,630	484,336	227,294	711,630
451	Surface Water Capital Fund	706,200	903,292	1,609,492	781,669	827,823	1,609,492
	SUB-TOTAL	20,511,949	1,345,373	21,857,322	19,883,498	1,973,824	21,857,322
	TOTAL APPROPRIATION	48,425,840	7,352,689	55,778,529	47,479,482	8,299,047	55,778,529

GENERAL AND STREET FUNDS
2013 PRELIMINARY BUDGET BALANCING STRATEGIES
12-6-12

<i>Budget Balancing Strategies:</i>	<i>Amount</i>	<i>Budget Gap</i>	
Budget Gap		(\$2,776,307)	
Defer 100% Equipment Replacement Assessments	\$495,558		
Defer 20% Equipment Maintenance Assessments	58,544		
Defer 50% Computer Eqp Replacement Assessments	60,160		
One-Time Bldg Permits/Dev Fees (to fund staff)	546,899		
Freeze Vacant Bldg Inspector	91,881		
Freeze Vacant Administrative Assistant I Position	77,365		
Freeze/Equivalent Value of Vacant Master Sergeant Position	169,218		
Freeze Vacant Record Specialist Position	63,742		
Freeze 2 Vacant Patrol Officer I Positions (funded by Fines & Forfeits)	0		
Freeze 2 Vacant Patrol Officer II Positions	208,890		
Freeze Vacant Transportation Tech Position	0		
Freeze Vacant Recreation Specialist Position	36,964		
Phase-in of COLA: 1% Jan 1; 1% Jul 1; 0.7% Nov 1	102,646		
Freeze Sr. Planner II (Base Bgt – Reorg to Planner I)	120,627		
Total	\$2,032,494	(\$743,813)	
<i>New Revenues:</i>			
Normandy Park Prosecution Services	\$25,000		
City-Wide Arterial Grant CIP Reimb Parks & Street Mtc Staff	37,000		
Increase Fines & Forfeits (Restore Traffic Unit)	250,000		
Revise CIP Reimbursements	(12,679)		
Revise Franchise Fees Revenue Estimates	47,200		
Increase Trans Benefit District Transfer to the Street Fund	50,847		
Add Arts Commission Contributions Sculpture Foundations (Pads)	20,000		
Total	\$417,368	(\$326,445)	
<i>New Expenditure Requests/Adjustments:</i>			
Increase Prosecuting Attorney 0.20 FTE/Normandy Park Prosecution Services	\$18,006		
Increase Paralegal 0.10 FTE/Normandy Park Prosecution Services	6,994		
Increase Paralegal 0.10 FTE for Automated Speed Enforcement Program	13,987		
Reduce Tsf Net Revenues Automated Speed Enforcement Program	(13,987)		
Reduce Tsf Net Revenues Automated Speed Enforcement Prog-Police School Traffic Emphasis	(50,000)		
Reallocate Street Maintenance Worker for SWM Traffic Control	(27,566)		
PBPW Admin & Engineering Staffing Changes due to Director Retirement	(118,526)		
Increase Court File Clerk from 0.2 FTE to 0.5 FTE (Traffic Unit)	13,238		
Add Appropriations for Sculpture Foundations (Pads)	20,000		
Increase FTE Allocation Land Use Planner II (Transfer from SWM)	31,398		
Add Appropriation for City Parking Lot Lease (Fisher Property)	7,500		
Reclass Parks & Rec Office Mgr Vacant Position to Admin Assistant	(25,787)		
Add Appropriation for CLASS System On-Line Registration	10,000		
Net Savings from Revised Rates for Medical, Vision, Dental, & L & I	(16,538)		Revised
Add Appropriation for 3 Police Officers Salary Upgrades	40,351		
Eliminate Membership Dues for National League of Cities	(1,935)		New
Total	(\$92,865)	(\$233,580)	
<i>Expenditure Cuts:</i>			
Council Recommended Cuts to Legislative Budget	\$10,741		
Savings from Conducting Accountability Audit Every Other Year	9,600		
Savings from City Currents/Recreation Brochure Production Costs	22,000		
Total	\$42,341	(\$191,239)	
<i>Reconcile to Recap:</i>			
Remaining One-Time Revenues (Artemis Shift from 2012)	\$431,542	\$240,303	
Estimated Beginning Fund Balance		\$1,198,078	
Estimated Ending Fund Balance		\$1,438,381	
Less Revenue Stabilization Reserves		(805,175)	
Revised Estimated Ending Fund Balance		\$633,206	
Required 7% Reserves	154	\$1,275,771	

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Business and Occupation (B&O) Tax
Model Ordinance Update

FOR AGENDA OF: December 6, 2012

DEPT. OF ORIGIN: Finance

ATTACHMENTS:

Attachment 1: Draft Ordinance 12-196 &
Comments;

Attachment 2: Draft Ordinance 12-197 –
Administrative Provisions & Comments

Attachment 3: AWC Fact Sheet

Attachment 4: Comparison of Deviations from
Core Model B&O Ordinance
Provisions & City of Des Moines
Provisions

DATE SUBMITTED: November 14, 2012

CLEARANCES:

Finance ph

Legal PS

Marina N/A

Parks, Recreation & Senior Services N/A

Planning, Building & Public Works N/A

Police N/A

Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose

The purpose of this report is to request the City Council’s adoption of Draft Ordinances No. 12-196 and 12-197 for enacting a City Business & Occupation Tax model ordinance update.

Suggested Motions:

- 1a. “I move to suspend Rule 26(a) in order to enact Draft Ordinance No. 12-196 on first reading.”
- 1b. “I move to enact Draft Ordinance No. 12-196, relating to taxes, repealing chapter 3.84 DMMC, replacing chapter 3.84 DMMC as provided in Draft Ordinance No. 12-196 for a Business and Occupation Tax, imposing the Business and Occupation Tax, setting the amount of tax, and establishing an effective date.”
- 2a. “I move to suspend Rule 26(a) in order to enact Draft Ordinance No. 12-197 on first reading.”
- 2b. “I move to enact Draft Ordinance No. 12-197, establishing a new chapter 3.85 of the Des Moines Municipal Code, providing for business and occupation tax administrative provisions, prescribing penalties, and codifying a new chapter 3.85 DMMC entitled *Business and Occupation Tax – Administrative Provisions.*”

Background

In December 2004, the City adopted a business and occupation tax (B&O) with Ordinance No. 1355. Ordinance No. 1355 imposed a B&O tax in the amount of two tenths of one percent (.2%) exempting businesses with annual gross receipts of \$50,000 or less.

Ordinance No. 1355 was adopted incorporating requirements imposed by EHB 2030 that mandated that cities imposing a B&O tax adopt a model ordinance by December 31, 2004. The model ordinance provided for uniformity in the application of municipal B&O taxes.

In addition to the model ordinance provisions, EHB 2030 required a new system for the allocation and apportionment of gross income subject to a municipal B&O tax. Apportionment refers to a method of dividing the tax base among various jurisdictions in which the taxpayer engages in business based on one or more factors relating to sales income, property value, and payroll amounts. The effect is that a jurisdiction may impose a tax only on a portion of the total income earned by a business that is attributed to the jurisdiction. The allocation and apportionment rules were effective January 1, 2008 with adoption of Ordinances No. 1416 and No 1417.

Discussion

The Association of Washington Cities has provided cities with draft model ordinance revisions and administrative updates that are required to be adopted effective January 1, 2013. The AWC Fact Sheet, Attachment 3, describes the six changes to the model ordinance and administrative provisions. Draft Ordinances No. 12-196 and 12-197 incorporate the required revisions and updates. The six changes identified below are described more fully in the AWC Fact Sheet:

1. Digital Goods Definitions & Apportionment
2. Board of Directors Licensing and Tax
3. Super Nexus
4. Insurance Business Preemption
5. First Mortgage Deduction
6. Confidentiality

Alternatives

None.

Financial Impact

Finance staff has not quantified potential impacts to revenues.

Recommendation

Mandatory provisions of the model ordinance are required to be adopted by cities implementing B&O taxes per Chapter 35.102 RCW.

Concurrence

The Legal and Finance Departments concur.

CITY ATTORNEY'S FIRST DRAFT 11/13/2012

DRAFT ORDINANCE NO. 12-196

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the City's Business and Occupation Tax, repealing chapter 3.84 DMMC and underlying ordinances and replacing chapter 3.84 DMMC as "*Business and Occupation Tax - Adopted.*"

WHEREAS, one of the most important functions of a government, including municipal government, in setting and implementing tax policy is to strive for fairness, consistency, equity, and efficiency, and

WHEREAS, in recognition of concerns over the business and occupation (B & O) tax, and legislative debates over how to address those concerns, the Association of Washington Cities (AWC) and six B & O tax jurisdictions formed a Task Force to analyze these issues, and

WHEREAS, the Task Force, with the concurrence of the majority of other Washington cities levying gross receipts B & O taxes, has developed a model ordinance that creates greater uniformity and consistency among city gross receipts business and occupation taxes; includes a system of deductions to prevent multiple taxation of the same gross receipts; simplifies the city gross receipts B & O taxes, and makes the tax easier to administer; provides examples of activities that constitute "engaging in business" and establishes safe harbors for *de minimis* activities that a person may engage in without having to register or becoming subject to tax; and contains sufficient flexibility to provide local control over the City tax structure, and

WHEREAS, the model ordinance further strives to minimize any major revenue impact on cities levying gross receipts B & O tax; and retains local control over B & O tax rates, thus preserving "local control" and revenue-protection measure that are critical to all cities in the State of Washington, and

WHEREAS, adoption of the model ordinance is vital in demonstrating to the Washington State Legislature that cities are sensitive to legitimate complaints over the local B & O tax and are serious about ensuring that it is more fairly,

ATTACHMENT 1

Ordinance No. ____
Page 2 of 34

equitably, consistently, and efficiently administered; now therefore,

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

Sec. 1. Chapter 3.84 DMMC and underlying ordinances are hereby repealed and replaced with the provisions of this Ordinance.

Sec. 2. Purpose. The purpose of this chapter is to implement Washington Constitution Article XI, Sec. 12, and RCW 35A.11.020 and 35A.82.020, which give municipalities the authority to license for revenue. In the absence of a legal or constitutional prohibition, the City has the power to define taxation categories as they see fit in order to respond to the unique concerns and responsibilities of local government.

Sec. 3. Exercise of revenue license power. The provisions of this chapter shall be deemed an exercise of the power of the City to license for revenue. The provisions of this chapter are subject to periodic statutory or administrative rule changes or judicial interpretations of the ordinances or rules. The responsibility rests with the licensee or taxpayer to reconfirm tax computation procedures and remain in compliance with the City code.

Sec. 4. Administrative provisions. The administrative provisions contained in chapter 3.85 DMMC shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

Sec. 5. Definitions. In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

(A) **"Business"** includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

(B) **"Business and occupation tax"** or **"gross receipts tax"** means a tax imposed on or measured by the value of

Ordinance No. ____
Page 3 of 34

products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.

(C) **"Commercial or industrial use"** means the following uses of products, including by-products, by the extractor or manufacturer thereof:

- (1) Any use as a consumer; and
- (2) The manufacturing of articles, substances or commodities.

(D) **"Delivery"** means the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer's representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of taxation.

(E) **"Digital automated service," "digital code,"** and **"digital goods"** have the same meaning as in RCW 82.04.192.

Ordinance No. _____
Page 4 of 34

(F) "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2) (g) and (6) (b).

(G) "Eligible gross receipts tax" The term "eligible gross receipts tax" means a tax which:

(1) Is imposed on the act or privilege of engaging in business activities within section .050; and

(2) Is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and

(3) Is not, pursuant to law or custom, separately stated from the sales price; and

(4) Is not a sales or use tax, business license fee, franchise fee, royalty or severance tax measured by volume or weight, or concession charge, or payment for the use and enjoyment of property, property right or a privilege; and

(5) Is a tax imposed by a local jurisdiction, whether within or without the State of Washington, and not by a Country, State, Province, or any other non-local jurisdiction above the County level.

(H) "Engaging in business."

(1) The term "engaging in business" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

(2) This section sets forth examples of activities that constitute engaging in business in the City, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimus business activities in the City without having to register and obtain a business license or pay City business and occupation taxes. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging

Ordinance No. ____
Page 5 of 34

in business" in subsection (1). If an activity is not listed, whether it constitutes engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law.

(3) Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license.

(a) Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City.

(b) Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.

(c) Soliciting sales.

(d) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

(e) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.

(f) Installing, constructing, or supervising installation or construction of, real or tangible personal property.

(g) Soliciting, negotiating, or approving franchise, license, or other similar agreements.

(h) Collecting current or delinquent accounts.

Ordinance No. ____
Page 6 of 34

(I) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

(j) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.

(k) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.

(l) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

(m) Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.

(n) Investigating, resolving, or otherwise assisting in resolving customer complaints.

(o) In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

(p) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

(q) Accepting or executing a contract with the City, irrespective of whether goods or services are delivered within or without the City, or whether the person's office or place of business is within or without the City.

Ordinance No. ____
Page 7 of 34

(4) If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license and pay tax.

(a) Meeting with suppliers of goods and services as a customer.

(b) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

(c) Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

(d) Renting tangible or intangible property as a customer when the property is not used in the City.

(e) Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.

(f) Conducting advertising through the mail.

(g) Soliciting sales by phone from a location outside the City.

(5) A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the City. Such activities do not include those in subsection (4).

Ordinance No. ____
Page 8 of 34

The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

(I) **"Extracting"** is the activity engaged in by an extractor and is reportable under the extracting classification.

(J) **"Extractor"** means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees, other than plantation Christmas trees, or other natural products; or takes fish, shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under contract the necessary labor or mechanical services for others; or persons meeting the definition of farmer.

(K) **"Extractor for hire"** means a person who performs under contract necessary labor or mechanical services for an extractor.

(L) **"Gross income of the business"** means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(M) **"Gross proceeds of sales"** means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated

Ordinance No. ____
Page 9 of 34

services or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(N) "Manufacturing" means the activity conducted by a manufacturer and is reported under the manufacturing classification.

(O) "Manufacturer," "to manufacture."

(1) "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from the person's own materials or ingredients any products. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to less than twenty percent (20%) of the total value of all materials or ingredients that become a part of the finished product, the owner of the equipment or facilities will be deemed to be a processor for hire, and not a manufacturer.

(2) "To manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:

(a) The production of special made or custom made articles;

(b) The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;

(c) Crushing and/or blending of rock, sand, stone, gravel, or ore; and

(d) The producing of articles for sale, or for commercial or industrial use from raw materials or prepared

Ordinance No. _____
Page 10 of 34

materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing, preserving, canning, and the preparing and freezing of fresh fruits and vegetables.

"To manufacture" shall not include the production of digital goods or the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(P) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise and the United States or any instrumentality thereof.

(Q) "Retailing" means the activity of engaging in making sales at retail and is reported under the retailing classification.

(R) "Retail service" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(1) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and

Ordinance No. ____
Page 11 of 34

recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

(2) Abstract, title insurance, and escrow services;

(3) Credit bureau services;

(4) Automobile parking and storage garage services;

(5) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(6) Service charges associated with tickets to professional sporting events; and

(7) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(8) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(S) "Sale," "casual or isolated sale."

(1) "Sale" means any transfer of the ownership of, title to, or possession of, property for a valuable consideration and includes any activity classified as a "sale at retail," "retail sale," or "retail service." It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

Ordinance No. ____
Page 12 of 34

(2) "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

(T) "Sale at retail," "retail sale."

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone

Ordinance No. _____
Page 13 of 34

service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use.

(f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(2) "Sale at retail" or "retail sale" also means every sale of tangible personal property to persons engaged in any business activity which is taxable under .050(1)(g).

(3) "Sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth

Ordinance No. ____
Page 14 of 34

excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services, except telephone business and cable service, by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of

Ordinance No. ____
Page 15 of 34

one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(4) "Sale at retail" or "retail sale" shall also include the providing of competitive telephone service to consumers.

(5) (a) "Sale at retail" or "retail sale" shall also include the sale of prewritten software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user. For purposes of this subsection (5)(a) the sale of the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

The term "sale at retail" or "retail sale" does not include the sale of or charge made for:

- (i) Custom software; or
- (ii) The customization of prewritten software.

Ordinance No. _____
 Page 16 of 34

(b) (i) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(ii) (A) The service described in (b)(i) of this subsection 5 includes the right to access and use prewritten software to perform data processing.

(B) For purposes of this subsection (b)(ii) "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

(6) "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state, the State of Washington, or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind. (Public road construction)

(7) "Sale at retail" or "retail sale" shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is

Ordinance No. _____
Page 17 of 34

included in the sales price of the tangible personal property covered by the agreement.

(8) "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation (government contracting).

(9) "Sale at retail" or "retail sale" shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(10) "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action.

(11) "Sale at retail" or "retail sale" shall also include the following sales to consumers of digital goods, digital codes, and digital automated services:

(a) Sales in which the seller has granted the purchaser the right of permanent use;

(b) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(c) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(d) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

Ordinance No. ____
Page 18 of 34

A retail sale of digital goods, digital codes, or digital automated services under this subsection includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(12) "Sale at retail" or "retail sale" shall also include the installing, repairing, altering, or improving of digital goods for consumers.

(U) "Sale at wholesale," "wholesale sale" means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer software, or services described in section 5(T)(b)(i), which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of telephone business to another telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

(V) "Services." At such time as chapter 82.04 RCW defines "services," that definition shall apply. Until such time as chapter 82.04 RCW shall define "services," "services" means all business activities not defined elsewhere in this section.

(W) "Taxpayer" means any "person", as herein defined, required to have a business license under this chapter or liable for the collection of any tax or fee under this chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this chapter.

Ordinance No. ____
Page 19 of 34

(X) "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer.

(Y) "Value of products."

(1) The value of products, including by-products, extracted or manufactured, shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or by-products by the seller.

(2) Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, are shipped, transported or transferred out of the City, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The Director may prescribe rules for the purpose of ascertaining such values.

(3) Notwithstanding subsection (2) above, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond to (a) the retail selling price of such

Ordinance No. ____
Page 20 of 34

new or improved product when first offered for sale; or (b) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(Z) "Wholesaling" means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

Sec. 6. Imposition of the tax - tax or fee levied.

(1) Except as provided in subsection (2) of this section, there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the City, whether the person's office or place of business be within or without the City. The tax shall be in amounts to be determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

(a) Upon every person engaging within the City in business as an extractor; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, extracted within the city for sale or for commercial or industrial use, multiplied by the rate of two tenths of one percent. The measure of the tax is the value of the products, including by-products, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(b) Upon every person engaging within the City in business as a manufacturer, as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured within the city, multiplied by the rate of two-tenths of one percent (.2%). The measure of the tax is the value of the products, including by-products, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(c) Upon every person engaging within the City in the business of making sales at wholesale, except persons taxable under subsection 2 of this section; as to such persons, the amount of tax with respect to such business shall be equal

Ordinance No. ____
Page 21 of 34

to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of two-tenths of one percent (.2%).

(d) Upon every person engaging within the City in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business, without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of two-tenths of one percent (.2%).

(e) Upon every person engaging within the City in the business of (i) printing, (ii) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (iii) publishing newspapers, magazines and periodicals, (iv) extracting for hire, and (v) processing for hire; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of two-tenths of one percent (.2%).

(f) Upon every person engaging within the City in the business of making sales of retail services; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales multiplied by the rate of two-tenths of one percent (.2%).

(g) Upon every other person engaging within the City in any business activity other than or in addition to those enumerated in the above subsections; as to such persons, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of two-tenths of one percent (.2%). This subsection includes, among others, and without limiting the scope hereof (whether or not title to material used in the performance of such business passes to another by accession, merger or other than by outright sale), persons engaged in the business of developing, or producing custom software or of customizing canned software, producing royalties or commissions, and persons engaged in the business of rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service.

Ordinance No. ____
Page 22 of 34

(2) The gross receipts tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted within the City during any calendar year is equal to or less than \$50,000.

Sec. 7. Multiple activities credit when activities take place in one or more cities with eligible gross receipt taxes.

(1) Persons who engage in business activities that are within the purview of two (2) or more subsections of section 6 of this Ordinance shall be taxable under each applicable subsection.

(2) Notwithstanding anything to the contrary herein, if imposition of the City's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the City's tax, and still apply the City tax to as much of the taxpayer's activities as may be subject to the City's taxing authority.

(3) To take the credit authorized by this section, a taxpayer must be able to document that the amount of tax sought to be credited was paid upon the same gross receipts used in computing the tax against which the credit is applied.

(4) Credit for persons that sell in the City products that they extract or manufacture. Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid (a) with respect to the manufacturing of the products sold in the City, and (b) with respect to the extracting of the products, or the ingredients used in the products, sold in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(5) Credit for persons that manufacture products in the City using ingredients they extract. Persons taxable under the manufacturing classification with respect to manufacturing

Ordinance No. ____
Page 23 of 34

products in this City shall be allowed a credit against those taxes for any eligible gross receipts tax paid with respect to extracting the ingredients of the products manufactured in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(6) Credit for persons that sell within the City products that they print, or publish and print. Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid with respect to the printing, or the printing and publishing, of the products sold within the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

Sec. 8. Deductions to prevent multiple taxation of manufacturing activities and prior to January 1, 2008, transactions involving more than one city with an eligible gross receipts tax.

(1) Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. For taxes due prior to January 1, 2008, a taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

(a) A taxpayer that has paid an eligible gross receipts tax, with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the City.

(b) Notwithstanding the above, a person that is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill shall assign those gross receipts to the jurisdiction where the person is domiciled (its headquarters is located).

Ordinance No. ____
Page 24 of 34

(c) A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to the contract price used to measure the tax due to the other city from the measure of the tax owed to the City.

(2) Person manufacturing products within and without. A person manufacturing products within the City using products manufactured by the same person outside the City may deduct from the measure of the manufacturing tax the value of products manufactured outside the City and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

Sec. 9. Assignment of gross income derived from intangibles. Gross income derived from the sale of intangibles such as royalties, trademarks, patents, or goodwill shall be assigned to the jurisdiction where the person is domiciled (its headquarters is located).

Sec. 10. Allocation and apportionment of income when activities take place in more than one jurisdiction. Effective January 1, 2008, gross income, other than persons subject to the provisions of chapter 82.14A RCW, shall be allocated and apportioned as follows:

(1) Gross income derived from all activities other than those taxed as service or royalties under section 6(1)(g) of this Ordinance shall be allocated to the location where the activity takes place.

(2) In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

(3) In the case of sales of digital products, the activity takes place where delivery to the buyer occurs. The delivery of digital products will be deemed to occur at:

(a) The seller's place of business if the purchaser receives the digital product at the seller's place of business;

Ordinance No. ____
Page 25 of 34

(b) If not received at the seller's place of business, the location where the purchaser or the purchaser's donee, designated as such by the purchaser, receives the digital product, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(c) If the location where the purchaser or the purchaser's donee receives the digital product is not known, the purchaser's address maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(d) If no address for the purchaser is maintained in the ordinary course of the seller's business, the purchaser's address obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

(e) If no address for the purchaser is obtained during the consummation of the sale, the address where the digital good or digital code is first made available for transmission by the seller or the address from which the digital automated service or service described in RCW 82.04.050 (2)(g) or (6)(b) was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(4) If none of the methods in subsection section 10(3) of this Ordinance for determining where the delivery of digital products occurs are available after a good faith effort by the taxpayer to apply the methods provided in subsections 10(3)(a) through 10(3)(e) of this Ordinance, then the city and the taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of income from the sale of digital products. The taxpayer will be responsible for petitioning the city to use an alternative method under this subsection 10(4). The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in subsections section 10(3)(a) through 10(3)(e) are not available and the taxpayer and the city are unable to mutually agree on an alternative method to effectuate

Ordinance No. ____
Page 26 of 34

an equitable allocation of income from the sale of digital products.

(5) For purposes of subsections 10(3)(a) through 10(3)(e), "Receive" has the same meaning as in RCW 82.32.730.

(6) Gross income derived from activities taxed as services and other activities taxed under section (1)(g) of this ordinance shall be apportioned to the city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two.

(a) The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:

(i) The individual is primarily assigned within the city;

(ii) The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent or more of his or her service for the tax period in the city; or

(iii) The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent or more of his or her service in any city and the employee resides in the city.

(b) The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if:

(i) The customer location is in the city;
or

(ii) The income-producing activity is performed in more than one location and a greater proportion of

Ordinance No. ____
Page 27 of 34

the service-income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or

(iii) The service-income-producing activity is performed within the City, and the taxpayer is not taxable in the customer location.

(c) If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer does business, the taxpayer may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, that one of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable:

(i) Separate accounting;

(ii) The use of a single factor;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(7) The definitions in this subsection apply throughout this section.

(a) "**Apportionable income**" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

(b) "**Compensation**" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included

Ordinance No. ____
Page 28 of 34

in the individual's gross income under the federal internal revenue code.

(c) "**Individual**" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(d) "**Customer location**" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.

(e) "**Primarily assigned**" means the business location of the taxpayer where the individual performs his or her duties.

(f) "**Service-taxable income**" or "**service income**" means gross income of the business subject to tax under either the service or royalty classification.

(g) "**Tax period**" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

(h) "**Taxable in the customer location**" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.

(8) Assignment or apportionment of revenue under this Section shall be made in accordance with and in full compliance with the provisions of the interstate commerce clause of the United States Constitution where applicable.

Sec. 11. Allocation and apportionment of printing and publishing income when activities take place in more than one

Ordinance No. _____
Page 29 of 34

jurisdiction. Notwithstanding RCW 35.102.130, effective January 1, 2008, gross income from the activities of printing, and of publishing newspapers, periodicals, or magazines, shall be allocated to the principal place in this state from which the taxpayer's business is directed or managed. As used in this section, the activities of printing, and of publishing newspapers, periodicals, or magazines, have the same meanings as attributed to those terms in RCW 82.04.280(1) by the department of revenue.

Sec. 12. Exemptions.

(1) Public utilities. This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of chapter 3.68 DMMC.

(2) Investments - dividends from subsidiary corporations. (a) This chapter shall not apply to amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations.

(3) Insurance business. This chapter shall not apply to amounts received by any person who is an insurer or their appointed insurance producer upon which a tax based on gross premiums is paid to the state pursuant to RCW 48.14.020, and provided further, that the provisions of this subsection shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor.

(4) Employees.

(a) This chapter shall not apply to any person in respect to the person's employment in the capacity as an employee or servant as distinguished from that of an independent contractor. For the purposes of this subsection, the definition of employee shall include those persons that are defined in the Internal Revenue Code, as hereafter amended.

Ordinance No. ____
Page 30 of 34

(b) A booth renter is an independent contractor for purposes of this chapter.

(5) Amounts derived from sale of real estate. This chapter shall not apply to gross proceeds derived from the sale of real estate. This, however, shall not be construed to allow an exemption of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions. This chapter shall also not apply to amounts received for the rental of real estate if the rental income is derived from a contract to rent for a continuous period of thirty (30) days or longer.

(6) Mortgage brokers' third-party provider services trust accounts. This chapter shall not apply to amounts received from trust accounts to mortgage brokers for the payment of third-party costs if the accounts are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions.

(7) Amounts derived from manufacturing, selling or distributing motor vehicle fuel. This chapter shall not apply to the manufacturing, selling, or distributing motor vehicle fuel, as the term "motor vehicle fuel" is defined in RCW 82.36.010 and exempt under RCW 82.36.440, provided that any fuel not subjected to the state fuel excise tax, or any other applicable deduction or exemption, will be taxable under this chapter.

(8) Amounts derived from liquor, and the sale or distribution of liquor. This chapter shall not apply to liquor as defined in RCW 66.04.010 and exempt in RCW 66.08.120.

(9) Casual and isolated sales. This chapter shall not apply to the gross proceeds derived from casual or isolated sales.

(10) Accommodation sales. This chapter shall not apply to sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to the vendor in the acquisition of the article and (2) the sale is made as an accommodation to

Ordinance No. ____
Page 31 of 34

the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen days to reimburse in kind a previous accommodation sale by the buyer to the seller.

(11) Taxes collected as trust funds. This chapter shall not apply to amounts collected by the taxpayer from third parties to satisfy third party obligations to pay taxes such as the retail sales tax, use tax, and admission tax.

(12) New business exemption established. An exemption to the Business and Occupation Tax is hereby established for businesses applying for their initial business license, with their principal place of business in the City between October 1, 2012 and December 31, 2015. Said new businesses shall receive an exemption for the total Business and Occupation tax due at each filing, for a period of three (3) years or twelve (12) consecutive quarters from said business' date of inception. The quarter within which the business license is granted shall be counted as the first quarter.

Sec. 13. Deductions. In computing the license fee or tax, there may be deducted from the measure of tax the following items:

(1) Receipts from tangible personal property delivered outside the State. In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is delivered by the seller to the buyer or the buyer's representative at a location outside the State of Washington.

(2) Cash discount taken by purchaser. In computing tax, there may be deducted from the measure of tax the cash discount amounts actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extracting or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the "value of product" provisions.

(3) Credit losses of accrual basis taxpayers. In computing tax, there may be deducted from the measure of tax the

Ordinance No. _____
Page 32 of 34

amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis.

(4) Constitutional prohibitions. In computing tax, there may be deducted from the measure of the tax amounts derived from business which the City is prohibited from taxing under the Constitution of the State of Washington or the Constitution of the United States.

(5) Receipts From the Sale of Tangible Personal Property and Retail Services Delivered Outside the City but Within Washington. Effective January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer's representative outside the City but within the State of Washington may be deducted from the measure of tax under the retailing, retail services, or wholesaling classification.

(6) Professional employer services. In computing the tax, a professional employer organization may deduct from the calculation of gross income the gross income of the business derived from performing professional employer services that is equal to the portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement.

(7) Interest on investments or loans secured by mortgages or deeds of trust. In computing tax, to the extent permitted by chapter 82.14A RCW, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on non-transient residential properties.

Sec. 14. Tax part of overhead. It is not the intention of this chapter that the taxes or fees herein levied upon persons engaging in business be construed as taxes or fees upon the purchasers or customer, but that such taxes or fees shall be levied upon, and collectible from, the person engaging

Ordinance No. ____
Page 33 of 34

in the business activities herein designated and that such taxes or fees shall constitute a part of the cost of doing business of such persons.

Sec. 15. Repealer. The previously codified provisions of chapter 3.84 DMMC and sections 1-33 of Ordinance No. 1355 as amended by sections 1 through 14 of Ordinance No. 1416 as amended by sections 1 through 11 of Ordinance No. 1417 as amended by Ordinance No. 1548 (uncodified) are each repealed and replaced as amended by this Ordinance.

Sec. 16. 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. 17. Savings clause. Chapter 3.84 DMMC, which is repealed and replaced by this Ordinance, shall remain in force and effect until the effective date of this Ordinance.

Sec. 18. 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 _____, 2012 and signed in authentication thereof this ____ day of _____, 2012.

M A Y O R

APPROVED AS TO FORM:

City Attorney

Ordinance No. _____
Page 34 of 34

ATTEST:

City Clerk

Published: _____

COMMENTS

DRAFT ORDINANCE NO. 12-196 B&O TAX - ADOPTED

Sec. No.:	Comment:
Sec. 3	Legislative intent information: This section implements Washington Constitution Article XI, Sec. 12 and RCW 35A.82.020 and 35A.11.020 (code cities); 35.22.280(32) (first class cities); RCW 35.23.440(8) (second class cities); 35.27.370(9) (fourth class cities and towns), which give municipalities the authority to license for revenue. In the absence of a legal or constitutional prohibition, municipalities have the power to define taxation categories as they see fit in order to respond to the unique concerns and responsibilities of local government. See <u>Enterprise Leasing v. City of Tacoma</u> , 139 Wn.2d 546 (1999). It is intended that this model ordinance be uniform among the various municipalities adopting it.
Sec. 5(A)	Mandatory.
Sec. 5(B)	Mandatory.
Sec. 5(D)	Mandatory.
Sec. 5(E)	Mandatory.
Sec. 5(F)	Mandatory.
Sec. 5(G)(5)	Mandatory. This definition is worded slightly different from the state's definition (RCW 82.04.440) in that it goes into more detail in describing what constitutes an eligible gross receipts tax. In addition, it makes it very clear that an eligible gross receipts tax for which a credit can be calculated must be imposed at the local level.
Sec. 5(H)(5)	Mandatory. Section (2) has been added to the State's definition of engaging in business to give guidelines and parameters to businesses in order for them to better ascertain whether or not they need to license and pay tax to the cities.
Sec. 5(I)	This definition is not contained in state law; however, RCW 35.102.120 requires that the model ordinance include this definition.]
Sec. 5(L)	Mandatory.
Sec. 5(M)	Mandatory.
Sec. 5(N)	Mandatory unless you don't tax manufacturing activities. This definition is not contained in state law, however RCW 35.102.120 requires that the model ordinance include this definition]
Sec. 5(O)	Mandatory. A business not located in this City that is the owner of materials or ingredients processed for it in this City by a processor for hire shall be deemed to be engaged in business as a manufacturer in this City.) Optional Comment: This definition differs from that found in RCW 82.04.110. The manufacturing vs. processing for hire language

	has been included within this definition rather than covered by rule as provided in RCW 82.04.110. The optional portion of this definition is different from the RCW in that the RCW allows for the owner of materials that are processed in Washington to be excluded as a manufacturer. It is presumed that the RCW was written in this way to encourage material owners to bring their materials into Washington to be processed by Washington processors for hire. The State chooses to forego the tax that the owner would pay on the value of the materials under the manufacturing classification. The aluminum and nuclear fuel assembly provisions were excluded since no B & O city contains these types of activities.
Sec. (5)(O) 2nd Paragraph	Mandatory. Comment: This definition is different from RCW 82.04.120. The cutting, delimiting, and measuring of felled, cut, or taken trees does not usually take place within cities so that was deleted. The RCW also states that some activities which are covered in other special taxing classifications at the State level are not manufacturing. Although some of these activities normally do not take place in cities we included them into manufacturing since they fall within the definition. Manufacturing activities covered in other tax classifications at the State level such as slaughtering, curing, preserving, or canning were included in this definition since the Cities do not have the other classifications.
Sec. 5(P)	Mandatory.
Sec. 5(Q)	Mandatory. This definition is not contained in state law, however RCW 35.102.120 requires that the model ordinance include this definition.
Sec. 5(R)(8)	Mandatory. This definition has been removed and separated from the definition of “sale at retail” since many cities have kept these activities taxable at a rate different from their “retailing” rate. The State changed these activities to retail from service a few decades ago. This separation of definitions enables those cities that have historically taxed retail sales and retail services at a different rate to continue to do so. The definition includes more examples under the amusement and recreation subsection than States definition and these examples originated from the State’s rule on amusement and recreation.
Sec. 5(S)(2)	The term “routine or continuous” comes from WAC 458-20-106.
Sec. 5(T)(4)	Cities can only include “competitive telephone service” since telephone business is taxed under the utility tax.
Sec. 5(T)(9)	This should be reported under the service and other classification.
Sec. 5(T)(10)	This should be reported under the service and other classification.
Sec. 5(T)(12)	Mandatory. Comment: This definition is different than RCW 82.04.050. Retail services have been given their own definition. Public road construction and government contracting has been included into this definition since the Cities do not have special tax classifications for those two activities. Environmental or nuclear waste cleanup are assigned to the service and other classification. And the sales to farmers will remain under the retailing classification. The reference to

	“telephone business and cable service” in subsection (3)(f) has been included to clarify to hotels and motels that such telephone services and cable services are taxable under the utility tax.
Sec. 5(U)	Mandatory. The last sentence must be included since telephone business would normally be taxed under the utility tax. The wholesale treatment of telephone business to another telecommunications company is dictated by State law.
Sec. 5(V)	RCW 35.102.120 requires that the model ordinance include this definition. However, no explicit definition will be included in this Model Ordinance until the RCW contains a definition of “service”. In the absence of a definition of “service” in state law, the Cities generally use this term and classification to include those activities that do not fall within one of the other tax classifications used by a city.
Sec. 5(X)	Mandatory if you have a manufacturing tax.
Sec. 5(Y)(3)	This definition is slightly different than that contained in RCW 82.04.450. The meaning is intended to be the same, and the only difference is in grammatical construction. The model also adds a sentence, taken from WAC 458-20-112, at the end of subsection (2) explaining the use of costs to ascertain the value of the products. Mandatory if you have manufacturing or extracting tax.
Sec. 5(Z)	Mandatory. This definition is not contained in state law, however RCW 35.102.120 requires that the model ordinance include this definition.
Sec. 6(1)(g)	Most cities do not use all of the classifications listed above, so they need only adopt those that are imposed within their jurisdictions. Mandatory wording for those classifications that are adopted.
Sec. 6(2)	Mandatory. Legislative intent information: This “super-nexus” section is repealed to reflect changes effective January 1, 2008, when allocation and apportionment provisions in section .077 took effect for city B&O taxes. The intent is that this change would not affect any rights under contracts executed for periods under the old language prior to the change.
Sec. 7(6)	Mandatory. The wording in this section .070 is not quite the same as RCW 35.102.060 (1). Subsection (1) is the same as (a) in RCW 35.102.060. Subsection (2) has the same meaning although the cities add the last phrase that the tax will be subjected to the greatest extent possible. Subsection (3) is not included in RCW 35.102.060—it merely states that the taxpayer must have records or proof that it paid another eligible gross receipts tax to another local jurisdiction. In the case of manufacturing products that have been partially manufactured in another location with an eligible gross receipt tax, the cities have chosen to give a deduction and only tax the incremental increase in the value of the product. This should provide an equal or better treatment to the manufacturer than the credit provision contained in RCW 35.102.060 (1)(d). (Refer to subsection .075(2) below.)

	<p>Legislative intent information: This section provides a tax credit for taxpayers engaged in multiple taxable activities. The section provides a credit against eligible selling or manufacturing taxes imposed by the City for extracting or manufacturing taxes paid to the City or to any other local jurisdiction with respect to the same products. The tax credit does not depend upon whether a person that sells in the City extracts or manufactures in the City or in another jurisdiction to which it has paid an eligible gross receipts tax. The tax credit does not depend on whether a person that manufactures in the City extracts in the City or in another jurisdiction to which it has paid an eligible gross receipts tax. The credit is available to any person that pays an eligible gross receipts tax on the applicable activities, regardless of where it conducts business. The result of this section is that a city in which selling takes place gives up the tax to the manufacturing jurisdiction and the manufacturing jurisdiction gives up the tax to the extracting jurisdiction, whether those jurisdictions are inside or outside the State of Washington.</p>
Sec. 8(1)(c)	<p>Mandatory. Legislative intent information: This section establishes deductions to be applied when a single taxable activity is taxable by more than one jurisdiction that imposes an eligible gross receipts tax for taxes due prior to January 1, 2008. Prior to January 1, 2008, under Washington State Law, more than one city that has established nexus can include 100% of the gross receipts from that transaction in its tax base. However, to eliminate the possibility of the same sale or service being taxed more than once by cities that maintain nexus and an eligible gross receipts tax, the cities have provided this deduction to taxpayers. For taxes due after January 1, 2008, the apportionment provisions in section .077 will provide the mechanism for all activities except manufacturing.</p> <p><u>Sales.</u> A taxpayer that has paid an eligible gross receipts tax on the sale to the jurisdiction where the product is delivered may deduct the gross receipts used to measure that tax from the measure of the tax owed to another jurisdiction on the sale. If a taxpayer has not paid tax to the jurisdiction where the product is delivered, then no deduction is allowed. The sale shall be taxed by the city where the office or place of business that generated the sale is located.</p> <p><u>Service.</u> A taxpayer that has paid an eligible gross receipts tax on services to the jurisdiction where the service is performed may deduct the gross receipts used to measure that tax from the measure of the tax owed to another jurisdiction on that service. If a taxpayer has not paid tax to the jurisdiction where the service is performed, then the service income shall be taxed by the city where the office or place of business that generated the sale is located. For both sales and services, the order of taxing rights is delivery city, first; and business office location,</p>

	<p>second.</p> <p><u>General Business Activities Other Than Services.</u> The eligible gross receipts tax on income derived from intangibles such as royalties, licenses, trademarks, patents and goodwill, and reportable under the general business classification .050 (7), shall be assigned to the domicile/headquarters office.</p> <p><u>Conducting Business With Another City.</u> A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with a city may deduct the contract price used to measure the tax from the measure of the tax owed to another city on the same activity.</p>
Sec. 8(2)	Mandatory.
Sec. 10(8)	<p>Mandatory – Effective January 1, 2008.</p> <p>Legislative intent information: This section is required by RCW 35.102.130 and provides allocation and apportionment formulas to be applied when a single taxable activity takes place in more than one jurisdiction, whether or not that jurisdiction imposes a gross receipts tax. A definition of delivery has been added in section .030. Retail services will be allocated to where the activity takes place. Digital goods will be allocated according to the new factors set out in RCW 35.102.130, as amended.</p>
Sec. 11.	<p>Legislative intent information: This section is required by RCW 35.102.150 and provides that printing and publishing income shall be allocated to the city in which taxpayer's business is directed or managed. This section is not mandatory for the model ordinance, but the tax treatment is required by RCW 35.102.150.</p>
Sec. 12(7)	Mandatory.
Sec. 12(8)	Mandatory.
Sec. 13(1)	Mandatory.
Sec. 13(4)	Mandatory.
Sec. 13(6)	<p>Legislative intent information Subsection (6) is required by RCW 35.102.160 and provides that professional employer organizations may deduct the portion of fees for actual costs of employee wages and other benefits and taxes from gross income. This deduction is not mandatory for the model ordinance, but the tax treatment is required by RCW 35.102.160 and is taken from RCW 82.04.540(2).</p>

CITY ATTORNEY'S FIRST DRAFT 11/14/2012

DRAFT ORDINANCE NO. 12-197

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to finance, adding a new chapter 3.85 to Title 3 DMMC, providing for administrative procedures, setting administrative fees, prescribing penalties for noncompliance with the provisions of chapters 3.84 and 3.85 DMMC, and codifying a new chapter 3.85 DMMC entitled "*Business and Occupation Tax - Administrative Provisions*".

WHEREAS, state law requires that, effective January 1, 2005, all cities levying or planning to levy a general business and occupation tax must revise their ordinances or adopt ordinances consistent with the model ordinance for municipal gross receipts business and occupation tax created through the Washington Association of Cities ("AWC"), and

WHEREAS, the City enacted Ordinance No. 1355, adopting AWC's model ordinance provisions effective January 2005, and establishing businesses licensing and other requirements which are set forth in Titles 3 and 5 of the Des Moines Municipal Code, and

WHEREAS, the City enacted Ordinance No. 1417 on November 29, 2007, adopting AWC's 2007 revised model ordinance provisions effective January 2008, and

WHEREAS, AWC recently updated its model ordinance for municipal gross receipts business and occupation tax to reflect changes made to state law since 2008; now, therefore,

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

Sec. 1. Adoption and purpose. A new chapter 3.85 is hereby adopted, providing for administrative procedures for the Business and Occupation Tax as codified in chapter 3.84 DMMC, setting administrative fees and prescribing penalties for noncompliance with the provisions of this chapter.

Sec. 2. Application of chapter stated. The provisions of this chapter shall apply with respect to the taxes imposed under chapter 3.84 DMMC and under other titles,

ATTACHMENT 2

Ordinance No. _____
Page 2 of 24

chapters, and sections in such manner and to such extent as indicated in each such title, chapter or section.

Sec. 3. Definitions. For purposes of this chapter, the definitions contained in chapter 3.84 shall apply equally to the provisions of this chapter unless the term is defined otherwise in this chapter. In addition, the following definitions will apply.

(1) **"Director"** means the Finance Director of the City or any officer, agent or employee of the City designated by the City Manager to act on the Director's behalf.

(2) **"Reporting period"** means:

(a) A one-month period beginning the first day of each calendar month (monthly); or

(b) A three-month period beginning the first day of January, April, July or October of each year (quarterly); or

(c) A twelve-month period beginning the first day of January of each year (annual).

(3) **"Return"** means any document a person is required by the City to file to satisfy or establish a tax or fee obligation that is administered or collected by the City and that has a statutorily defined due date.

(4) **"Successor"** means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

(5) **"Tax year," "taxable year"** means the calendar year.

Sec. 4. Definitions -- References to Chapter 82.32 RCW. Where provisions of chapter 82.32 RCW are incorporated in

Ordinance No. _____
 Page 3 of 24

section 12 of this Ordinance, "Department" as used in the RCW shall refer to the "Director" as defined in section 3 of this Ordinance and "warrant" as used in the RCW shall mean "citation or criminal complaint."

Sec. 5. Registration/license requirements. Every person who engages in business activities within the City shall register for and obtain a business license from the City as required in Title 5 DMMC.

Sec. 6. Registration/license certificates. Every person who engages in soliciting as defined in DMMC 5.08.010 from persons in residences or businesses within the City shall register and receive a certificate of registration from the City as required in chapter 5.08 DMMC.

Sec. 7. When due and payable - Reporting periods - Monthly, quarterly, and annual returns - Threshold provisions or Relief from filing requirements - Computing time periods - Failure to file returns.

(1) Other than any annual license fee or registration fee assessed under this chapter, the tax imposed by this chapter shall be due and payable in quarterly installments. At the Director's discretion, businesses may be assigned to a monthly or annual reporting period depending on the tax amount owing or type of tax. Tax payments are due on or before the last day of the next month following the end of the assigned reporting period covered by the return.

(2) Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the Director. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is complete and true.

(3) Tax returns must be filed and returned by the due date whether or not any tax is owed.

(4) For purposes of the tax imposed by chapter 3.84 DMMC, any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all

Ordinance No. _____
Page 4 of 24

allowable deductions, is equal to or less than \$50,000 in the current calendar year shall file a return, declare no tax due on their return, and submit the return to the Director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.

(5) A taxpayer that commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in business activity.

(6) Except as otherwise specifically provided by any other provision of this chapter, in computing any period of days prescribed by this chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or City or Federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or City or Federal legal holiday.

(7) If any taxpayer fails, neglects or refuses to make a return as and when required in this chapter, the Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the Director's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the City by the taxpayer. The Director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

Sec. 8. Payment methods - Mailing returns or remittances - Time extension - Deposits - Recording payments - Payment must accompany return - NSF checks.

(1) Taxes shall be paid to the Director in United States currency by bank draft, certified check, cashier's check, personal check, money order, cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the Director. If payment so received is not paid by the bank on which it is drawn, the taxpayer, by whom such payment is tendered, shall remain liable for payment of the

Ordinance No. _____
Page 5 of 24

tax and for all legal penalties, the same as if such payment had not been tendered. Acceptance of any sum by the Director shall not discharge the tax or fee due unless the amount paid is the full amount due.

(2) A return or remittance that is transmitted to the City by United States mail shall be deemed filed or received on the date shown by the cancellation mark stamped by the Post Office upon the envelope containing it. The Director may allow electronic filing of returns or remittances from any taxpayer. A return or remittance which is transmitted to the City electronically shall be deemed filed or received according to procedures set forth by the Director.

(3) If a written request is received prior to the due date, the Director, for good cause, may grant, in writing, additional time within which to make and file returns.

(4) The Director shall keep full and accurate records of all funds received or refunded. The Director shall apply payments first against all penalties and interest owing, and then upon the tax, without regard to any direction of the taxpayer.

(5) For any return not accompanied by a remittance of the tax shown to be due thereon, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the penalties and interest provided in this chapter.

(6) Any payment made that is returned for lack of sufficient funds or for any other reason will not be considered received until payment by certified check, money order, or cash of the original amount due, plus a "non-sufficient funds" (NSF) charge of forty dollars (\$40.00) is received by the Director. Any license issued upon payment with a NSF check will be considered void, and shall be returned to the Director. No license shall be reissued until payment [including the forty dollars (\$40.00) NSF fee] is received.

(7) The Director is authorized, but not required, to mail tax return forms to taxpayers, but failure of the taxpayer to receive any such forms shall not excuse the taxpayer from

Ordinance No. _____
Page 6 of 24

filing returns and making payment of the taxes or fees, when and as due under this chapter.

Sec. 9. Records to be preserved - Examination - Estoppel to question assessment. Every person liable for any fee or tax imposed by this chapter shall keep and preserve, for a period of five (5) years after filing a tax return, such records as may be necessary to determine the amount of any fee or tax for which the person may be liable; which records shall include copies of all federal income tax and state tax returns and reports made by the person. All books, records, papers, invoices, vendor lists, inventories, stocks of merchandise, and other data including federal income tax and state tax returns and reports shall be open for examination at any time by the Director or its duly authorized agent. Every person's business premises shall be open for inspection or examination by the Director or a duly authorized agent.

(1) If a person does not keep the necessary books and records within the City, it shall be sufficient if such person (a) produces within the City such books and records as may be required by the Director, or (b) bears the cost of examination by the Director's agent at the place where such books and records are kept; provided that the person electing to bear such cost shall pay in advance to the Director the estimated amount thereof including round-trip fare, lodging, meals and incidental expenses, subject to adjustment upon completion of the examination.

(2) Any person who fails, or refuses a Department request, to provide or make available records, or to allow inspection or examination of the business premises, shall be forever barred from questioning in any court action, the correctness of any assessment of taxes made by the City for any period for which such records have not been provided, made available or kept and preserved, or in respect of which inspection or examination of the business premises has been denied. The Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the estimate of the tax or fees due. Such fee or tax assessment shall be deemed prima facie correct and shall be the amount of tax owing the City by the taxpayer. The Director shall notify the taxpayer by mail the amount of tax so

Ordinance No. _____
Page 7 of 24

determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

Sec. 10. Accounting methods.

(1) A taxpayer may file tax returns in each reporting period with amounts based upon cash receipts only if the taxpayer's books of account are kept on a cash receipts basis. A taxpayer that does not regularly keep books of account on a cash receipts basis must file returns with amounts based on the accrual method.

(2) The taxes imposed and the returns required hereunder shall be upon a calendar year basis.

Sec. 11. Public work contracts - Payment of fee and tax before final payment for work. The Director may, before issuing any final payment to any person performing any public work contract for the City, require such person to pay in full all license fees or taxes due under this title from such person on account of such contract or otherwise, and may require such taxpayer to file with the Director a verified list of all subcontractors supplying labor and/or materials to the person in connection with said public work.

Sec. 12. Underpayment of tax, interest, or penalty - Interest.

(1) If, upon examination of any returns, or from other information obtained by the Director, it appears that a tax or penalty less than that properly due has been paid, the Director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The Director shall notify the person by mail of the additional amount, which shall become due and shall be paid within thirty (30) days from the date of the notice, or within such time as the Director may provide in writing.

(2) (a) For tax periods prior to December 31, 2004, the Director shall compute interest in accordance with RCW 82.32.050 as it now exists or as it may be amended.

Ordinance No. _____
 Page 8 of 24

(b) For tax periods after December 31, 2004 the Director shall compute interest in accordance with RCW 82.32.050 as it now exists or as it may be amended.

(c) If section 2(b) of this Ordinance is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this Ordinance shall apply.

Sec. 13. Time in which assessment may be made. The Director shall not assess, or correct an assessment for, additional taxes, penalties, or interest due more than four years after the close of the calendar year in which they were incurred, except that the Director may issue an assessment:

(1) Against a person who is not currently registered or licensed or has not filed a tax return as required by this chapter for taxes due within the period commencing 10 years prior to the close of the calendar year in which the person was contacted in writing by the Director;

(2) Against a person that has committed fraud or who misrepresented a material fact; or

(3) Against a person that has executed a written waiver of such limitations.

Sec. 14. Over payment of tax, penalty, or interest - Credit or refund - Interest rate - Statute of limitations.

(1) If, upon receipt of an application for a refund, or during an audit or examination of the taxpayer's records and tax returns, the Director determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer. Except as provided in subsection (2) of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four (4) years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2) The execution of a written waiver shall extend the time for applying for, or making a refund or credit of any taxes

Ordinance No. _____
 Page 9 of 24

paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the Director discovers that a refund or credit is due.

(3) Refunds shall be made by means of vouchers approved by the Director and by the issuance of a City check or warrants drawn upon and payable from such funds as the City may provide.

(4) Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any person shall be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the Director a certified copy of the order or judgment of the court.

(5) (a) For tax periods after December 31, 2004 the Director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060 as it now exists or as it may be amended.

(b) If section 14(5)(a) of this Ordinance is held to be invalid, then the provisions of RCW 82.32.060 existing at the effective date of this Ordinance shall apply.

Sec. 15. Late payment - Disregard of written instructions - Evasion - Penalties.

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the Director by the due date, the Director shall add a penalty in accordance with RCW 82.32.090(1), as it now exists or as it may be amended.

(2) If the Director determines that any tax has been substantially underpaid as defined in RCW 82.32.090(2), there shall be added a penalty in accordance with RCW 82.32.090(2), as it now exists or as it may be amended.

(3) If a citation or criminal complaint is issued by the Director for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty in accordance with RCW 82.32.090(3), as it now exists or as it may be amended.

Ordinance No. _____
Page 10 of 24

(4) If the Director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the Director a license as required by chapter 5.04 DMMC, the Director shall impose a penalty in accordance with RCW 82.32.090(4), as it now exists or as it may be amended. No penalty shall be imposed under this subsection (4) if the person who has engaged in business without a license obtains a license prior to being notified by the Director of the need to be licensed.

(5) If the Director determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty in accordance with RCW 82.32.090(5), as it now exists or as it may be amended.

(6) If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the Director shall assess a penalty in accordance with RCW 82.32.090(6), as it now exists or as it may be amended.

(7) The penalties imposed under subsections (1) through (5) above of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(8) The Director shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

(9) For the purposes of this section, "return" means any document a person is required by the City of Des Moines to file to satisfy or establish a tax or fee obligation that is administered or collected by the City, and that has a statutorily defined due date.

(10) If incorporation into the City of Des Moines Code of future changes to RCW 82.32.090 is deemed invalid, then the provisions of RCW 82.32.090 existing at the time this Ordinance is effective shall apply.

Ordinance No. _____
Page 11 of 24

Sec. 16. Cancellation of penalties.

(1) The Director may cancel any penalties imposed under subsections 14(1) of this Ordinance if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax but was, nevertheless, due to circumstances beyond the taxpayer's control, unable to file or pay by the due date. The Director has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection 15(3).

(2) A request for cancellation of penalties must be received by the Director within 30 days after the date the Department mails the notice that the penalties are due. The request must be in writing and contain competent proof of all pertinent facts supporting a reasonable cause determination. In all cases the burden of proving the facts rests upon the taxpayer.

(3) The Director may cancel the penalties in subsections 15(1) one time if a person:

- (a) Is not currently licensed and filing returns,
- (b) Was unaware of its responsibility to file and pay tax, and
- (c) Obtained business licenses and filed past due tax returns within 30 days after being notified by the Department.

(4) The Director shall not cancel any interest charged upon amounts due.

Sec. 17. Taxpayer quitting business - Liability of successor.

(1) Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due

Ordinance No. _____
Page 12 of 24

and payable. Such taxpayer shall, within ten (10) days thereafter, make a return and pay the tax due.

(2) Any person who becomes a successor shall become liable for the full amount of any tax owing. The successor shall withhold from the purchase price a sum sufficient to pay any tax due to the city from the taxpayer until such time as: a) the taxpayer shall produce a receipt from the City showing payment in full of any tax due or a certificate that no tax is due, or b) more than six (6) months has passed since the successor notified the Director of the acquisition and the Director has not issued and notified the successor of an assessment.

(3) Payment of the tax by the successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due such successor from the taxpayer.

(4) Notwithstanding the above, if a successor gives written notice to the Director of the acquisition, and the Department does not within six (6) months of the date it received the notice issue an assessment against the taxpayer and mail a copy of that assessment to the successor, the successor shall not be liable for the tax.

Sec. 18. Administrative Appeal. Any person, except one who has failed to comply with section 9 of this Ordinance, aggrieved by the amount of the fee or tax determined by the Director to be required under the provisions of this chapter may Optional pay the amount due and appeal from such determination by filing a written notice of appeal with the City Clerk, within 30 days from the date written notice of such amount was mailed to the taxpayer. Pursuant to DMMC 18.94.330, a filing fee shall be submitted with the appeal, which filing fee is required to process the appeal. The City's Hearing Examiner shall, as soon as practical, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the parties. The hearing shall be conducted in accordance with the provisions of chapter 18.94 DMMC. The decision of the Hearing Examiner shall indicate the correct amount of the fee or tax owing.

Ordinance No. _____
Page 13 of 24

Sec. 19. Judicial review of administrative appeal decision. The taxpayer or the City may obtain judicial review of the City's Hearing Examiner's decision by applying for a Writ of Review in the King County Superior Court within ten (10) calendar days from the date of the Hearing Examiner's decision in accordance with the procedure set for in chapter 7.16 RCW, other applicable law, and court rules. The City shall have the same right of review from the administrative decision as does a taxpayer.

Sec. 20. Director to make rules. The Director shall have the power, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this chapter or with law for the purpose of carrying out the provisions of this chapter and it shall be unlawful to violate or fail to comply with, any such rule or regulation.

Sec. 21. Ancillary allocation authority of Director. The Director is authorized to enter into agreements with other Washington cities which impose an "eligible gross receipts tax":

(1) To conduct an audit or joint audit of a taxpayer by using an auditor employed by the City of Des Moines, another city, or a contract auditor, provided, that such contract auditor's pay is not in any way based upon the amount of tax assessed;

(2) To allocate or apportion in a manner that fairly reflects the gross receipts earned from activities conducted within the respective cities the gross proceeds of sales, gross receipts, or gross income of the business, or taxes due from any person that is required to pay an eligible gross receipts tax to more than one Washington city.

(3) To apply the City's tax prospectively where a taxpayer has no office or place of business within the City and has paid tax on all gross income to another Washington city where the taxpayer is located; provided that the other city maintains an eligible gross receipts tax, and the income was not derived from contracts with the City.

Sec. 22. Mailing of notices. Any notice required by this chapter to be mailed to any taxpayer or licensee shall be

Ordinance No. _____
 Page 14 of 24

sent by ordinary mail, addressed to the address of the taxpayer or licensee as shown by the records of the Director. Failure of the taxpayer or licensee to receive any such mailed notice shall not release the taxpayer or licensee from any tax, fee, interest, or any penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this chapter. It is the responsibility of the taxpayer to inform the Director in writing about a change in the taxpayer's address.

Sec. 23. Tax declared additional. The license fee and tax herein levied shall be additional to any license fee or tax imposed or levied under any law or any other ordinance of the City of Des Moines except as herein otherwise expressly provided.

Sec. 24. Public disclosure - Confidentiality - Information sharing.

(1) For purposes of this section, defined terms shall be as set forth in section 3 of this Ordinance:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information.

(b) "Tax information" means:

(i) A taxpayer's identity;

(ii) The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over assessments, or tax payments, whether taken from the taxpayer's books and records or any other source;

(iii) Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or

(iv) Other data received by, recorded by, prepared by, or provided to the City with respect to the determination or the existence, or possible existence, of liability, or the amount thereof, of a person under the Title 3 DMMC for a tax, penalty, interest, fine, forfeiture, or other imposition, or

Ordinance No. _____
Page 15 of 24

offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material or documents so as to permit its disclosure.

(c) "City agency" means every City office, department, division, bureau, board, commission, or other City agency.

(d) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer.

(2) Returns and tax information are confidential and privileged, and except as authorized by this section, neither the Director nor any other person may disclose any return or tax information.

(3) This section does not prohibit the Director from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under Title 3 DMMC if the taxpayer or its officer or other person liable under this title is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding.

(b) Disclosing, subject to such requirements and conditions as the Director prescribes by rules adopted pursuant to section 20 of this ordinance, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a

Ordinance No. _____
Page 16 of 24

request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the Director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(d) Disclosing such return or tax information, for official purposes only, to the mayor or city attorney, or to any City agency, or to any member of the city council or their authorized designees dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(e) Permitting the City's records to be audited and examined by the proper state officer, his or her agents and employees;

(f) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought or where otherwise allowed to be disclosed under this section;

(g) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments

Ordinance No. _____
Page 17 of 24

of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of the City;

(h) Disclosing any such return or tax information to the United States department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United States department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States department of treasury, and the United States department of transportation, or any authorized representative of these federal agencies or their successors, for official purposes;

(i) Publishing or otherwise disclosing the text of a written determination designated by the Director as a precedent pursuant to RCW 82.32.410;

(j) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers and the active/closed status of such registrations, state or local business license registration identification and the active/closed status and effective dates of such licenses, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. Except that this subsection may not be construed as giving authority to the City or any recipient to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(k) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

Ordinance No. _____
Page 18 of 24

(l) Disclosing such return or tax information to the United States department of agriculture, or successor department or agency, for the limited purpose of investigating food stamp fraud by retailers;

(m) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the City for a filed tax warrant, judgment, or lien against the real property;

(n) Disclosing to a person against whom the department has asserted liability as a successor under section 17 of this Ordinance return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

(o) Disclosing real estate excise tax affidavit forms filed under chapter 3.76 DMMC in the possession of the City, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

(p) Disclosing such return or tax information to the court or hearing examiner in respect to the City's application for a subpoena if there is probable cause to believe that the records in possession of a third party will aid the Director in connection with its official duties under this title or a civil or criminal investigation.

(4) (a) The Director may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties under this Title 3 DMMC, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general

Ordinance No. _____
Page 19 of 24

journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the Director must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The Director may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the Director if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The Director must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

Ordinance No. _____
Page 20 of 24

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Service of a subpoena issued by the court or under DMMC 18.94.100 does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena issued by the court or under DMMC 18.94.100 may disclose the existence or content of the subpoena to that person's legal counsel.

(6) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the City and any person acquiring knowledge of any return or tax information as provided under subsection (3) (d), (e), (f), (g), (h), (i), or (k) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in this City for a period of two (2) years thereafter.

Sec. 24. Tax constitutes debt. Any license fee or tax due and unpaid under this chapter, and all interest and penalties thereon, shall constitute a debt to the City of Des Moines and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

Sec. 25 Unlawful actions - Violation - Penalties.

(1) It shall be unlawful for any person liable for fees under this chapter (or other chapters as listed):

(a) To violate or fail to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the Director;

Ordinance No. _____
 Page 21 of 24

(b) To make any false statement on any license application or tax return;

(c) To aid or abet any person in any attempt to evade payment of a license fee or tax;

(d) To fail to appear or testify in response to a subpoena issued pursuant to applicable federal, state or local law;

(e) To testify falsely in any investigation, audit, or proceeding conducted pursuant to this chapter.

(2) Violation of any of the provisions of this chapter is a gross misdemeanor. Any person convicted of a violation of this chapter may be punished by a fine not to exceed \$1,000, imprisonment not to exceed one year, or both fine and imprisonment. Penalties or punishments provided in this chapter shall be in addition to all other penalties provided by law.

(3) Any person, or officer of a corporation, convicted of continuing to engage in business after the revocation of a license shall be guilty of a gross misdemeanor and may be punished by a fine not to exceed \$5,000, or imprisonment not to exceed one year, or both fine and imprisonment.

Sec. 26. Suspension or Revocation of business license or registration.

(1) The Director, or designee, shall have the power and authority to suspend or revoke any license issued under the provisions of Title 5 DMMC. The Director, or designee, shall notify such licensee in writing by certified mail of the suspension or revocation of his or her license and the grounds therefor. Any license issued under Title 5 may be suspended or revoked based on one or more of the following grounds:

(a) The license was procured by fraud or false representation of fact.

(b) The licensee has failed to comply with any provisions of Titles 3 and 5 DMMC.

Ordinance No. _____
Page 22 of 24

(c) The licensee has failed to comply with any provisions of the Des Moines Municipal Code.

(d) The licensee is in default in any payment of any license fee or tax under Titles 3 and 5 DMMC.

(e) The licensee or employee has been convicted of a crime involving the business.

(2) Any licensee may, within ten (10) days from the date that the suspension or revocation notice was mailed to the licensee, appeal from such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the Des Moines City Clerk. A copy of the petition must be provided by the licensee to the Director and the City Attorney on or before the date the petition is filed with the City Clerk. The hearing shall be conducted in accordance with the procedures for hearings set out in chapter 18.94 DMMC. The Hearing Examiner shall set a date for hearing said appeal and notify the licensee by mail of the time and place of the hearing. After the hearing thereon the Hearing Examiner shall, after appropriate findings of fact, and conclusions of law, affirm, modify, or overrule the suspension or revocation and reinstate the license, and may impose any terms upon the continuance of the license.

No suspension or revocation of a license issued pursuant to the provisions of this subchapter shall take effect until 10 days after the mailing of the notice thereof by the Department, and if appeal is taken as herein prescribed the suspension or revocation shall be stayed pending final action by the Hearing Examiner. All licenses which are suspended or revoked shall be surrendered to the City on the effective date of such suspension or revocation.

The decision of the Hearing Examiner shall be final. The licensee and/or the Department may seek review of the decision by the Superior Court of Washington in and for King County within 10 days from the date of the decision. If review is sought as herein prescribed the suspension or revocation shall be stayed pending final action by the Superior Court.

Ordinance No. _____
Page 23 of 24 _____

(3) Upon revocation of any license as provided in this subchapter no portion of the license fee shall be returned to the licensee.

Sec. 27. Closing agreement provisions. The Director may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the chapters within this title and administered by this chapter for any taxable period(s). Upon approval of such agreement, evidenced by execution thereof by the Director and the person so agreeing, the agreement shall be final and conclusive as to the tax liability or tax immunity covered thereby, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the Director or the taxpayer, and

(2) In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

Sec. 28. Charge-off of uncollectible taxes. The Director may charge off any tax, penalty, or interest that is owed by a taxpayer, if the Director reasonably ascertains that the cost of collecting such amounts would be greater than the total amount that is owed or likely to be collected from the taxpayer.

Sec. 29. Codification. Sections 1 through 28 of this Ordinance shall be codified in Title 3 as chapter 3.85 DMMC entitled "*Business and Occupation Tax - Administrative Provisions*".

Sec. 30. Severability - Construction.

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

Ordinance No. _____
Page 24 of 24

(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. 31. 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 _____, 2012 and signed in authentication thereof this _____ day of _____, 2012.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

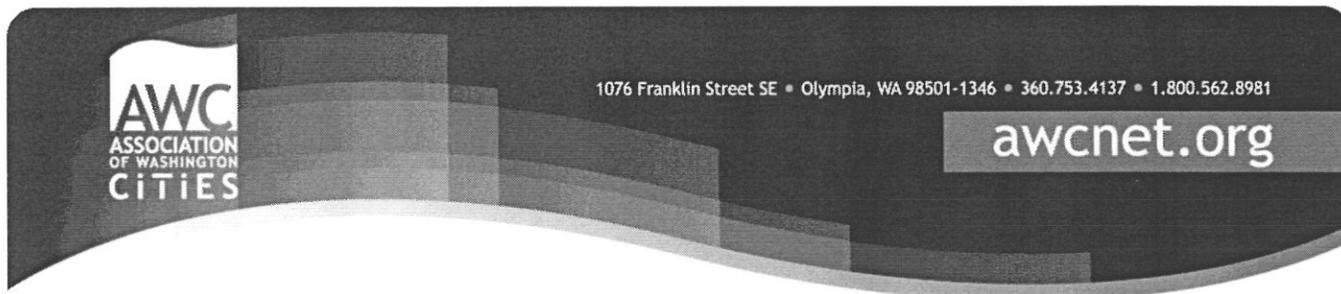
City Clerk

Published: _____

COMMENTS

DRAFT ORDINANCE NO. 12-197 B&O TAX - ADMINISTRATION

Sec. No.	Comment:
Sec. 7(4)	Subsection (4) is mandatory.
Sec. 12(2)	Legislative intent information: Cities have interpreted RCW 35.102 interest provisions to apply prospectively to tax periods after the effective date of the model ordinance. For taxes and interest due for tax periods prior to the effective date of the 2004 ordinance, the cities will apply interest provisions from their own code in effect during that tax period. Subsection (b) permanently links statute to RCW to incorporate 2006 changes and any future changes.
Sec. 14	Legislative intent information: Cities have interpreted RCW 35.102 refund interest provisions to apply prospectively to tax periods after the effective date of the model ordinance. For refund interest due for tax periods prior to the effective date of the 2004 ordinance, the cities will apply refund interest provisions from their own code in effect during that tax period. Subsection (b) permanently links statute to RCW to incorporate 2006 changes and any future changes.
Sec. 14(5)(b)	Mandatory.
Sec. 15(10)	Mandatory.
Sec. 18	Individual cities may adopt provisions similar to these or develop their own procedures. We encourage cities to check with other cities and the RCW. NOTE: The option language above allows the city to demand payment of the amount assessed before any appeal process. If the option is not used, then payment cannot be demanded before the administrative appeal process is completed.



Updates to city Business & Occupation (B&O) Tax – Must be adopted by 40 B&O tax cities by January 1, 2013

What is changing?

In 2003, the Legislature enacted RCW Chapter 35.102, which required cities with local B&O taxes to implement a modified B&O tax model ordinance with certain mandatory provisions. Changes to the model ordinance mandatory provisions must be adopted by cities with the same effective date: January 1, 2013.

A city workgroup met over the summer to revise the model to include changes to RCW 35.102 and other changes in state law since the model was last updated to implement allocation and apportionment provisions in 2008.

There are six changes to the model ordinance and administrative provisions:

1. **Digital Goods Definitions & Apportionment** – Adopt changes required by HB 2620, which amended apportionment in RCW 35.102.130; mirrors changes made to state law in 2009 with adoption of HB 2075 Digital Goods legislation required by Streamlined Sales Tax changes separating digital books, music, and videos from their tangible equivalents.
 - .030 Definitions added for digital automated service and digital products
 - .030 Added digital goods references to other mandatory definitions: gross proceeds of sales, manufacture, retail sale, wholesale sale
 - .077 Updates apportionment for digital goods as a separate classification to mirror treatment under state law – 5 steps in order of priority to determine where delivery to buyer occurs
2. **Board of Director licensing and tax** – (.030) engaging in business definitions clarification: board meeting nexus exclusion applies to the corporation, not the individual board members or consultants attending meetings.
3. **“Super Nexus”** provision repeal – (.060) reflects requirements that allocation and apportionment provisions in RCW 35.102.130 (.077 of model ordinance) should be used for contracts with the city executed after January 1, 2008.
4. **Insurance business preemption** – (.090) moves exemption from Guidelines to Model Ordinance and updates language to reflect preemption of taxation of insurers/appointed insurance producers in RCW 48.14.020(4) and repeal of RCW 48.17.010-020.
 - RCW 48.14.020(4): The state does hereby preempt the field of imposing excise or privilege taxes upon insurers or their appointed insurance producers, other than title insurers, and no county, city, town or other municipal subdivision shall have the right to impose any such taxes upon such insurers or these insurance producers.
5. **First mortgage deduction** – (.100) updates language to refer to state required tax treatment in RCW 82.14A and moves provision from Guidelines to Model Ordinance.
6. **Confidentiality** – (Administrative Provisions .200) Adopts language of state confidentiality provision RCW 82.32.330, reflecting option that cities may adopt under RCW 35.102.145.

Background on the B&O Tax Model Ordinance

There are currently 40 cities that levy a B&O tax on businesses, which is measured by a percentage of the firm's gross receipts.

2000: A group of cities drafted a model ordinance to make local B&O tax provisions more uniform.

2003: The Legislature enacted RCW Chapter 35.102, which required cities with local B&O taxes to:

- Implement a modified B&O tax model ordinance with certain mandatory provisions by December 31, 2004.
 - \$20,000 minimum threshold
 - Specific definitions
 - Penalty and interest provisions
 - Payment periods
- Ensure that double taxation could not occur by implementing mandatory credits; and
- Adopt specific allocation and apportionment of revenues, based on the classification of the activity, effective January 1, 2008.
- Limit updates to the model to every four years, except to comply with state law changes.

2008: The model ordinance was last updated.

- Adopting specific allocation and apportionment of revenues, based on the classification of the activity (RCW35.102.130)
- Exempting newspaper and publishing businesses from apportionment requirements. (RCW 35.102.150)
- Updates to penalties and interest provisions in administrative provisions -- linked to RCW to accommodate any future changes.

For more information

AWC's website:

www.awcnet.org/LegislativeAdvocacy/LegislativeBulletin/MunicipalFinance/MunicipalBO.aspx

AWC is interested in keeping this model ordinance current and relevant, so it provides good guidance for cities. Your comments and feedback are welcome.

Contact: Sheila Gall, sheilag@awcnet.org

**Comparison of Deviations from Core Model B & O Ordinance Provisions
and
City of Des Moines Provisions**

B & O Provision Summary of Changes from Model B & O Ordinance (Draft Ordinance No. 12-196)	
MODEL PROVISION:	CITY'S PROVISION:
.050 Imposition of the tax – tax or fee levied.	Sec. 6(2) The gross receipts tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted within the City during any calendar year is equal to or less than \$50,000.
.100 Exemptions.	<u>Sec. 12(12) New business exemption established. An exemption to the Business and Occupation Tax is hereby established for businesses applying for their initial business license, with their principal place of business in the City between October 1, 2012 and December 31, 2015. Said new businesses shall receive an exemption for the total Business and Occupation tax due at each filing, for a period of three (3) years or twelve (12) consecutive quarters from said business' date of inception. The quarter within which the business license is granted shall be counted as the first quarter.</u>
Summary of Changes from Administration Model Ordinance (Draft Ordinance No. 12-197)	
MODEL PROVISION:	CITY'S PROVISION:
.020 Definitions.	<u>Sec. 3(a) "Director" means the Finance Director of the City or any officer, agent or employee of the City designated by the City Manager to act on the director's behalf.</u>
.025 Registration/license requirements	<u>Sec. 5. Registration/license requirements. Every person who engages in business activities within the City shall register for and obtain a business license from the City as required in <u>Title 5 DMMC.</u></u>
.030 Registration	<u>Sec. 6. Registration/license certificates. Every person who engages in soliciting as defined in DMMC 5.08.010 from persons in residences or businesses within the City shall register and receive a certificate of registration from the City as required in <u>chapter 5.08 DMMC.</u></u>
.050 Payment methods - Mailing returns or remittances - Time extension - Deposits -	<u>Sec. 8(6). Any payment made that is returned for lack of sufficient funds or for any other reason will not be considered received until payment by certified check, money order, or cash of the original amount due, plus a "non-sufficient funds" (NSF)</u>

Recording payments - Payment must accompany return - NSF checks.	charge of <u>forty dollars (\$40.00)</u> is received by the Director. Any license issued upon payment with a NSF check will be considered void, and shall be returned to the Director. No license shall be reissued until payment (including the <u>forty dollars (\$40.00)</u> NSF fee) is received.
.140 Administrative Appeal.	Administrative Appeal. Any person, except one who has failed to comply with section 9 of this Ordinance, aggrieved by the amount of the fee or tax determined by the Director to be required under the provisions of this chapter may pay the amount due and appeal from such determination by filing a written notice of appeal with the City Clerk, within 30 days from the date written notice of such amount was mailed to the taxpayer. <u>Pursuant to DMMC 18.94.330, a filing fee shall be submitted with the appeal, which filing fee is required to process the appeal.</u> The City's Hearing Examiner shall, as soon as practical, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the parties. The hearing shall be conducted in accordance with the provisions of chapter 18.94 DMMC. The decision of the Hearing Examiner shall indicate the correct amount of the fee or tax owing.
.150 Judicial review of administrative appeal decision.	Sec. 19. Judicial review of administrative appeal decision. The taxpayer or the City may obtain judicial review of the City's Hearing Examiner's decision by applying for a Writ of Review in the King County Superior Court within <u>10 calendar</u> days from the date of the Hearing Examiner's decision in accordance with the procedure set for in chapter 7.16 RCW, other applicable law, and court rules. The City shall have the same right of review from the administrative decision as does a taxpayer.

November 6, 2012 the voters in Washington State passed Referendum 74 recognizing that marriages are allowed regardless of gender and eventually converting all same gender State Registered Domestic Partnerships to marriages.

Discussion

With the passage of Referendum 74, the only Domestic Partnerships remaining are those where at least one partner is above age 62. As a result, staff reviewed Ordinance 1484 with an eye toward updating the employee benefits to be consistent with the new state law. During the review process, staff discovered a few other areas that were not consistent with current collective bargaining agreements or did not reflect changes to the City of Des Moines personnel manual. Specific changes to the ordinance include:

- Adding a definition of Collective Bargaining Agreement
- Adding a definition of Domestic Partner
- Removing references to specific holidays and reconciling the holidays with the CBAs or personnel manual
- Updating part-time employee benefits to reflect current policy

Alternatives

None

Financial Impact

Because the City was already providing benefits to Domestic Partners under a City specific definition, there will be no additional cost to the city for this benefit.

Recommendation or Conclusion

Staff recommends approval of Draft Ordinance 12-212.

CITY ATTORNEY'S FIRST DRAFT 11/28/2012

DRAFT ORDINANCE NO. 12-212

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to employee policies and amending DMMC 2.12.005, 2.12.040, 2.12.050, 2.12.060, 2.12.080, 2.12.090, 2.12.120, and 2.12.130 to be consistent with state law, the City's personnel policies, and Collective Bargaining Agreements (CBAs).

WHEREAS, on April 22, 2010, the City Council passed Ordinance No. 1484, amending chapter 2.12 DMMC, *Employee Policies*, for the City's workforce, and

WHEREAS, the City's general employment policies and practices are currently described in the City of Des Moines Personnel Manual, which is promulgated by the City Manager under authority of DMMC 2.12.100, and

WHEREAS, some of the City's specific compensation and working conditions are established in various Collective Bargaining Agreements (CBAs), and

WHEREAS, State Referendum 74 was passed by the voters at the November 6, 2012 general election recognizing that marriages are now allowed by the State of Washington regardless of gender; now therefore,

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

Sec. 1. DMMC 2.12.005, *Definitions*, and section 1 of Ordinance No. 1484 are amended to read as follows:

Definitions.

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

Ordinance No. ____
Page 2 of 9

(2) "Annual pay schedule" means the actual dollar amounts contained in the basic pay plan.

(3) "Basic pay plan" is a pay plan containing 40 or more salary ranges. Within each range there are pay steps.

(4) "City" is the municipal corporation of the state of Washington known as the City of Des Moines.

(5) "City Council" is the elected legislative body of the City, composed of seven members.

(6) "City Manager" is the chief executive officer and appointing authority of the City. The City Manager is appointed by the City Council.

(7) "Collective Bargaining Agreement" or "CBA" means a contractual agreement between the City and an Employee Group that governs wages, hours, and working conditions for employees.

(8) "Domestic partner" means a state registered domestic partner where at least one (1) partner is at least sixty-two (62) years of age.

(79) "Employee" is any individual appointed to a position of service with the City.

(810) "Employee, regular full-time" is an employee who has received an appointment to a budgeted position on a full workweek, year-round basis. Normally such an employee receives a monthly salary.

Ordinance No. ____

Page 3 of 9

(~~9~~11) "Employee, regular part-time" is an employee who has been appointed to a year-round budgeted position for less than 40 hours per week.

(1~~0~~2) "Employee, regular part-time flexible" is an employee who has been appointed to a year-round budgeted position for less than 1,664 hours per year. The employee's weekly schedule can vary between zero and forty hours from week to week.

(1~~1~~3) "Employee, temporary/seasonal or intermittent" is an employee who has received a temporary appointment to either a budgeted or non-budgeted position. A seasonal or intermittent employee is considered a temporary employee. Temporary employees are eligible for overtime, but shall receive no holiday pay, floating holiday, vacation, sick leave, or any other benefits of the City, with the exception of Washington State Public Employees' Retirement System (PERS) if a temporary/seasonal or intermittent position meets the state criteria for eligibility in PERS. PERS position eligibility requires at least five months of 70 hours or more for two consecutive years initially and will continue to be eligible for PERS if it requires at least five months of 70 or more hours of compensated service at least every other year.

(1~~2~~4) "Holiday" is a designated day off during which the employee would otherwise be scheduled to work.

(1~~3~~5) "Leave" is an authorized absence from regularly scheduled work hours that has been approved by the proper authority.

Ordinance No. ____
Page 4 of 9

(146) "Pay grade" is a specified salary range within the basic pay plan.

(157) "Pay step" is a single rate of pay within a pay grade or range. Pay steps consist of "A", "B", "C", "D", and "E" steps in the basic pay plan.

(168) "Position classification" is the assignment of a position to a pay grade in the basic pay plan.

(179) "Position description" is a written statement setting forth the general duties and responsibilities of a position. It may also be called "job description."

(1820) "Salary range" is a set of salaries consisting of an established minimum, intermediate, and maximum rate of pay.

Sec. 2. DMMC 2.12.040, *Holidays*, and section 4 of Ordinance No. 790, formerly 2.72.040, as amended by section 2(3)(part) of Ordinance No. 1135 are amended to read as follows:

Holidays.

(1) City employees shall be entitled to the following paid holidays: New Year's Day, Martin Luther King, Jr.'s Birthday, President's Day (third Monday in February), Memorial Day (last Monday in May), Independence Day, Labor Day (first Monday in September), Veteran's Day, Thanksgiving Day, the Friday after Thanksgiving, Christmas Day, and one floating holiday paid holidays as identified in the City Personnel Manual or CBAs as currently written or subsequently amended.

Ordinance No. _____
Page 5 of 9

(2) Any holiday falling on a Sunday shall be observed on the following Monday and any holiday falling on Saturday shall be observed the preceding Friday.

(3) The City Manager shall have the authority to administer holidays for part-time employees, floating holidays, and holiday overtime schedules as specified in the City personnel manual.

Sec. 3. DMMC 2.12.050, *Vacations*, and section 5 of Ordinance No. 790, formerly 2.72.050, as amended by section 2(3)(part) of Ordinance No. 1135 are amended to read as follows:

Vacations. Annual paid vacations shall be granted to all full-time employees and, on a pro rata basis, to part-time employees. Paid vacation shall be granted ~~according to the following schedule:~~in accordance with the City of Des Moines Personnel Manual and Collective Bargaining Agreements.

~~0 - 3 years = 8 hrs/month~~
~~4 - 6 years = 10 hrs/month~~
~~7 - 10 years = 12 hrs/month~~
~~11 + years = 14 hrs/month~~

As compensation for a minimum 42-hour work week, department directors are granted an added eight hours per quarter year vacation time. For purposes of vacation taken, a week shall consist of 40 hours for department directors.

Sec. 4. DMMC 2.12.060, *Sick leave*, and section 6 of Ordinance No. 790, formerly 2.72.060, as amended by section 2(3)(part) of Ordinance No. 1135 are amended to read as follows:

Sick leave. All full-time employees shall accrue sick leave benefits at the rate of one working day for each calendar month of continuous employment. Regular part-time ~~and part-time~~ employees shall

Ordinance No. ____
Page 6 of 9

accrue sick leave benefits on a pro rata basis according to the City Personnel Manual and to hours worked.

Sec. 5. DMMC 2.12.080, *Health and welfare plans*, and section 8 of Ordinance No. 790, formerly DMMC 2.72.080, as amended by section 2(3)(part) of Ordinance No. 1135 are amended to read as follows:

Health and welfare plans. Employees who ~~work on a regular basis 21 hours or more per week~~ qualify under the City Personnel Manual are eligible to participate in the City's health insurance programs as identified in the City Personnel Manual.

Sec. 6. DMMC 2.12.090, *Other retirement*, and section 9 of Ordinance No. 790, formerly DMMC 2.72.090, as amended by section 2(3)(part) of Ordinance No. 1135 are amended to read as follows:

Other retirement. In lieu of Social Security all employees shall be covered under a qualified retirement plan chosen by the City and its employees. The City shall contribute a percentage of employee salary negotiated with City employee groups; which amount shall not exceed the then current employer Social Security rate less a percentage amount necessary to purchase a benefit plan to replace Social Security death and disability benefits. To qualify for this program employees must be full-time or regular part-time and work a minimum of ~~21~~32 hours per week, or be flexible part-time and average a minimum of 21 hours per week. The employer contribution rate may be modified by council resolution, when such change is not in violation of an employee agreement.

Sec. 7. DMMC 2.12.120, *Benefit coverage*, and section 1 of Ordinance No. 1394 are amended to read as follows:

Ordinance No. ____
Page 7 of 9

Benefit coverage. ~~The AWC Employee Benefit Trust extends dependent eligibility to employees' domestic partners and their children. In accordance with the policies of AWC Employee Benefit Trust as currently written or hereafter amended, and in compliance with DMMC 2.12.110, the City will provide benefit coverage to domestic partners of the same and opposite gender and dependent children on the same basis as provided to spouses and dependent children.~~

(1) Effective through May 31, 2013. In compliance with DMMC 2.12.110, the City will provide benefit coverage through May 31, 2013, or as provided in Executive Order, to domestic partners of the same and opposite gender and dependent children on the same basis as provided to spouses and dependent children.

(2) Effective June 1, 2013. In compliance with DMMC 2.12.110, the City will provide benefit coverage from June 1, 2013, or as provided in Executive Order, to state registered domestic partners where at least one partner is at least 62 years of age and their dependent children on the same basis as provided to spouses and dependent children.

Sec. 8. DMMC 2.12.130, *Eligibility*, and section 2 of Ordinance No. 1394 are amended to read as follows:

Eligibility. Eligibility for domestic partnership status ~~will be~~ is established by the presentation of an affidavit of domestic partnership meeting the definition of domestic partner as defined in this Ordinance ~~AWC Employee Benefit Trust policies as currently written or hereafter amended; provided, and~~ that the domestic partnership has existed for a minimum of one (1) year.

NEW SECTION. Sec. 9. Severability - Construction.

Ordinance No. ____
Page 8 of 9

(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. 10. 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 _____, 2012 and signed in authentication thereof this ____ day of _____, 2012.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____