





**AMENDED MINUTES**

**DES MOINES CITY COUNCIL  
STUDY SESSION  
City Council Chambers  
21630 11<sup>th</sup> Avenue South, Des Moines**

**April 4, 2013 - 7:00 p.m.**

**CALL TO ORDER**

Mayor Kaplan called the meeting to order at 7:01 p.m.

**PLEDGE OF ALLEGIANCE**

The flag salute was led by Councilmember Sheckler.

**ROLL CALL**

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

Councilmember Caldwell was absent.

Mayor Pro Tem Pina moved to excuse Councilmember Caldwell; seconded by Councilmember Musser.

The motion passed 5-0.

Councilmember Scott arrived at 7:02 p.m.

Councilmember Dan Caldwell resigned from City Council position #4 as of April 4, 2013 due to health reasons, via a letter read by Mayor Kaplan.

Mayor Kaplan announced that Sound Cities Association is looking for someone to serve on the Regional Transit Committee Growth Management Policy Board and the Growth Management Policy Planning Council.

Staffs present were City Manager Tony Piasecki; City Attorney Pat Bosmans; Transportation Manager Brandon Carver; Management Consultant Grant Fredricks; Economic Development Manager Marion Yoshino; City Clerk Bonnie Wilkins.

**COMMENTS FROM THE PUBLIC**

Michael Walker, 23911 20<sup>th</sup> Avenue S, Des Moines, expressed to Council his concerns of cars driving at high speeds in front of his house.

Ronald Dupard, 11023 SE 240<sup>th</sup> Street, Kent, informed Council of his height restrictions and parking concerns in the Pacific Ridge neighborhood.

**DISCUSSION ITEMS**

- 1. **LED STREETLIGHT CONVERSION PROJECT**  
Discussion Leader: Transportation Manager Brandon Carver

**Action/Direction**

**Motion** made by Councilmember Sheckler moved to direct staff to initiate the conversion process with PSE of the 1,036 100Watt High Pressure Sodium streetlights to energy efficient 54Watt LED type lights within the City over the next 3 years creating an additional annual cost of approximately \$44,075 to the Street Fund for years 2013, 2014 and 2015; seconded by Councilmember Musser.

The motion passed 6-0.

2. COUNCIL PROCESS  
Discussion Leader: Mayor Dave Kaplan

Council agreed to continue with the Agenda format that is currently being used and directed that the wording ramifications of all options in the Alternative Section be simplified to 'pass, amend, and more detail, especially the "do nothing;" with explanations/ramifications and additional options; included when presented needed.

Council asked that Committee Meeting materials be ready by 4:30 p.m. the Friday prior to the meeting.

3. PACIFIC RIDGE ZONING & PERMITTED USES POLICY DISCUSSION  
Discussion Leader: Management Consultant Grant Fredricks  
Economic Development Manager Marion Yoshino

Staff gave a power point presentation.

Councilmember Sheckler left the meeting at 8:17 p.m.

No formal action was taken.

#### ADJOURNMENT

Motion made by Mayor Pro Tem Pina to adjourn; seconded by Councilmember Musser.  
The motion passed 5-0.

The meeting was adjourned at 8:41 p.m.

#### NEXT MEETING DATE

April 6, 2013 City Council Retreat

Respectfully submitted,

Bonnie Wilkins  
City Clerk

**MINUTES**

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

**April 11, 2013 - 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 Councilmember Burrage.

**ROLL CALL**

Present were Mayor Kaplan; Councilmembers Melissa Musser, Jeanette Burrage, Bob Sheckler, and Carmen Scott.

Mayor Pro Tem Pina was absent. Councilmember Musser moved to excuse Mayor Pro Tem Pina; seconded by Councilmember Scott.

The motion passed 5-0.

Staffs present were City Manager Tony Piasecki; City Attorney Pat Bosmans; Land Use Planner Laura Techico; Acting Transportation Manager Brandon Carver; City Clerk Bonnie Wilkins.

**COMMENTS FROM THE PUBLIC**

Florence McMullin, Wesley Homes, wanted to update Council on attending her first Arts Commission meeting.

**BOARD & COMMITTEE REPORTS/COUNCILMEMBER COMMENTS**

Councilmember Scott:

- Arts Commission
  - Reports from:
    - Visual Arts
    - Performing Arts
    - Executive Committee & Members
  - Openings for *Des Moines Got Talent* still available
  - Music in the Park Contracts
  - *Stqry* Technology for statues and murals in Des Moines
  - Nancy Gosen writing grants for young children's programs
- Des Moines Libraries
  - Yearlong series about cooking and nutrition:
    - April 17, 6:30 p.m. Woodmont Library, "Growing Fruits & Vegetables"
    - April 17, 2:00 p.m. Des Moines Library, "Ethiopian Style Cooking"
    - May 1, 7:00 p.m. Des Moines Library, "Food Historians from "Downton Abbey Era"
    - Food donations now being accepted at all King County Libraries to benefit local food banks.
- Des Moines Beach Park Auditorium receiving the *John Spellman Award* for historical restoration, to be presented at the Museum of History and Industry on April 23, 2013.
- CorkyCellars is closing; a thank you event will be held on April 12, 2013 at CorkyCellars.

## Councilmember Sheckler:

- Request of Council to use funds from their Hearts and Flowers account to present former Councilmember Dan Caldwell with a plaque thanking him for his service on the Council.

## Councilmember Burrage:

- Spoke at the following community groups:
  - Royal Arch Masons
  - Huntington Park
    - Residents had concerns about QFC closing

## Councilmember Musser:

- Sound Cities Association Public Issues Committee Meeting:
  - Beginning regional discussion regarding tolling impacts
  - King County Parks Levy
    - Two Taxing Initiatives on August Ballot:
      - Continue to support existing levy
      - Purchase additional green space to primarily complete trails

**PRESIDING OFFICER'S REPORT**

- Announced to the public that the City is now live streaming the City Council meetings on the City's website at [www.desmoineswa.gov](http://www.desmoineswa.gov)
- April 12, 2013 is the deadline to submit applications for the Pro/Con Committee for Proposition 1, Utility Tax Ballot Measure.
- Deadline to apply for Council Vacancy is Friday April 19, 2013 at 2:00 p.m.
  - Applicant interviews April 25, 2013
  - Council decision May 2, 2013
- Spoke to the closure of the Des Moines QFC store

**ADMINISTRATION REPORTS**

- Staff participated in interviews with 3 of the 4 candidates that responded to the RFP put out by The Port of Seattle for the Des Moines Business Park. Staff will meet Friday to finalize the evaluation process.
- Announced to Council that after 25 years, Development Services Manager Robert Ruth will be leaving the City; his last day will be May 2, 2013, his 25<sup>th</sup> anniversary date with the City. City Manager Piasecki publically thanked Robert for all that he has done for the City.

**CONSENT CALENDAR**

Item 1: APPROVAL OF MINUTES

Motion is to approve the minutes of the March 14 and March 28, 2013 City Council Meetings.

Item 2: APPROVAL OF VOUCHERS

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

Claim checks: \$846,333.61

Payroll fund transfers: \$417,364.49

Total certified Wire Transfers, Voids, A/P &amp; Payroll vouchers: \$1,263,698.10

Item 3: PROCLAMATION HONORING RIC & DIANNE JACOBSON

Motion is to approve the proclamation honoring Ric and Dianne Jacobson, owners of CorkyCellars, for their many contributions to the Des Moines community and proclaiming April 12, 2013 as "Ric and Dianne Jacobson Day."

Item 4: 2013 SUMMER EVENTS – AGREEMENT WITH DESTINATION DES MOINES

Motion is to approve Draft Resolution No. 13-052 authorizing Destination Des Moines to conduct five summer events and setting the conditions for the Fireworks Over Des Moines, the Waterland Community Barbeque, the Des Moines Classic Car & Boat Show, the Waterland Parade and the Italian Car Show.

AND

Motion is to authorize the City Manager to sign the Agreement with Destination Des Moines for summer events specifying the responsibilities assumed by Destination Des Moines and identifying the in-kind services that will be provided by the City up to a value of \$14,000, substantially in the form as attached.

**Direction/Action**

Motion made by Councilmember Musser to approve the consent agenda; seconded by Councilmember Burrage.

Councilmember Scott wished to pull Item #4 from the Consent Agenda.

Council approved the remaining consent agenda, 5-0.

Councilmember Scott moved to approve Draft Resolution No. 13-052 authorizing Destination Des Moines to conduct four summer events and setting the conditions for the Fireworks Over Des Moines, the Waterland Community Barbeque, the Waterland Parade and the Italian Car Show, to authorize the City Manager to sign the Agreement with Destination Des Moines for summer events specifying the responsibilities assumed by Destination Des Moines and identifying the in-kind services provided by the City, up to a value of \$14,000, substantially in the form as submitted and to delete all references to the Classic Car and Boat Show scheduled for July 20, 2013 from Draft Resolution No. 13-052 and the attached agreement between Destination Des Moines and the City of Des Moines; seconded by Councilmember Musser.

The motion passed 5-0.

**PUBLIC HEARING**

1. SIGN CODE AMENDMENTS – PUBLIC READERBOARDS, CHAPTER 18.42  
DMMC  
Staff Presentation: Development Services Manager Robert Ruth

**Direction/Action**

Motion made by Councilmember Sheckler to move Public Hearing Item #1, Sign Code Amendments – Public Readerboards, Chapter 18.42 DMMC, to a later date; seconded by Councilmember Musser.

The motion passed 5-0



## AMENDED MINUTES

DES MOINES CITY COUNCIL  
RETREAT  
Des Moines Activity Center  
2045 S 216<sup>th</sup> Street, Des Moines

April 6, 2013 - 9:00 a.m.

### CALL TO ORDER

Mayor Kaplan called the meeting to order at 9:05 a.m.

### ROLL CALL

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

Staffs present were City Manager Tony Piasecki; Assistant City Manager Lorri Ericson; Police Chief George Delgado; Commander Barry Sellers; Commander Bob Bohl; Acting Director of Community Development Denise Lathrop; Park & Recreation Director Patrice Thorell; Municipal Judge Veronica Alicea-Galvan; Finance Director Paula Henderson; Acting Director of Public Works Dan Brewer; Economic Development Manager Marion Yoshino; Budget Analyst Cecilia Pollock; Management Consultant Grant Fredricks; Harbormaster Joe Dusenbury; City Attorney Pat Bosmans; City Clerk Bonnie Wilkins.

### PRESENTATION AND DISCUSSION OF 2008-2013 BUDGETS AND PROJECTIONS FOR FUTURE BUDGETS

Finance Director Henderson presented budget graphs of revenues and expenditures for 2008-2013.

### PRESENTATION AND DISCUSSION OF POTENTIAL RADICAL REVENUE EXPENDITURE REDUCTION STRATEGIES

City Manager Piasecki presented Radical Expenditure Reduction Ideas and the City Council requested further review/follow-up on the following:

- Police Department – contract for some services (emphasis on support and infrastructure)
  - We offer police services to others
  - Regional police services (or merge w/another city)
- Court
  - Contract with other cities – we need physical space – [leasing option available?](#)
  - Regional services
- Other opportunities for collaboration with other cities
  - Street Services
  - Park & Rec Services
  - Mechanics/Fleet
  - Building
  - Code Enforcement
- Merge Marina and Park, Rec & Senior Services
- Contract w/private sector for some of the items listed above
- Lease Fleet/Equipment
- Recombine, reorganize and flatten organizational structure in PBPW - \$280,000-\$350,000

At 10:20 a.m. Council took a 10 minute break and resumed the retreat at 10:30 a.m.

**PRESENTATION AND DISCUSSION OF POTENTIAL RADICAL REVENUE STRATEGIES**

City Manager Piasecki briefed Council with Extraordinary Revenue Generating Ideas and the City Council requested further review/follow-up on the following:

- Prepare a thorough analysis of all commercial areas and corresponding uses to determine where highest revenues are/can be generated, in the context of political feasibility
- Research revenue sources of surrounding cities – where are they getting their revenue?
- Review/discuss complete and exhaustive listing of all possible revenue sources
- Bring all properties between I-5 and Highway 99 and between Kent-Des Moines Road and South 272<sup>nd</sup> Street into Des Moines – conduct an analysis
- Sponsorships/naming rights for City facilities/vehicles – what would policy/rules look like?
- Far reaching rezones
  - Pacific Ridge
  - Pacific Highway South from Kent-Des Moines Road to South 272<sup>nd</sup> Street
- Marina District
  - Buy vacant property and make it more developable
  - Move City Hall/Court/Library to the Marina District
  - Look at vacating alleys and ROW to encourage economic development
- Charge for Parking (Marina, Redondo, Beach Park, Marina District) – PS&T to study parking issues
- Support passage of King County Human Services Sales Tax increase
- Redevelop Marina
- Complete Beach Park Rehabilitation, Rent/Lease space
- Require utilities to develop plans to extend service to undeveloped/underdeveloped lots
  - Mechanism?
  - Increase development?
  - Increase property values?
- Lease the Marina to private operator
- Des Moines Elementary School – have F&ED review zoning

**PRESENTATION AND DISCUSSION OF TRADITIONAL BUDGET BALANCING STRATEGIES**

City Manager Piasecki presented Council with a list of Traditional Budget Balancing Strategies and Efficiency Enhancements.

- Reduce/slow/eliminate increases in employee compensation/benefits
- Street Lighting
  - LEDs - \$45,000 per year for 100 watt lights
- Eliminate ACM and add HR Specialist - \$74,848
- Eliminate ED Manager Position - \$134,026
- Eliminate Consultant Positions
- Freeze Empty Positions/Reallocate Resources as needed - \$1,142,078 (includes some of the savings in reorganization of PBPW)
- Continue fight for liquor revenue - \$300,000 for 2013
- Consider Bi-Annual Budget Process
- \$\$\$ for Marijuana

- \$40 Car tab - \$400,000
- Feds – Advocate for Fair Market Place (i.e. sales tax on all internet sales)
- Require direct pay deposit for all City employees (just as the Federal government now requires for pay and entitlements) by 1/1/14 and immediately for new employees when hired
- Charge for all community events – cover direct costs
- Eliminate Citizen Advisory Committees (Human Services, Senior Services, Arts Commission, Landmarks Commission) – eliminates need to provide staff support\_-  
What are these committees doing and how much staff support is provided?
- Eliminate the Planning Agency by 1/1/14
- Reevaluate all Departmental Positions for duplication
- Reevaluate all Departmental Expenditures for savings
- Reevaluate all Departmental Fees for market rates

#### **Action/Direction**

**Motion** made by Mayor Kaplan to extend the meeting an additional 10 minutes; seconded by Councilmember Sheckler.

Mayor Pro Tem Pina offered a friendly amendment to add an additional 5 minutes to the main motion; Councilmember Sheckler approved the amendment.

The motion passed 6-0.

After continued discussion Council requested more information on the Citizen Advisory Committees – what are they doing and how much staff support is provided?

By a majority consensus, Council supports the elimination of the Planning Agency by January 1, 2014.

For: Mayor Kaplan, Mayor Pro Tem Pina; Councilmembers Burrage, Sheckler & Musser.

Against: Councilmember Scott

Motion made by Councilmember Musser to extend the meeting an additional 15 minutes; seconded by Mayor Pro Tem Pina.

The motion passed 5-1.

For: Mayor Kaplan, Mayor Pro Tem Pina; Councilmembers Burrage, Scott & Musser.

Against: Councilmember Sheckler.

At 12:24 p.m. Councilmember Sheckler left the meeting.

The meeting was adjourned at 12:35 p.m.



## Consent Agenda Item #2

**CITY OF DES MOINES**  
**Voucher Certification Approval**

25-Apr-13

**Auditing Officer Certification**

Vouchers and Payroll transfers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing, which has been made available to the City Council.

As of April 25, 2013 the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the attached list and further described as follows:

The vouchers below have been reviewed and certified by individual departments and the City of Des Moines Auditing Officer.

<b>Claims Vouchers:</b>	<b>Numbers</b>			<b>Amounts</b>
Total A/P Checks/Vouchers	135603	-	135775	469,017.79
Electronic Wire Transfers	3		DEPT OF REV, BANK OF AMER VISA	0.00
<b>Subtotal for this Council Packet</b>				<b>469,017.79</b>
Voided Claim Checks this check run:				0.00
Voided Claim Checks from <b>previous</b> check runs	135384, 135469		2	(890.00)
<b>Total Claims/Wire Transfers/Voids</b>			<b>135</b>	<b>468,127.79</b>

<b>Payroll Vouchers:</b>	<b>DISBURSED 04/19/13</b>				<b>Amounts</b>	
Payroll Checks	18148	-	18161	=	14	14,760.54
Direct Deposit	160001	-	160133	=	133	267,697.39
Payroll Taxes						58,894.35
Wage/Garnishments						744.07
VOIDS					0	0.00
Electronic Wire Transfers						83,598.52
ICMA 401 Forfeitures						0.00
<b>Total Claims</b>						<b>425,694.87</b>
<b>Total certified Wire Transfers, Voids, A/P &amp; Payroll vouchers for April 25, 2013</b>						<b>893,822.66</b>



## AGENDA ITEM

### BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Franchise Agreement for the ZAYO  
Group – Second Reading

AGENDA OF: April 25, 2013

DEPT. OF ORIGIN: Planning, Building & Public  
Works

ATTACHMENTS:

1. Draft Ordinance 12-191
2. RCW 35.21.860
3. RCW 82.16.010
4. March 29, 2013 letter
5. Response to March 29, 2013 letter

DATE SUBMITTED: April 15, 2013

CLEARANCES:

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

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: AT

**Purpose and Recommendation:**

The purpose of this item is to request Council to enact Draft Ordinance 12-191 on second reading establishing a non-exclusive Franchise Agreement with the ZAYO Group to construct, install, operate, maintain, and repair telecommunication facilities within the public right-of-way of the City of Des Moines. Staff recommends approval.

The following motion will be on the consent calendar:

**Suggested Motion**

Motion: "I move to enact Draft Ordinance 12-191 granting a non-exclusive franchise with the ZAYO Group to construct, install, operate, maintain, and repair telecommunication facilities within the public right-of-way of the City of Des Moines."

**Background:**

In September of 2012, staff was approached by the ZAYO Group for a right-of-way permit to install a fiber optic communications system within the City of Des Moines. At that time, staff informed the ZAYO Group that they would first need to obtain a Franchise with the City, before any work in the right-of-way could be permitted. The ZAYO Group requested that staff begin the process to establish a

telecommunication franchise. Since that time staff has prepared the Draft Franchise Agreement, which is included as Draft Ordinance 12-191 (refer to Attachment 1).

The ZAYO Group currently has other existing municipal franchise and row use license agreements with various metro area cities in Washington State, and they are currently working on an additional 21 requests including one with the City of Des Moines. Over the last couple of years, the ZAYO Group has acquired several large communications companies, including AboveNet (formerly known as Metromedia), and 360 Networks.

The ZAYO Group is a privately held Delaware limited liability company with its headquarters located in Louisville, Colorado. ZAYO is a provider of bandwidth infrastructure solutions, offering traditional lit telecommunications services (including private lines and wavelengths, Internet access and colocation) to wholesale and enterprise customers over a fiber-optic network in metropolitan markets from coast-to-coast. Their wholesale carrier customers include telecom, wireless, cable, and Internet service providers. Zayo's enterprise customers include web-centric and technology businesses, government entities, educational institutions, financial services companies, healthcare providers and smaller firms needing to connect multiple facilities. ZAYO does not provide any residential, voice, cable or video service.

The ZAYO Group is a registered telecommunication business with the Washington Public Utilities and Transportation Commission, and their Certificate of Public Convenience and Necessity number is UT-110349.

After further discussions with ZAYO representatives, staff learned that they have a planned project to install a metro wide fiber optic communications network, which will span as far north as Everett and as far south as Joint Base Lewis McChord (JBLM) south of Tacoma. The planned alignment through Des Moines would be along the west side of Pacific Highway South, which will be the main backbone cable. Subsequently, laterals would be expanded from the main line to serve other telecoms and enterprise customers. We know that they also have plans to install fiber along South 240<sup>th</sup> Street from Pacific Highway South to Marine View Drive, to an existing Version cellular facility.

ZAYO's expansion will provide many benefits to the City, including bringing additional advanced communications infrastructure to community businesses. The additional infrastructure will introduce more competition in the local telecom market and attract new economic development to the City, which is good for business and ultimately consumers. The proposed project will enable one of the major wireless carriers to provide enhanced 4G service to the City. The ZAYO Group is optimistic that there will be additional opportunities for further expansion in the future.

**Discussion:**

The primary purpose of the franchise agreement is to grant the right to use the franchise area and outline the parameters for the permission. The franchise agreement is for a 10 year term and is non-exclusive. The agreement outlines the guidelines for ZAYO to perform work in the franchise area. It stipulates that ZAYO facilities must not unreasonably interfere with normal traffic and use in the right-of-way. It requires them to obtain all permits and inspections and follow all laws and regulations. It provides a provision for an "after the fact" permit if an emergency situation exists. It requires ZAYO to provide drawings, data layers and schematics, and to participate in One-Call locate Service.

Parameters are identified for ZAYO to relocate facilities for City right-of-way improvements. With proper notice, if the improvement is clearly identified in advance there should be no cost to the City

unless the City requires ZAYO to underground an aerial facility. Currently ZAYO does not have any aerial facilities within the City of Des Moines, and the franchise agreement requires undergrounding of all new installations.

The Ad-Hoc Franchise Committee met on January 24, 2013 to discuss the Draft Ordinance. Staff met with representatives from the ZAYO Group on January 29, 2013 to discuss issues raised by the committee members. Staff learned that the ZAYO Group does not provide any direct residential, voice, cable or video service. They install fiber-optic infrastructure to support wireless communications, which they then lease out to wholesale and enterprise customers.

Staff also looked into the possibility of having the ZAYO Group lease City conduit along Pacific Highway South. Unfortunately, the City does not have a spare (empty) conduit along Pacific Highway South. While there is a 2" conduit with some space available within it, the City already occupies that conduit with its own conductor and generally speaking it is not good practice to share the same conduit with other entities. In addition, the ZAYO group is proposing to install a 288 count fiber along Pacific Highway South and it is doubtful a fiber cable of that size would even fit within the space that we have. Zayo suggested to us that a typical lease rate for something like this is around \$65/mile/month. That's roughly \$800 per year. It is staff's opinion that this would not be a reasonable amount. If we did have a conduit available (which we do not), the lease rate for that conduit would need to be at least equitable with the amortized construction costs. Since we don't have a conduit available to lease to them staff did not determine what a reasonable lease rate would be.

The first reading of Draft Ordinance was held on March 14, 2013. At that time the Council asked staff to send a letter to property owners along Pacific Highway South informing them of the work proposed by the ZAYO group. The letter was sent out on March 29, 2013 (refer to Attachment 4). Staff received one response to the letter which is provided as Attachment 5.

**Financial impact:**

RCW 35.21.860 (Attachment 2) currently prohibits the City from imposing a franchise fee for permission to use the right-of-way for telephone business purposes. Based on the representations of the ZAYO Group, staff understands that the ZAYO Group will use the right-of-way for telephone business purposes as defined by RCW 82.16.010 (Attachment 3). If this prohibition is removed or does not apply, the ZAYO Group agrees the City will assess a reasonable franchise fee in accordance with the DMMC, so long as local, State or federal law does not otherwise prohibit such fee.

The City may charge for actual administrative expenses incurred that are directly related to this franchise agreement as well as permits and inspections related to work occurring within the right-of-way.

Fees are covered in Section 9 of the Draft Ordinance.

**Alternatives:**

Adopt the Draft Ordinance as Written

Council could choose to adopt Draft Ordinance 12-191 as written granting a non-exclusive franchise with the ZAYO Group to construct, install, operate, maintain, and repair telecommunication facilities within the public right-of-way of the City of Des Moines.

**Adopt the Draft Ordinance as Amended**

The Council could propose suggested amendments to Draft Ordinance 12-191 to discuss with Zayo and consider the final adoption at a later date.

**Do Nothing.**

Council could decide to take no action thereby not approving the Franchise Agreement.

**Recommendation:**

Staff recommends that the City Council enact Draft Ordinance 12-191 on second reading as presented.

**Concurrence**

The Legal and Planning, Building and Public Works Departments concur.

## Attachment #1

1                   **ENGINEERING DEPARTMENT'S FIRST DRAFT 2/27/2013**

2  
3                   **DRAFT ORDINANCE NO. 12-191**

4  
5  
6                   **AN ORDINANCE OF THE CITY OF DES MOINES** granting a non-  
7 exclusive Franchise to construct, install, operate, maintain,  
8 repair, or remove fiber optic cables within the public ways of  
9 the City of Des Moines ("City") to Zayo Group, LLC ("Grantee").  
10 The City and Grantee are sometimes hereinafter collectively  
11 referred to as the "parties."

12  
13                   **WHEREAS**, Zayo Group, LLC, a limited liability company  
14 organized and existing under the laws of the State of Delaware  
15 is a competitive telecommunications company providing  
16 telecommunication services, including voice, Internet and data  
17 services, which desires to occupy the City of Des Moines rights-  
18 of-ways to install, construct, operate, and maintain its  
19 telecommunications facilities and network for the purpose of  
20 providing services to its customers at locations within the  
21 City, and

22  
23                   **WHEREAS**, the Grantee, Zayo Group, LLC, has represented  
24 to the City that it provides a telephone business as defined by  
25 RCW 82.16.010, and

26  
27                   **WHEREAS**, Grantee has applied to the City for a non-  
28 exclusive telecommunications service franchise to enter, occupy,  
29 and use public ways to construct, install, operate, maintain,  
30 and repair fiber optic facilities to offer and provide  
31 telecommunications service for hire, sale, or resale in the  
32 City, and

33  
34                   **WHEREAS**, the City is authorized by applicable law to grant  
35 one or more nonexclusive franchises within the boundaries of the  
36 City, and

37  
38                   **WHEREAS**, the 1934 Communications Act, as amended relating  
39 to telecommunications providers recognizes and provides local  
40 government authority to manage the public rights-of-way and to  
41 require fair and reasonable compensation on a competitively  
42 neutral and nondiscriminatory basis, and

43  
44                   **WHEREAS**, a franchise does not include, and is not a  
45 substitute for any other permit, agreement, or other  
46 authorization required by the City, including without

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1 limitation, permits required in connection with construction  
2 activities in public ways which must be administratively  
3 approved by the City after review of specific plans, and  
4

5 **WHEREAS,** Grantee shall be responsible for its actual  
6 costs in using, occupying and repairing public ways, and  
7

8 **WHEREAS,** the City and Grantee desire to effectuate good  
9 coordination of the use of the rights-of-way, and  
10

11 **WHEREAS,** the City Council finds that the franchise terms  
12 and conditions contained in this ordinance are in the public  
13 interest; now therefore,  
14  
15

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

17 **Sec. 1. Definitions.**

18  
19  
20 (1) **Use of words and phrases.** For the purposes of this  
21 Ordinance, the following terms, phrases, words, and their  
22 derivations will have the meanings given herein. When not  
23 inconsistent with the context, words used in the present tense  
24 include the future, words in the plural include the singular,  
25 and words in the singular include the plural. Words not defined  
26 will have the meaning ascribed to those words in the Des Moines  
27 City Code (DMMC), or in the federal Communications Act of 1934  
28 as amended, unless inconsistent herewith. The headings contained  
29 in this Franchise are to facilitate reference only, do not form  
30 a part of this Franchise, and shall not in any way affect the  
31 construction or interpretation hereof. The words "shall," "will,"  
32 and "must" are mandatory, and the word "may" is permissive or  
33 directory.  
34

35 (2) "Abandonment" means the disconnection by the  
36 Grantee of specific Facilities from the telecommunications  
37 system.  
38

39 (3) "Affiliate" means any Person who owns or controls,  
40 is owned by or controlled by, or is under common ownership or  
41 control with Grantee.  
42

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1 (4) "Cable Act" means the Cable Communications Policy  
2 Act of 1984 as amended and as may be amended from time to time  
3 during the term of this Franchise (47 U.S.C. § 521 et seq., as  
4 amended).  
5

6 (5) "Cable service" means the one-way transmission to  
7 subscribers of video programming or other programming service  
8 and subscriber interaction, if any, which is required for the  
9 selection or use of such video programming or other programming  
10 service.  
11

12 (6) "City Council" means the governing body of the  
13 City.  
14

15 (7) "Communications" means the transmission, between or  
16 among points specified by the user, of information of the user's  
17 choosing, without change in the form or content of the  
18 information as sent and received.  
19

20 (8) "Communications applications fees and charges"  
21 includes fees and charges connected to right-of-way management,  
22 construction permit, permit design fee, building permit,  
23 encroachment permit, inspections and pavement restoration.  
24

25 (9) "Communications service" means the offering of  
26 communications for a fee directly to the public, or to such  
27 classes of users as to be effectively available directly to the  
28 public, regardless of the facilities used.  
29

30 (10) "Communications system" or "system" means only  
31 those facilities necessary for Grantee to provide communications  
32 Service.  
33

34 (11) "Conduit" means optical cable housing, jackets, or  
35 casing, and pipes, tubes, or tiles used for receiving and  
36 protecting wires, lines, cables, and communication and signal  
37 lines.  
38

39 (12) "Costs" means costs, expenses, and other financial  
40 obligations of any kind whatsoever.  
41

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1           (13) "Dark fiber" means properly functioning optical  
2 cable which is not used or available for use by Grantee or the  
3 general public.  
4

5           (14) "Effective date" means five days following the  
6 publication of this Franchise or a summary thereof occurs in an  
7 official newspaper of the City as provided by law.  
8

9           (15) "Emergency" means a condition of imminent danger to  
10 the health, safety, and welfare of property or persons located  
11 within the City including, without limitation, damage to persons  
12 or property from natural consequences, such as storms,  
13 earthquakes, riots or wars.  
14

15           (16) "Facilities" means, collectively, any and all  
16 telecommunications transmission systems and appurtenances owned  
17 by Grantee, now and in the future, in the Franchise Area,  
18 including, but not limited to, wire, radio, optical cable,  
19 electromagnetic or other similar types of equipment and related  
20 appurtenances in any way comprising part of the System.  
21

22           (17) "FCC or Federal Communications Commission" means  
23 the agency as presently constituted by the United States  
24 Congress or any successor agency with jurisdiction over  
25 Telecommunications Service matters.  
26

27           (18) "Fiber optic" means a transmission medium of  
28 optical fiber cable, along with all associated optronics and  
29 equipment, capable of carrying telecommunication service by  
30 means of electric light-wave impulses.  
31

32           (19) "Franchise area" means the area within the  
33 jurisdictional boundaries of the City, including any annexed  
34 areas, to be served by Grantee as specified in this Franchise.  
35

36           (20) "Gross Revenues" means all gross revenues received  
37 by Grantee or its affiliates from the provision of intrastate  
38 telephone business activities in the City of Des Moines, as  
39 described in Utility Tax below.  
40  
41

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1 (21) "Incremental costs" means the actual and necessary  
2 costs incurred which exceed costs which would have otherwise  
3 been incurred.

4 (22) "Optical cable" means wires, lines, cables and  
5 communication and signal lines used to convey communications by  
6 fiber optics.

7  
8 (23) "Open Video System" means a facility consisting of a  
9 set of transmission paths and associated signal generation,  
10 reception and control equipment that is designed to provide Cable  
11 Service which includes video programming and which is provided to  
12 multiple subscribers within a community, provided that the Federal  
13 Communications Commission has certified that such system complies  
14 with 47 CFR 76.1500 et seq.

15  
16 (24) "Person" means any individual, firm, partnership,  
17 association, joint stock company, trust, corporation, company,  
18 governmental entity.

19  
20 (25) "Public ways or rights-of-way" includes the  
21 surface, the air space above the surface, and the area below the  
22 surface of any public street, highway, parkway, circle, lane,  
23 alley, sidewalk, boulevard, drive, bridge, tunnel, easement or  
24 similar property in which the City holds any property interest or  
25 exercises any rights of management or control and which,  
26 consistent with the purposes for which it was acquired or  
27 dedicated, may be used for the installation, repair, and  
28 maintenance of a Telecommunication System. No reference in this  
29 Franchise to a public right-of-way shall be deemed to be a  
30 representation or guarantee by the City that its interests or  
31 other rights in such property are sufficient to permit its use  
32 for the installation, repair, and maintenance of a  
33 Telecommunication System, and the Grantee shall be deemed to  
34 gain only those rights which the City has the undisputed right  
35 and power to give. For this Franchise, public ways and rights-  
36 of-way are limited to the areas above the ordinary high water  
37 mark of Puget Sound.

38  
39 (26) "Route map" means a geographic representation of  
40 the Grantee's Telecommunication System as it exists within the  
41 public right-of-way and within private easements in the  
42 Franchise area.

43

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1 (27) "Subscriber" means any Person who or which  
2 purchases, leases, rents, obtains or subscribes to  
3 Telecommunications Service provided by Grantee by means of or in  
4 connection with the Grantee's Telecommunications System.  
5

6 (28) "Telecommunications" means the transmission,  
7 between or among points specified by the user, of information of  
8 the user's choosing, without change in the form or content of  
9 the information as sent and received.  
10

11 (29) "Telecommunications applications fees and charges"  
12 includes fees and charges connected to right-of-way management,  
13 construction permit, permit design fee, building permit,  
14 encroachment permit, inspections and pavement restoration.  
15

16 (30) "Telecommunications service" means the offering of  
17 telecommunications for a fee directly to the public, or to such  
18 classes of users as to be effectively available directly to the  
19 public, regardless of the facilities used.  
20

21 (31) "Telecommunications system" or "system" means only  
22 those facilities necessary for Grantee to provide  
23 Telecommunications Service.  
24

25 (32) "Underground facilities" means facilities located  
26 under the surface of the ground, other than underground  
27 foundations or supports for overhead facilities.  
28

29 (33) "Utility poles" means poles, and crossarms,  
30 devices, and attachments directly affixed to such poles which  
31 are used for the transmission and distribution of electrical  
32 energy, signals, or other methods of communication.  
33

34 (34) "Wireless Communications Facilities" means the  
35 site, wireless communications support structures, antennas,  
36 accessory equipment structures, and appurtenances used to  
37 transmit, receive, distribute, provide or offer personal  
38 wireless communications services. Wireless communications  
39 facilities include, but are not limited to antennas, poles,  
40 towers, cables, wires, conduits, ducts, pedestals, vaults,  
41 buildings, and electronic switching equipment.  
42

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1           **Sec. 2. Franchise - Grant of authority.**

2  
3           (1)   **Use of public rights-of-way.** There is hereby granted  
4 to Grantee the right, privilege, to have, acquire, construct,  
5 reconstruct, upgrade, repair, maintain, use, and operate in the  
6 City a Telecommunication System, and to have, acquire,  
7 construct, reconstruct, repair, maintain, use, and operate in,  
8 over, under, and along the present and future Public Rights-of-  
9 Way of the City all necessary or desirable wires, cables,  
10 electronic conductors, underground conduits, vaults, and other  
11 structures and appurtenances necessary for the construction,  
12 maintenance, and operation of a Telecommunication System in the  
13 Franchise Area. Grantee or Affiliates shall not install or  
14 construct facilities within the City's Public Rights-of-Way  
15 which are not authorized by this Franchise or lawfully allowed  
16 by applicable local, state, or federal law.  
17

18           (2)   **Additional services/compensation.** By granting this  
19 Franchise, the City does not waive and specifically retains any  
20 right to regulate and receive compensation as allowed by law for  
21 services offered over the Telecommunication System which are  
22 not Telecommunication Services. Upon request, Grantee shall  
23 inform City of any non-Telecommunication and/or  
24 Telecommunication Services offered over the Telecommunication  
25 System of which Grantee or its Affiliates are aware. By  
26 accepting this Franchise, Grantee does not waive any right it  
27 has under law to challenge the City's requirement for  
28 authorization to provide non-Telecommunication Services.  
29

30           (3)   **Responsibility for costs.** Except as expressly  
31 provided otherwise, any act that Grantee is required to perform  
32 under this Franchise shall be performed at Grantee's cost. If  
33 Grantee fails to perform work that it is required to perform  
34 within the time provided for performance or a cure period, the  
35 City may perform the work and bill the Grantee for documented  
36 costs. The Grantee shall pay the amounts billed within thirty  
37 (30) days. The parties agree that any amounts paid pursuant to  
38 this Section are not Franchise fees and fall within one or more  
39 of the exceptions to the definition of Franchise fee under  
40 federal law. Nothing in this section is intended to affect in  
41 any way (by expansion or contraction) Grantee's rights under  
42 applicable law governing rates.

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1  
2           (4)   **Publication costs.**   Any and all costs of  
3 publication related to this Franchise which may be required by  
4 law or action of City Council shall be borne by Grantee. Any  
5 payments made by the City under this provision are to be  
6 reimbursed to the City within thirty (30) days of Grantee's  
7 receipt of the invoice.  
8

9           (5)   **Franchise non-exclusive.** The rights, privileges of  
10 any franchise granted pursuant to chapter 20.04 of the Des  
11 Moines Municipal Code (DMMC) shall be nonexclusive. This  
12 Franchise shall not be construed as any limitation upon the right  
13 of the City, through its proper officers, to grant to other  
14 persons or corporations, including itself, rights, privileges or  
15 authority the same as, similar to or different from the rights,  
16 privileges or authority herein set forth, in the same or other  
17 streets and public ways by Franchise, permit or otherwise. The  
18 City shall not authorize or permit any Person providing  
19 Communication Services to enter into the Public Rights-of-Way in  
20 any part of the City on terms or conditions that, when viewed  
21 collectively, are generally more favorable or less burdensome to  
22 such Person than those applied to the Grantee pursuant to this  
23 Franchise.  
24

25           (6)   Nothing in this Franchise excuses Grantee of its  
26 obligation to identify its facilities and proposed facilities  
27 and their location or proposed location in the public ways and  
28 to obtain use and/or development authorization and permits from  
29 the City before entering, occupying, or using public ways to  
30 construct, install, operate, maintain, repair, or remove such  
31 facilities.  
32

33           (7)   Nothing in this Franchise excuses Grantee of its  
34 obligation to comply with applicable codes, rules, regulations,  
35 and standards subject to verification by the City of such  
36 compliance.  
37

38           (8)   Nothing in this Franchise shall be construed to  
39 limit taxing authority or other lawful authority to impose  
40 charges or fees, or to excuse Grantee of any obligation to pay  
41 lawfully imposed charges or fees.  
42

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1 (9) Nothing in this Franchise grants authority to  
2 Grantee to impair or damage any City property, public way, other  
3 ways or other property, whether publicly or privately owned.  
4

5 (10) Nothing in this Franchise shall be construed to  
6 create a duty upon the City to be responsible for construction  
7 of facilities or to modify public ways to accommodate Grantee's  
8 facilities.  
9

10 (11) Nothing in this Franchise shall be construed to  
11 create, expand, or extend any liability of the City to any third  
12 party user of Grantee's facilities or to otherwise recognize or  
13 create third party beneficiaries to this Franchise.  
14

15 (12) Nothing in this Franchise shall be construed to  
16 permit Grantee to unlawfully enter or construct improvements  
17 upon the property or premises of another.  
18

19 (13) Nothing in this Franchise grants authority to  
20 Grantee to enter, occupy or use City property, nor to install or  
21 construct facilities within the City's Public Rights-of-Way  
22 which are not authorized by this Franchise or lawfully allowed  
23 by applicable local, state, or federal law.  
24

25 (14) Nothing in this Franchise grants authority to  
26 Grantee to provide or offer cable service as cable service is  
27 defined in 47 U.S.C. § 522(6), Open Video System services, or  
28 Internet Protocol Television ("IPTV") Service. This Franchise  
29 does not relieve Grantee of any obligation it may have to obtain  
30 from the City separate authorization to provide Cable or Open  
31 Video System services, or relieve Grantee of its obligation to  
32 comply with any such authorizations that may be lawfully  
33 required.  
34

35 (15) Grantee may use the wired facilities authorized by  
36 this Franchise for the transmission of telecommunications  
37 service only as expressly provided in this Franchise.  
38

39 **Sec. 3. Term evaluation, and renewal.**  
40

41 (1) This Franchise shall run for a period of ten (10)  
42 years unless extended or terminated sooner as hereinafter

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1 provided. This Franchise shall commence after the effective  
2 date of this Franchise and in accordance with the written  
3 acceptance requirements herein.  
4

5 (2) Should the Parties fail to formally renew this  
6 Franchise prior to the expiration of the ten (10) year renewal  
7 period, the Franchise shall automatically continue on a month  
8 to month period until renewed or either party gives written  
9 notice at least one hundred and eighty (180) days in advance of  
10 intent not to renew the Franchise.  
11

12 **Sec. 4. Compliance with City, State, and Federal**  
13 **Laws.**  
14

15 (1) **Compliance with applicable laws.** Grantee shall at  
16 all times comply with all laws, rules, and regulations of the  
17 City, state and federal governments and any administrative  
18 agencies thereof which are applicable to all businesses in the  
19 City and/or all users of the Public Rights-of-Way. The express  
20 provisions of this Franchise constitute a valid and enforceable  
21 contract between the parties.  
22

23 (2) **Other ordinances.** This Franchise and all rights  
24 and privileges granted hereunder are subject to, and the Grantee  
25 must exercise all rights in accordance with, applicable law, as  
26 amended over the Franchise term. However, this Franchise is a  
27 contract, subject only to the City's exercise of its police  
28 powers and applicable law, and in case of any conflict between  
29 the express terms of this Franchise and any ordinance enacted by  
30 the City, this Franchise shall govern. This Franchise does not  
31 confer rights or immunities upon the Grantee other than as  
32 expressly provided herein. The grantee reserves the right to  
33 challenge provisions of any ordinance that conflicts with its  
34 contractual rights, and does not waive its right to challenge  
35 the lawfulness of a particular enactment, including on the  
36 grounds that a particular action is an unconstitutional  
37 impairment of contractual rights.  
38

39 (3) **Police power of the City.** Construction,  
40 maintenance, and operation of Grantee's Telecommunication System  
41 and all property of Grantee subject to the provisions of this  
42 Franchise shall be subject to all lawful police powers, rules, and

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1 regulations of the City. The Grantee shall be subject to the  
2 police power of the City to adopt and enforce general ordinances  
3 necessary to protect the safety and welfare of the general public  
4 in relation to the rights granted in the Franchise Area. The  
5 City reserves the right to use, occupy and enjoy any Public  
6 rights-of-way or other public places for any purpose, including  
7 without limitation, the construction of any water, sewer or  
8 storm drainage system, installation of traffic signal systems,  
9 intelligent transportation systems, street lights, trees,  
10 landscaping, bicycle paths and lanes, equestrian trails,  
11 sidewalks, other pedestrian amenities, other City services, or  
12 uses not limited to the enumerated items as listed herein, and  
13 other public street improvement projects. The City shall have  
14 the power at any time to order and require Grantee to remove or  
15 abate any pole, line, tower, wire, cable, guy, conduit,  
16 electric conductor, or any other structure or facility that is  
17 dangerous to life or property. In the event Grantee, after  
18 written notice, fails or refuses to act within fifteen (15)  
19 days of such written notice, City shall have the power to  
20 remove or abate the same at the expense of Grantee, all  
21 without compensation or liability for damages to Grantee  
22 except in instances when the damage is caused by negligence  
23 or willful misconduct of the City or its agents. Any conflict  
24 between the terms or conditions of this Franchise and any other  
25 present or future exercise of the City's police powers will be  
26 resolved in favor of the exercise of the City's police power.

27

28           (4) **Notification in the event of preemptive law.**  
29 Grantee shall use its best efforts to notify the City of any  
30 change in law that materially affects Grantee's rights or  
31 obligations under this Franchise.

32

33           (5) **Amending franchise to conform to subsequent law.**  
34 The City reserves the right at any time to amend this Franchise  
35 to conform to any hereafter enacted, amended, or adopted  
36 federal or state statute or regulation relating to the public  
37 health, safety, and welfare, or relating to roadway regulation, or  
38 a City Ordinance enacted pursuant to such federal or state  
39 statute or regulation upon providing Grantee with thirty (30)  
40 days written notice of its action setting forth the full text of  
41 the amendment and identifying the statute, regulation, or  
42 ordinance requiring the amendment. Said amendment shall become

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1 automatically effective upon expiration of the notice period  
2 unless, before expiration of that period, the Grantee makes a  
3 written call for negotiations over the terms of the amendment.  
4 If the parties do not reach agreement as to the terms of the  
5 amendment within thirty (30) days of the call for negotiations,  
6 the City may enact the proposed amendment, by incorporating the  
7 Grantee's concerns to the maximum extent the City deems possible.  
8

9           **Sec. 5.           Conditions           of           public           rights-of-way**  
10 **occupancy.**

11  
12           (1)   **Use permits and/or development authorization.**  
13 Grantee shall obtain use, right-of-way construction, and/or  
14 development authorization and required permits from the City and  
15 all other appropriate regulatory authorities prior to  
16 constructing or installing facilities or performing other work  
17 in the franchise area. Grantee shall provide the following  
18 information for all facilities that it proposes to construct or  
19 install:  
20

21                   (a)   Engineering plans, specifications and a  
22 network map of the proposed facilities and their relation to  
23 existing facilities, in a format and media requested by the City  
24 in sufficient detail to identify:  
25

26                           (i)   The location and route of the  
27 proposed facilities;  
28

29                           (ii)   When requested by the City, the  
30 location of all overhead and underground public utility,  
31 communication, cable, water, sewer, drainage and other  
32 facilities in the public way along the proposed route;  
33

34                           (iii)   When requested by the City, the  
35 location(s), if any, for interconnection with the communication  
36 facilities of others;  
37

38                           (iv)   The specific trees, structures,  
39 improvements, facilities and obstructions, if any, that Grantee  
40 proposes to temporarily or permanently alter, remove or  
41 relocate.  
42

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1                   (b)     If Grantee is proposing to install overhead  
2 facilities, the Grantee shall provide evidence that the proposed  
3 overhead installation is in compliance with all applicable  
4 provisions of the Des Moines Municipal Code. The Grantee shall  
5 also provide evidence of Grantee's authorization to use each  
6 utility pole along the proposed route together with any  
7 conditions of use imposed by the pole owner(s) for each pole,  
8 and written acknowledgement by the Grantee that if the overhead  
9 facilities are subsequently relocated underground, the Grantee  
10 shall relocate underground at no cost to the City.

11  
12                   (c)     If Grantee is proposing to install  
13 underground facilities in existing ducts or conduits within the  
14 public ways, information in sufficient detail to identify:

15  
16                             (i)     Evidence of ownership or  
17 authorization to use such ducts or conduits;

18  
19                             (ii)    Conditions of use imposed by the  
20 owner(s) of the ducts or conduits;

21  
22                             (iii)  If known to Grantee or reasonably  
23 ascertainable to Grantee, the total capacity of such ducts or  
24 conduits; and

25  
26                             (iv)  If known to Grantee or reasonably  
27 ascertainable to Grantee, the amount of the total capacity  
28 within such ducts or conduits which will be occupied by  
29 Grantee's facilities.

30  
31                   (d)     If Grantee is proposing to install  
32 underground facilities in new ducts or conduits within the  
33 public ways:

34  
35                             (i)     The location proposed for new ducts  
36 or conduits;

37  
38                             (ii)  The total capacity of such ducts or  
39 conduits; and

40

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1 (iii) The initial listing of co-located  
2 facilities located within Grantee constructed or installed ducts  
3 or conduits.

4  
5 (e) A preliminary construction schedule and  
6 completion date together with a traffic control plan in  
7 compliance with the Manual on Uniform Traffic Control Devices  
8 (MUTCD) for any construction.

9  
10 (f) Information to establish that the applicant  
11 has obtained all other governmental approvals and permits to  
12 construct and operate the facilities.

13  
14 (g) Such other documentation and information  
15 regarding the facilities requested by the City.

16  
17 (h) The requirements of this section do not  
18 apply to installation of optical cable necessary to connect a  
19 customer of Grantee to a previously approved facility; provided  
20 that neither excavation nor trenching in the public right-of-way  
21 is required; that the optical cable does not cross a distance of  
22 more than eighty (80) feet from its point of connection to the  
23 approved facility and the point where it exits the public right-  
24 of-way; that the optical cable connection meets or exceeds all  
25 applicable technical standards required by law; that the optical  
26 cable connection is durable and installed in accordance with  
27 good engineering, construction, and installation practices and  
28 does not interfere with the public use of the public ways, or  
29 adversely affect public health, safety or welfare; that the  
30 optical cable connection is constructed and installed to conform  
31 to all federal, state, local, and industry codes, rules,  
32 regulations, and standards; and that the optical cable  
33 connection does not damage or impair the City's public way or  
34 property.

35  
36 (i) The requirements of this section do not  
37 apply to repair or maintenance of a previously approved overhead  
38 facility; provided that the location and size of the previously  
39 approved facility is not materially changed; that no additional  
40 new facilities are constructed or installed; that the repair or  
41 maintenance activities are conducted in accordance with good  
42 engineering, repair, and maintenance practices and do not

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1 interfere with the public use of the public ways, or adversely  
 2 affect public health, safety, or welfare; that maintenance or  
 3 repair activities conform to all federal, state, local, and  
 4 industry codes, rules, regulations, and standards; and that the  
 5 repair or maintenance activities comply with the City Code.

6  
 7           (2)    **Construction and installation requirements.**

8  
 9           (a)    Grantee's System shall be constructed and  
 10 maintained in such manner as not to interfere with sewers, water  
 11 pipes or any other property of City, or with any other pipes,  
 12 wires, conduits, pedestals, structures or other facilities that  
 13 may have been placed in Rights-of-Way by, or under, City's  
 14 authority.

15  
 16           (b)    All facilities shall be constructed and  
 17 installed in such manner and at such points so as not to  
 18 inconvenience City or public use of the public ways or to  
 19 adversely affect the public health, safety or welfare and in  
 20 conformity with plans approved by the City, except in instances  
 21 in which deviation may be allowed by the City.

22  
 23           (c)    Interference with use of streets.    When  
 24 installing, locating, constructing or maintaining Facilities,  
 25 the Grantee shall not interfere with the use of any street to  
 26 any greater extent than is necessary, and shall leave the  
 27 surface and subsurface of any such street in as good condition  
 28 as it was prior to performance by the Grantee of such work, to  
 29 the satisfaction of the City.

30  
 31           (d)    The Grantee shall apply for, obtain, and  
 32 comply with the terms of all permits required under Des Moines  
 33 Municipal Code sections regulating construction and maintenance  
 34 within the right-of-way for any work done upon Grantee  
 35 Facilities.    Grantee shall comply with all applicable City,  
 36 State, and Federal codes, rules, regulations, and orders in  
 37 undertaking such work, which shall be done in a thorough and  
 38 proficient manner.    Grantee shall have the sole responsibility  
 39 for obtaining, at its own cost and expense, all permits,  
 40 licenses, or other forms of approval or authorization necessary  
 41 to construct, operate, maintain or repair or expand the System,  
 42 and to construct, maintain and repair any part thereof.

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1  
2 (e) The Telecommunications System constructed,  
3 maintained and operated by virtue of this Franchise, shall be so  
4 constructed, maintained and operated in accordance with all  
5 applicable engineering codes adopted or approved by the City,  
6 State of Washington, federal government and/or engineering  
7 profession and in accordance with any applicable Statutes of the  
8 State of Washington, rules and regulations of the applicable  
9 Washington regulatory authority, Ordinances of the City or of  
10 any other governmental regulatory commission, board or agency  
11 having jurisdiction over Grantee.

12  
13 (f) The construction plans and Grantee's  
14 operations shall conform to all federal, state, local, and  
15 industry codes, rules, regulations, standards and laws. Grantee  
16 must cease work immediately if the City determines that Grantee  
17 is not in compliance with such codes, rules, regulations, or  
18 standards, and may not begin or resume work until the City  
19 determines that Grantee is in compliance. The City shall not be  
20 liable for any costs arising out of delays occurring as a result  
21 of such work stoppage.

22  
23 (g) Neither approval of plans by the City nor  
24 any action or inaction by the City shall relieve Grantee of any  
25 duty, obligation, or responsibility for the competent design,  
26 construction, and installation of its facilities. Grantee is  
27 solely responsible for the supervision, condition, and quality  
28 of the work done, whether it is performed by itself or by its  
29 contractors, agents, or assigns.

30  
31 (h) Except as to emergency repairs, Grantee  
32 shall, prior to excavating within any street, alley or other  
33 public place, and installing any conduit, overhead cable or  
34 equipment therein, file with the City Manager or designee plans  
35 and specifications thereof showing the work to be done, the  
36 location and nature of the installation to be made, repaired or  
37 maintained, and a schedule showing the times of beginning and  
38 completion and shall secure a permit from the City before  
39 proceeding with any such work. The Grantee shall conform to all  
40 requirements of the City Code, as it currently exists or as it  
41 may be amended.

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1           (i) All construction and/or maintenance work as  
2 provided herein shall be performed in conformity with the plans  
3 and specifications filed with the City and with the permit or  
4 permits issued, except in instances in which deviation may be  
5 allowed thereafter in writing pursuant to an application by the  
6 Grantee.

7  
8           (j) Excavation work requiring a permit from the  
9 City shall only commence upon the issuance of applicable permits  
10 by the City, which permits shall not be unreasonably withheld or  
11 delayed. However, in the event of an emergency requiring  
12 immediate action by Grantee for the protection of the  
13 Facilities, City property or other persons or property, Grantee  
14 may proceed without first obtaining the normally required  
15 permits. In such event Grantee must (1) take all necessary and  
16 prudent steps to protect, support, and keep safe from harm the  
17 Facilities, or any part thereof; City property; or other persons  
18 or property, and to protect the public welfare, health and  
19 safety; and (2) as soon as possible thereafter, must obtain the  
20 required permits and comply with any mitigation requirements or  
21 other conditions in the after-the-fact permit.

22  
23           (k) In the event of an emergency, the Grantee  
24 may commence such repair and emergency response work as  
25 required under the circumstances, provided that the Grantee  
26 shall notify the City Manager or designee in writing as promptly  
27 as possible, before such repair or emergency work commences,  
28 or as soon thereafter as possible, if advance notice is not  
29 practical. The City may act, at any time, without prior  
30 written notice in the case of emergency, but shall notify the  
31 Grantee in writing as promptly as possible under the  
32 circumstances.

33  
34           (l) Unless such condition or regulation is in  
35 conflict with a federal or state requirement, the City may  
36 condition the granting of any permit or other approval that is  
37 required under this Franchise, in any manner reasonably  
38 necessary for the safe use and management of the public right-  
39 of-way or the City's property including, by way of example and  
40 not limitation, maintaining proper distance from other  
41 utilities, protecting the continuity of pedestrian and vehicular

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1 traffic and Rights-of-Way improvements, private facilities and  
2 public safety.

3  
4 (m) New facilities shall be constructed in  
5 accordance with the following terms and conditions:  
6

7 (i) Facilities shall be installed within  
8 the Grantee's existing underground duct or conduit whenever  
9 excess capacity exists.

10  
11 (ii) Overhead facilities shall be  
12 installed on pole attachments to existing utility poles only,  
13 and then only if space is available.

14  
15 (iii) Whenever all existing telephone and  
16 electric utilities are located underground within public ways,  
17 the Grantee must also locate its facilities underground.

18  
19 (iv) Whenever all new or existing  
20 telephone and electric utilities are located or relocated  
21 underground within public ways, the Grantee that currently  
22 occupies the same public ways shall concurrently relocate its  
23 facilities underground at its own expense.

24  
25 (n) Display of right-of-way permit. The Grantee  
26 shall maintain a copy of the construction permit and approved  
27 plans at the construction site, which shall be displayed and  
28 made available for inspection by the City Manager or designee at  
29 all times when construction work is occurring.

30  
31 (o) Construction schedule. The Grantee shall  
32 submit a written construction schedule to the City Manager or  
33 designee prior to commencing any work in or about the public  
34 ways in accordance with City regulations.

35  
36 (p) Locator service compliance. The Grantee,  
37 before commencing any construction in the public ways, shall  
38 call for location in accordance with RCW 19.122.

39  
40 (q) Placement. All optical cable, equipment,  
41 and structures shall be located and placed in accordance with a  
42 valid permit so as to cause minimum interference with the rights

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1 and reasonable convenience of adjacent property owners. All  
2 Facilities shall be maintained in a safe condition, and in good  
3 order and repair. Suitable barricades, flags, lights, flares,  
4 or other devices shall be used during construction activities at  
5 such times and places as are reasonably required for the safety  
6 of the public. Any poles or other fixtures placed in any street  
7 by the Grantee shall be placed in such manner as not to  
8 interfere with the usual travel on such public way. Exact  
9 placement within the right-of-way shall be coordinated with the  
10 City and other utilities in order to provide for maintenance and  
11 future expansion, as well as, for the safety of the public. The  
12 City reserves the reasonable right as to final placement.

13  
14 (r) Completion of construction. The Grantee  
15 shall promptly complete all construction activities so as to  
16 minimize disruption of the public ways and other public and  
17 private property. All construction work authorized by a permit  
18 within public ways, including restoration, must be completed  
19 within 90 calendar days of the date of issuance or at such other  
20 interval as the City may specify in writing upon issuance of the  
21 permit.

22  
23 (s) Non-complying work. Upon order of the City  
24 Manager or designee, all work which does not comply with the  
25 provisions of this Franchise shall be brought into compliance  
26 with this Franchise.

27  
28 (t) The City reserves the right to install, and  
29 permit to be installed, sewer, electric, phone, gas, water and  
30 other pipelines, cables, conduits and related appurtenances and  
31 to do, or permit to be done, any underground or overhead work  
32 in, across, along, over or under a public way or other public  
33 place occupied by Grantee. The City also reserves the right to  
34 construct new streets and public utilities and to alter the  
35 design of existing streets and public utilities. In performing  
36 such work, the City shall not be liable to Grantee for any  
37 damage, but nothing herein shall relieve any other person or  
38 entity from the responsibility for damages to Grantee's  
39 Facilities. The City will use its best efforts to provide  
40 Grantee with reasonable advance notice of plans by other persons  
41 to open the public ways.

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1  
2           (3)   **Coordination of construction and installation**  
3 **activities.**

4           (a)   Grantee shall coordinate its construction  
5 and installation activities and other work with the City and all  
6 other users of the public ways, including utilities located  
7 within the Franchise Area.  
8

9           (b)   All construction or installation locations,  
10 activities and schedules shall be coordinated, as ordered by the  
11 City, to minimize public inconvenience, disruption or damages.  
12

13           (c)   At least forty-eight (48) hours prior to  
14 entering a public way to perform construction and installation  
15 activities or other work, Grantee shall give notice, at its  
16 cost, to owners and occupiers of property adjacent to such  
17 public ways indicating the nature and location of the work to be  
18 performed. Such notice shall be physically posted by door  
19 hanger. Grantee shall make a good faith effort to comply with  
20 the property owner or occupier's preferences, if any, on  
21 location or placement of underground facilities, consistent with  
22 sound engineering practices.  
23

24           (d)   The City shall give reasonable advance  
25 notice to Grantee of plans to open public ways for construction  
26 or installation of facilities; provided, however, the City shall  
27 not be liable for damages for failure to provide such notice.  
28 When such notice has been given, Grantee shall provide  
29 information requested by the City regarding Grantee's future  
30 plans for use of the public way to be opened. When notice has  
31 been given, Grantee may only construct or install facilities  
32 during such period that the City has opened the public way for  
33 construction or installation.  
34

35           (4)   **Relocation.** Grantee shall relocate its facilities  
36 as ordered by the City Manager or designee at no expense or  
37 liability to the City when there is construction, alteration,  
38 repair or improvement of a public way. Grantee shall complete  
39 the relocation by the date specified by the City. Grantee  
40 agrees to protect and save harmless the City from any customer  
41 or third-party claims for service interruption or other losses  
42 in connection with any such change or relocation. Grantee shall

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1 relocate its facilities at its own expense except where the  
2 Grantee had paid for the relocation costs of the same facilities  
3 at the request of the City within the past five (5) years, the  
4 Grantee's share of the cost of relocation will be paid by the  
5 City if it requested the subsequent relocation.  
6

7           (5)   **Temporary removal, adjustment or alteration of**  
8 **facilities.**  
9

10           (a)   Grantee shall temporarily remove, adjust or  
11 alter the position of its facilities at its cost at the request  
12 of the City for public projects, events, or other public  
13 operations or purposes.  
14

15           (b)   Grantee shall locate the precise horizontal  
16 and vertical location of its underground facilities by  
17 excavating upon request of the City. If the City's request is  
18 in support of a City project, the Grantee shall complete this  
19 service within 14 days at no cost to the City. If the City's  
20 request is in support of a third party's project, the Grantee  
21 shall be entitled to recover its cost from the project sponsor.  
22

23           (c)   If any person requests permission from the  
24 City to use a public way for the moving or removal of any  
25 building or other object, the City shall, prior to granting such  
26 permission, require such person or entity to make any necessary  
27 arrangements with Grantee for the temporary removal, adjustment  
28 or alteration of Grantee's facilities to accommodate the moving  
29 or removal of said building or other object. In such event,  
30 Grantee shall, at the cost of the person desiring to move or  
31 remove such building or other object, remove, adjust or alter  
32 the position of its facilities which may obstruct the moving or  
33 removal of such building or other object, provided that:  
34

35           (i)   The moving or removal of such  
36 building or other object which necessitates the temporary  
37 removal, adjustment or alteration of facilities shall be done at  
38 a reasonable time and in a reasonable manner so as to not  
39 unreasonably interfere with Grantee's business, consistent with  
40 the maintenance of proper service to Grantee's customers;  
41

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1 (ii) Where more than one route is  
2 available for the moving or removal of such building or other  
3 object, such building or other object shall be moved or removed  
4 along the route which causes the least interference with the  
5 operations of Grantee, in the sole discretion of the City;  
6

7 (iii) The person obtaining such permission  
8 from the City to move or remove such building or other object  
9 may be required to indemnify and save Grantee harmless from any  
10 and all claims and demands made against it on account of injury  
11 or damage to the person or property of another arising out of or  
12 in conjunction with the moving or removal of such building or  
13 other object, to the extent such injury or damage is caused by  
14 the negligence of the person moving or removing such building or  
15 other object or the negligence of the agents or employees of the  
16 person moving or removing such building or other object; and  
17

18 (iv) Completion of notification  
19 requirements by a person who has obtained permission from the  
20 City to use a public way for the moving or removal of any  
21 building or other object shall be deemed to be notification by  
22 the City.  
23

24 (d) The City may require Grantee to temporarily  
25 remove, adjust or alter the position of Grantee's facilities as  
26 the City may reasonably determine to be necessary at no cost to  
27 the City for work deemed needed by the City in the Rights-of-  
28 Way. The City shall not be liable to Grantee or any other party  
29 for any direct, indirect, consequential, punitive, special or  
30 other damages suffered as a direct or indirect result of the  
31 City's actions.  
32

33 (e) The temporary removal, adjustment or  
34 alteration of the position of Grantee's facilities shall not be  
35 considered relocation for any purpose whatsoever.  
36

37 (6) **Tree trimming.** The Grantee shall have the authority  
38 to trim trees or other natural growth on public property or which  
39 overhang streets, alleys, sidewalks and public ways of the City  
40 so as to prevent the branches of such trees from coming in  
41 contact with the Grantee's wires, cables or other equipment  
42 that may be damaged due to continued contact. Grantee takes

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1 full responsibility for removing debris when the work is  
2 complete. All trimming is to be done at the sole expense and  
3 responsibility of Grantee.

4  
5 Trimming of trees and shrubbery within or overhanging the public  
6 ways to prevent contact with Grantee's Facilities shall be done  
7 in such a manner to cause the minimum amount of damage to trees  
8 and shrubs. If in the City's determination, trees are  
9 excessively damaged as a result of the work undertaken by or on  
10 behalf of Grantee, Grantee shall pay the City, within 30 days of  
11 submission of a statement by the City, the reasonable cost of  
12 any treatment required to preserve a tree or shrub or the cost  
13 for removal and replacement of the tree or shrub with  
14 landscaping of equal value or the value of the tree or shrub  
15 prior to the damage or removal, as determined by the City  
16 Manager or designee.

17  
18 Any trimming or removal of trees or shrubs shall be done in full  
19 compliance with the City's Ordinances and all other laws or  
20 regulations of the City.

21  
22 (7) **Underground installation.**

23  
24 (a) The parties agree that this Franchise does  
25 not limit the City's authority under federal law, state law, or  
26 local ordinance, to require the undergrounding of utilities.

27  
28 (b) Whenever the City requires the  
29 undergrounding of aerial utilities in the Franchise Area, the  
30 Grantee shall underground the Grantee Facilities in the manner  
31 specified by the City Manager or designee at no expense or  
32 liability to the City. Where other utilities are present and  
33 involved in the undergrounding project, Grantee shall only be  
34 required to pay its fair share of common costs borne by all  
35 utilities, in addition to the costs specifically attributable to  
36 the undergrounding of Grantee Facilities. Common costs shall  
37 include necessary costs for common trench excavation, backfill,  
38 and restoration, and utility vaults. Fair share shall be  
39 determined in comparison to the total number and size of all  
40 other utility facilities being undergrounded.

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1 (c) Grantee will maintain membership in good  
2 standing with the Utility Coordinating Council One Call Center,  
3 or other similar or successor organization designated to  
4 coordinate underground equipment locations and installations.  
5 Grantee shall abide by chapter 19.122 RCW (Washington State's  
6 "Underground Utilities" statutes) and will further comply with  
7 and adhere to local procedures, customs and practices relating  
8 to the one call locator service program.  
9

10 (8) **Ducts and conduits.**  
11

12 (a) If the Grantee is constructing underground  
13 conduit for its own use, the City may require the Grantee to  
14 construct excess conduit capacity in the public ways, provided  
15 that the City enters into a contract with the Grantee consistent  
16 with RCW 80.36.150. The contract rates to be charged should  
17 recover the incremental costs of the Grantee, (calculated as the  
18 difference between what the Grantee would have paid for the  
19 construction of its conduit and the additional cost only of  
20 construction of the excess conduit). If the City makes the  
21 additional conduit available to any other entity for the  
22 purposes of providing telecommunications service or cable  
23 service for hire, sale, or resale to the general public, the  
24 rates to be charged, as set forth in the contract with the  
25 Grantee shall recover at least the fully allocated costs of the  
26 Grantee. The Grantee shall state both contract rates in the  
27 contract. The City shall inform the Grantee of the use, and any  
28 change in use, of the requested conduit and related access  
29 structures, if any, to determine the applicable rate to be paid  
30 by the City.  
31

32 (b) The City shall not require that the  
33 additional conduit space be connected to the access structure  
34 and vaults of the Grantee.  
35

36 (c) Except as expressly provided in this  
37 section, Grantee shall not charge the City for any costs, of any  
38 kind whatsoever, for facilities provided by Grantee in  
39 accordance with this section.  
40

41 (9) **Location of Grantee Facilities.**  
42

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1           (a) From time to time, the City, or its  
2 representatives, may request identification of the specific  
3 location of Grantee System facilities. The Grantee agrees to  
4 respond to such request within forty-eight (48) hours of the  
5 receipt of the request. In the event that Grantee cannot locate  
6 such information within forty-eight (48) hours, Grantee shall  
7 notify the City. If Grantee fails to notify the City of its  
8 facilities locations within forty eight (48) hours, and damage  
9 is caused to Grantee's facilities as a direct result, the  
10 Grantee shall hold the City harmless from all liability, damage,  
11 cost or expense resulting from the City's actions in this regard  
12 unless such damage was caused by the willful misconduct of the  
13 City or its agents.

14  
15           (b) Report of underground facilities. From time  
16 to time the City may require to design or construct right-of-way  
17 improvements in a specific area, the City or its designee may  
18 require the Grantee to submit a report of existing underground  
19 system facilities for a specific area of the City that will be  
20 impacted as a result of a planned right-of-way improvement.  
21 Within thirty (30) days after receipt by the Grantee of a  
22 request from the City or its designee, the Grantee shall submit  
23 a report of underground system facilities that shall comply with  
24 the following provisions:

25  
26           (i) Certification by an engineer licensed  
27 in the State of Washington employed by the Grantee that the  
28 report accurately depicts the location of all system facilities,  
29 including drop service lines to individual subscribers, if any.  
30 The accuracy of this report shall be noted based upon the  
31 capability of the locating equipment used.

32  
33           (ii) The accurate depth of the underground  
34 facility, as may be available based upon the capability of the  
35 locating device used. The accuracy of this information shall be  
36 noted.

37  
38           (iii) Submittals shall be provided in  
39 hardcopy, and if available, electronically as an AutoCAD or  
40 ArcView file.

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1 (iv) The City and Grantee recognize the  
2 importance of making best efforts to communicate during the  
3 planning and construction phases of right-of-way improvement  
4 projects. To that end, the City and Grantee agree to work  
5 cooperatively and to be reasonable and timely in requesting and  
6 providing necessary information. In the event the City  
7 reasonably determines that more precise information is needed  
8 for a specific aspect of a right-of-way project, the Grantee  
9 agrees to take the necessary steps to provide such precise  
10 information within thirty (30) days of receipt of request. If  
11 it is necessary for the Grantee to pot-hole or excavate and  
12 restore portions of the right-of-way to respond to the City's  
13 information request, the Grantee agrees to take such steps at  
14 its expense, and the City agrees to waive all permitting and  
15 inspection fees therefore.

16  
17 (c) Within sixty (60) days of the effective date  
18 of this Franchise, Grantee shall provide the City with a current  
19 route map of the Telecommunication System located within the  
20 City. Upon City request, but no more often than once each year  
21 during the term of this Franchise, the Grantee shall provide the  
22 City with an updated route map showing the changes that have  
23 occurred in the Telecommunication System.

24  
25 (d) Grantee agrees to obtain facilities location  
26 information from other users of the Public Rights-of-Way prior  
27 to Grantee's construction, reconstruction, maintenance,  
28 operations and repair of the Grantee's System facilities.

29  
30 (10) **Removal and abandonment of facilities.** In the  
31 event that the use of any part of the Grantee's system is  
32 discontinued for any reason for a continuous period of twelve  
33 (12) months, or in the event such system equipment or facilities  
34 have been installed in any public ways or rights-of-way without  
35 complying with the requirements of this Franchise or other City  
36 ordinances, or the Franchise has been terminated or has expired,  
37 upon receiving ten (10) business days prior written demand from  
38 the City, the Grantee shall promptly remove, at its expense,  
39 such affected equipment or Facilities, other than any which the  
40 City may permit to be abandoned in place, from the public ways  
41 of rights-of-way. Said removal shall be completed within one-  
42 hundred eighty (180) days from receipt of the City's written

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1 demand. In the event of such removal, the Grantee shall  
2 promptly restore the public ways or rights-of-way from which  
3 such property has been removed to a condition satisfactory to  
4 the City. Any affected equipment or facilities of the Grantee  
5 remaining in place one-hundred eighty-one (181) days after the  
6 termination or expiration of the Franchise, and upon written  
7 notice from the City, shall be considered permanently abandoned.  
8 The City may extend such time not to exceed an additional ninety  
9 (90) days with prior written request from the Grantee, and such  
10 request shall not be unreasonably withheld. Any equipment or  
11 facilities of the Grantee that the City allows to be abandoned  
12 in place shall be abandoned in such manner as the City shall  
13 prescribe. Upon permanent abandonment of the equipment or  
14 facilities of the Grantee in place, the equipment or Facilities  
15 shall become that of the City, and the Grantee shall submit to  
16 the City Clerk an instrument in writing, to be approved by the  
17 City Attorney, transferring to the City the ownership of such  
18 equipment or facilities. None of the foregoing affects or  
19 limits the Grantee's rights to compensation for an involuntary  
20 abandonment of its equipment or facilities under state or  
21 federal law.

22

23 (11) **Safety and maintenance requirements.**

24

25 (a) All work authorized and required under this  
26 Franchise will be performed in a safe, thorough, and workmanlike  
27 manner.

28

29 (b) Grantee, in accordance with applicable  
30 federal, state, and local safety requirements shall, at all  
31 times, employ ordinary care and shall use commonly accepted  
32 methods and devices for preventing failures and accidents which  
33 are likely to cause damage, injury, or nuisance to occur. All  
34 facilities, wherever situated or located, shall at all times be  
35 kept in a good, safe, and suitable condition. If a violation of  
36 a safety code or other applicable regulation is found to exist  
37 by the City, the City may, after discussions with Grantee,  
38 establish a reasonable time for Grantee to make necessary  
39 repairs. If the repairs are not made within the established time  
40 frame, the City may make the repairs itself at the cost of the  
41 Grantee or have them made at the cost of Grantee.

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1 (c) If Grantee fails to commence, pursue or  
2 complete any work required by law, this Franchise or any  
3 applicable permit to be done in any public way within the time  
4 prescribed and to the satisfaction of the City, the City may at  
5 its discretion cause the work to be done. Grantee shall pay to  
6 the City the reasonable costs of the work in an itemized report  
7 provided by the City to Grantee within 30 days after receipt of  
8 such report.

9  
10 (d) Grantee, and any person acting on its  
11 behalf, shall provide a traffic control plan that conforms to  
12 the latest edition of the Manual of Uniform Traffic Control  
13 Devices (MUTCD). Said plan shall use suitable barricades,  
14 flags, flagmen, lights, flares, and other measures as required  
15 for the safety of all members of the general public during the  
16 performance of work, of any kind whatsoever, in public ways to  
17 prevent injury or damage to any person, vehicle, or property.  
18 Grantee shall implement and comply with its approved traffic  
19 control plan during execution of its work. The traffic control  
20 plan shall be developed and kept on site in Grantee's possession  
21 for all work impacting vehicular and pedestrian traffic. Traffic  
22 control plans may be modified as necessary by the Grantee to  
23 achieve effective and safe traffic control. All road closures  
24 requested by Grantee require a detour plan submitted at least 48  
25 hours in advance and prior City approval unless there is an  
26 emergency.

27  
28 (e) Grantee shall maintain its facilities in  
29 proper working order. Grantee shall restore its facilities to  
30 proper working order upon receipt of notice from the City that  
31 facilities are not in proper working order. The City may, after  
32 discussions with Grantee, establish a reasonable time for  
33 Grantee to restore its facilities to proper working order. If  
34 the facilities are not restored to proper working order within  
35 the established time frame, the City may restore the facilities  
36 to proper working order or have them restored at the cost of  
37 Grantee.

38  
39 (f) The City shall have the right to inspect all  
40 construction and installation work performed by Grantee pursuant  
41 to this Franchise to the extent necessary to ensure compliance  
42 by Grantee. On an ongoing basis, Grantee shall certify to the

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1 City that Grantee's work is being performed and completed in a  
2 satisfactory manner.

3  
4 (g) On notice from the City that any work is  
5 being performed contrary to the provisions herein, or in an  
6 unsafe or dangerous manner or in violation of the terms of any  
7 applicable permit, laws, regulations, ordinances or standards,  
8 the City may issue a stop work order and Grantee shall stop the  
9 work immediately. The City shall issue a stop work order in  
10 writing, unless given verbally in the case of an emergency, and  
11 provide the order to the individual doing work or post it on the  
12 work site. A copy of the order shall be sent to Grantee, and  
13 the order must indicate the nature of the alleged violation or  
14 unsafe condition and the conditions under which Grantee may  
15 resume work.

16  
17 (12) **Removal of unauthorized facilities.** Within thirty  
18 (30) days following written notice from the City, Grantee shall,  
19 at its expense, remove unauthorized facilities and restore  
20 public Rights-of-Way and other property to as good a condition  
21 as existed prior to construction or installation of its  
22 facilities. Any plan for removal of said facilities must be  
23 approved by the City prior to such work. Facilities are  
24 unauthorized and subject to removal in the following  
25 circumstances:

26  
27 (a) Upon expiration, termination, or  
28 cancellation of this Franchise;

29  
30 (b) Upon abandonment of the facilities.  
31 Facilities shall be deemed abandoned if they are unused by  
32 Grantee as described in Section 5(10);

33  
34 (c) If the facilities were constructed or  
35 installed prior to the effective date of this Franchise; unless  
36 such facilities were constructed or installed upon the condition  
37 of subsequent approval of this Franchise with the consent of the  
38 City;

39  
40 (d) If the facilities were constructed,  
41 installed, operated, maintained, or repaired without the prior

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1 issuance of required use and/or development authorization and  
2 permits;

3  
4 (e) If the facilities were constructed or  
5 installed or are operated, maintained or repaired in violation  
6 of the terms or conditions of this Franchise; or

7  
8 (f) If the facilities are unauthorized for any  
9 reason whatsoever.

10

11 (13) **Restoration of public ways and other property.**

12

13 (a) Whenever necessary, after construction or  
14 maintaining any of Grantee's Facilities within the Rights-of-  
15 Way, the Grantee shall, without delay, and at Grantee's sole  
16 expense, remove all debris and restore the surface and  
17 subsurface disturbed by Grantee as nearly as possible to as good  
18 or better condition as it was in before the work began. Grantee  
19 shall replace any property corner monuments, survey reference or  
20 equipment that were disturbed or destroyed during Grantee's work  
21 in the Rights-of-Way. Such restoration shall be done in a  
22 manner consistent with applicable codes and laws and to the  
23 City's satisfaction and specifications where applicable.  
24 Grantee agrees to pay all costs and expenditures required on  
25 Rights-of-Way as a result of settling, subsidence, or any other  
26 need for repairs or maintenance resulting from excavations made  
27 by Grantee for necessary trench patch maintenance, indefinitely.  
28 Favorable weather conditions permitting, Grantee agrees to  
29 repair Rights-of-Way as a result of settling, subsidence, or  
30 other needed repairs or maintenance resulting from excavations  
31 made by the Grantee upon forty-eight (48) hours notice excluding  
32 weekends and holidays. If Grantee fails to undertake such  
33 repairs as herein provided, the City may perform the repairs at  
34 Grantee's expense.

35

36 (b) Landscape restoration. All trees,  
37 landscaping and grounds removed, damaged or disturbed as a  
38 result of the construction, installation, maintenance,  
39 operation, repair or replacement of the Grantee's facilities,  
40 shall be replaced or restored, at the Grantee's expense to the  
41 condition existing prior to performance of the work.

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1           (14) **Poles, structures, and property owned by others.**

2 If and when the Grantee is authorized to install communication  
3 facilities aerially in accordance with chapter 12.48 of the Des  
4 Moines Municipal Code (DMMC), Grantee must obtain written  
5 approval from the owners of utility poles, structures and  
6 property not owned by Grantee prior to attaching to or otherwise  
7 using such poles, structures or property, and provide proof of  
8 such approval to the City. The City makes no representation and  
9 assumes no responsibility for the availability of utility poles,  
10 structures, and property owned by third parties for the  
11 installation of Grantee's facilities. The City shall not be  
12 liable for the unavailability of utility poles, structures, and  
13 property owned by the City or third parties for any reason  
14 whatsoever. The installation of facilities by Grantee on or in  
15 the poles, structures, or property owned by others shall be  
16 subject to and limited by the owner's authority to enter,  
17 occupy, and use public ways. In the event that the authority of  
18 the owner of poles, structures, or property to enter, occupy,  
19 and use the public ways either expires, terminates, or is  
20 cancelled, the authority of Grantee to construct, install,  
21 operate, maintain, and repair Grantee's facilities at such  
22 locations may be immediately cancelled at the sole option of the  
23 City. The City shall not be liable for the costs for removal of  
24 facilities arising from expiration, termination, or cancellation  
25 of any pole owner's authority to enter, occupy, or use public  
26 ways for any reason whatsoever.

27  
28           **Sec. 6.           Indemnification and liability and assumption**  
29 **of risk.**

30  
31           (1) Indemnification / Hold Harmless. The Grantee shall  
32 defend, indemnify and hold the City, its officers, officials,  
33 employees and volunteers harmless from any and all claims,  
34 injuries, damages, losses or suits including attorney fees,  
35 arising out of or in connection with activities or operations  
36 performed by the Grantee or on the Grantee's behalf under this  
37 Franchise agreement, except for injuries and damages caused by  
38 the sole negligence of the City.

39  
40           (2) The City shall give the Grantee written notice of any  
41 claim or of the commencement of any action, suit or other  
42 proceeding covered by this section. If a claim or action arises,

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1 the City or any other indemnified party shall then tender the  
2 defense of the claim to Grantee, which defense shall be at  
3 Grantee's expense. However, the failure of the City to provide  
4 such notice in writing to Grantee shall not relieve Grantee of  
5 its duties and obligations under this Section, provided that  
6 Grantee is given sufficient advance notice to perform its duties  
7 under this Section. It is further specifically and expressly  
8 understood that the indemnification provided herein constitutes  
9 the Grantee's waiver of immunity under Industrial Insurance,  
10 Title 51 RCW, solely for the purposes of this indemnification.  
11 This waiver has been mutually negotiated by the parties.  
12

13 (3) Should a court of competent jurisdiction determine  
14 that this Agreement is subject to RCW 4.24.115, then, in the  
15 event of liability for damages arising out of bodily injury to  
16 persons or damages to property caused by or resulting from the  
17 concurrent negligence of the Contractor and the City, its  
18 officers, officials, employees, and volunteers, the Contractor's  
19 liability hereunder shall be only to the extent of the  
20 Contractor's negligence. The provisions of this section shall  
21 survive the expiration or termination of this Agreement.  
22

23 (4) **Damages and penalties.** By acceptance of this  
24 Franchise, Grantee specifically agrees that it will pay, all  
25 damages or penalties which the City, its officers, agents,  
26 employees, or contractors may legally be required to pay as a  
27 result of damages arising out of copyright infringements and all  
28 other damages arising out of Grantee's or Grantee's agents'  
29 installation, maintenance, or operation of the  
30 Telecommunication System, except as specifically referenced  
31 elsewhere in this Franchise, whether or not any act or omission  
32 complained of is authorized, allowed, or prohibited by this  
33 Franchise, subject to Section 635A of the Cable Act and  
34 applicable law.  
35

36 (5) **Expenses.** If any action or proceeding is brought  
37 against the City or any of its officers, agents, or employees  
38 for claims for damages or penalties described in this Section,  
39 the Grantee, upon written notice from the City, shall assume the  
40 investigation of defense and fully control any resolution or  
41 compromise thereof, including the employment of counsel and the  
42 payment of all expenses including the reasonable value of any

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1 services rendered by any officers, agents, employees or  
2 contractors of the City which are not unreasonably duplicative  
3 of services provided by Grantee and its representatives. The  
4 City shall fully cooperate with the Grantee.  
5

6 (6) **Separate counsel.** The City shall have the right  
7 to employ separate counsel in any action or proceeding and to  
8 participate in the investigation and defense thereof, and the  
9 Grantee shall pay the reasonable fees and expenses of such  
10 separate counsel if representation of both the Grantee and the  
11 City by the same attorney would be inconsistent with accepted  
12 canons of professional ethics and if separate counsel is  
13 employed with the approval and consent of the Grantee, which  
14 shall not be unreasonably withheld.  
15

16 (7) **Assumption of risk.** Grantee assumes the risk of  
17 damage to its facilities located in the City's public ways from  
18 activities conducted by third parties or the City, its elected  
19 officials, officers, employees, agents, or representatives.  
20 Grantee releases and waives any and all claims against the City,  
21 its elected officials, officers, employees, agents, and  
22 representatives for damage to or destruction of the Grantee's  
23 facilities except to the extent any such damage or destruction  
24 is caused by or arises from active sole negligence of the City.  
25 Grantee bears sole responsibility to insure its property.  
26 Grantee shall ensure that its insurance contracts waive  
27 subrogation claims against the City, its elected officials,  
28 officers, employees, agents, and representatives, and Grantee  
29 shall indemnify, defend and hold harmless the City, its elected  
30 officials, officers, employees, agents, and representatives  
31 against any and all subrogation claims if it fails to do so.  
32

### 33 **Sec. 7. Insurance.**

34

35 (1) Grantee shall procure and maintain for the duration  
36 of the Franchise, insurance against claims for injuries to  
37 Persons or damage to property which may arise from or in  
38 connection with this Franchise by the Grantee, their agents,  
39 representatives, employees or subcontractors.  
40

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1 (a) Minimum Amounts of Insurance. In accordance  
2 with applicable law, the Grantee shall maintain throughout the  
3 term of this Franchise the following insurance limits:  
4

5 (i) Automobile Liability. An automobile  
6 liability insurance policy and, if necessary, a commercial  
7 umbrella liability insurance policy with a limit of not less than  
8 Three Million Dollars (\$3,000,000) per accident. Such insurance  
9 shall cover liability arising out of any Grantee motor vehicle  
10 (including owned, hired, and non-owned vehicles).  
11

12 (ii) Commercial General Liability. A  
13 commercial general liability insurance policy issued by a  
14 company duly authorized to do business in the State of  
15 Washington insuring the Grantee with respect to the  
16 installation, maintenance, and operation of Grantee's  
17 Telecommunication System in the minimum amount of One Million  
18 Dollars (\$1,000,000) per occurrence and Five Million Dollars  
19 (\$5,000,000) aggregate. The City shall be named as an additional  
20 insured under Grantee's Commercial General Liability insurance  
21 policy.  
22

23 (iii) Excess General Liability. Excess or  
24 Umbrella Liability coverage at limits of Five Million Dollars  
25 (\$5,000,000) per occurrence and annual aggregate. This excess  
26 or umbrella liability coverage shall apply, at a minimum, to  
27 both the Commercial General and Auto insurance policy coverage.  
28

29 (iv) Workers' Compensation coverage as  
30 required by the Industrial Insurance laws of the State of  
31 Washington. This requirement may be satisfied instead through  
32 the Grantee's primary Commercial General and Automobile  
33 Liability coverage, or any combination thereof.  
34

35 (b) Other Insurance Provisions. The insurance  
36 policies are to contain, or be endorsed to contain, the  
37 following provisions for Automobile Liability and Commercial  
38 General Liability insurance:  
39

40 (i) The Grantee's insurance coverage  
41 shall be primary insurance as respect the City. Any Insurance,  
42 self-insurance, or insurance pool coverage maintained by the

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1 City shall be excess of the Grantee's insurance and shall not  
2 contribute with it.

3  
4 (ii) The Grantee's insurance shall be  
5 endorsed to state that coverage shall not be cancelled by either  
6 party, except after thirty (30) days prior written notice by  
7 certified mail, return receipt requested, has been given to the  
8 City.

9  
10 (c) Acceptability of Insurers. Insurance is to  
11 be placed with insurers with a current A.M. Best rating of not  
12 less than A:VII.

13  
14 (d) Verification of Coverage. Upon acceptance of  
15 the Franchise, Grantee shall furnish the City with original  
16 certificates and a copy of the amendatory endorsements,  
17 including but not necessarily limited to the additional insured  
18 endorsement, evidencing the insurance requirements of the  
19 Grantee.

20  
21 (e) Subcontractors. Grantee shall have sole  
22 responsibility for determining the insurance coverage and limits  
23 required, if any, to be obtained by any contractors or  
24 subcontractors, which determination shall be made in accordance  
25 with reasonable and prudent business practices.

26  
27 (2) Endorsements. Grantee agrees that with respect to  
28 the insurance requirements contained above, all insurance  
29 certificates will contain the following required provisions:

30  
31 (a) Name the City and its officers, employees,  
32 and elected representatives as an additional insured.

33  
34 (b) Provide for thirty (30) days' notice to the  
35 City for cancellation, non-renewal or material change, or ten  
36 (10) days notice to the City in the event of nonpayment of the  
37 premium.

38  
39 (c) Shall be on an occurrence basis and shall be  
40 primary coverage of all losses resulting from Grantee's  
41 operations covered by the policies.

42

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1           (3)    **Insurance term.**    The insurance required above  
2 shall be kept in full force and effect by Grantee during this  
3 Franchise and thereafter until after the removal of all poles,  
4 wires, cables, underground conduits, manholes, and other  
5 conductors and fixtures incident to the maintenance and  
6 operation of Grantee's Telecommunication System, should such  
7 removal be required by City Council or undertaken by Grantee.  
8

9           (4)    **Issuing companies.**    Companies issuing the insurance  
10 policies shall have no recourse against the City for payment of  
11 any premiums or assessments which all are set at the sole risk  
12 of the Grantee.  
13

14           (5)    **No limit on liability.**    Grantee's maintenance of  
15 insurance as required by this Franchise shall not be construed  
16 to limit the liability of Grantee to the coverage provided by  
17 such insurance, or otherwise limit the City's recourse to any  
18 remedy to which the City is otherwise entitled at law or in  
19 equity.  
20

21           **Sec. 8. Performance bond and security fund.**  
22

23           (1)    **Amount.**    The Grantee shall provide the City with a  
24 financial guarantee in the amount of One Hundred Thousand  
25 Dollars (\$100,000) running for, or renewable for, the term of  
26 this Franchise, in a form and substance acceptable to the City.  
27 This Franchise performance bond shall be separate and distinct  
28 from any other bond or deposit required.  
29

30           (2)    **Damages.**    In the event Grantee shall fail to  
31 substantially comply with any one or more of the provisions of  
32 this Franchise, then there shall be recovered jointly and  
33 severally from the principal and any surety of such financial  
34 guarantee any damages suffered by City as a result thereof,  
35 including but not limited to staff time, material and equipment  
36 costs, compensation or indemnification of third parties, and the  
37 cost of removal or abandonment of facilities hereinabove  
38 described.  
39

40           (a)    Before any draws are made on the Franchise  
41 performance bond, the City Manager or designee shall give  
42 written notice to the Grantee:

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1  
2 (i) Describing the act, default or  
3 failure to be remedied, or the damages, cost or expenses which  
4 the City has incurred by reason of the Grantee's act or default;  
5

6 (ii) Providing a reasonable opportunity  
7 for the Grantee to first remedy the existing or ongoing default  
8 or failure, if applicable;  
9

10 (iii) Providing a reasonable opportunity  
11 for the Grantee to pay any moneys due the City before the City  
12 draws on the Franchise performance bond, if applicable;  
13

14 (iv) That the Grantee will be given an  
15 opportunity to review the act, default or failure described in  
16 the notice with the City Manager or designee.  
17

18 (b) The Grantee shall replace the Franchise  
19 performance bond within fourteen (14) days after written notice  
20 from the City Manager or designee that there is a deficiency in  
21 the amount of the Franchise performance bond.  
22

23 (3) **Security fund.** In addition to the performance bond,  
24 Grantee shall establish and maintain a security fund in the  
25 amount of eight thousand dollars (\$8,000), at its cost, with the  
26 City by depositing such monies, letters of credit, or other  
27 instruments in such form and amount acceptable to the City  
28 within 30 calendar days of the effective date of this Franchise.  
29 No sums may be withdrawn from the fund by Grantee without  
30 consent of the City. The security fund shall be maintained at  
31 the sole expense of Grantee so long as any of the Grantee's  
32 facilities occupy a public way.  
33

34 (a) The fund shall serve as security for the  
35 performance of this Franchise, including any claims, costs,  
36 damages, judgments, awards, attorneys' fees or liability, of any  
37 kind whatsoever, the City pays or incurs, including civil  
38 penalties, because of any failure attributable to Grantee to  
39 comply with the provisions of this Franchise or the codes,  
40 ordinances, rules, regulations, standards, or permits of the  
41 City.  
42

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1 (b) Before any sums are withdrawn from the  
2 security fund, the City shall give written notice to Grantee:

3  
4 (i) Describing the act, default or  
5 failure to be remedied, or the claims, costs, damages,  
6 judgments, awards, attorneys' fees or liability which the City  
7 has incurred or may pay by reason of Grantee's act or default;

8  
9 (ii) Providing a reasonable opportunity  
10 for Grantee to first remedy the existing or ongoing default or  
11 failure, if applicable;

12  
13 (iii) Providing a reasonable opportunity  
14 for Grantee to pay any monies due the City before the City  
15 withdraws the amount thereof from the security fund, if  
16 applicable; and

17  
18 (iv) Grantee will be given an opportunity  
19 to review the act, default or failure described in the notice  
20 with the City or his or her designee.

21  
22 (c) Grantee shall replenish the security fund  
23 within fourteen (14) days after written notice from the City  
24 that there is a deficiency in the amount of the fund.

25  
26 (d) Insufficiency of the security fund shall not  
27 release or relieve Grantee of any obligation or financial  
28 responsibility.

29  
30 **Sec. 9. Taxes, charges, and fees.**

31  
32 (1) Franchise Fee. RCW 35.21.860 currently prohibits a  
33 municipal franchise fee for permission to use the right of way  
34 for telephone business purposes. Based on the representations  
35 of Grantee, it is the City's understanding that Grantee will use  
36 the right of way for telephone business purposes as defined by  
37 RCW 82.16.010. If this prohibition is removed or does not  
38 apply, Grantee agrees the City will assess a reasonable  
39 franchise fee in accordance with the City Code, so long as  
40 local, State or federal law does not otherwise prohibit such  
41 fee.  
42

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1           (2) Utility Tax. The parties further understand that RCW  
2 35.21.870 currently limits the rate of City tax upon telephone  
3 business activities to six percent (6%) of Gross Receipts,  
4 unless a higher rate is approved by vote of the people. The  
5 parties agree, however, that nothing in this Franchise shall  
6 limit the City's power of taxation, as now or may hereafter  
7 exist. Grantee stipulates that all of its business activities in  
8 the City of Des Moines as identified herein are taxable  
9 activities subject to the six percent (6%) gross receipts tax  
10 rate, as imposed under the City's telephone business tax,  
11 adopted in Des Moines Municipal Code Chapter 6.68. This  
12 provision does not limit the City's power to amend Des Moines  
13 Municipal Code Chapter 6.68 as may be permitted by law,  
14 including increases to the tax rate.  
15  
16

17           (3) Permit and Administrative Fees. Grantee shall also  
18 pay and be responsible for all charges and fees imposed to  
19 recover actual administrative expenses incurred by the City that  
20 are directly related to receiving and approving this Franchise,  
21 any use and/or development authorizations which may be required,  
22 or any permit which may be required, to inspecting plans and  
23 construction, or to the preparation of a detailed statement.  
24 Regular application and processing charges and fees imposed by  
25 the City shall be deemed to be attributable to actual  
26 administrative expenses incurred by the City but shall not  
27 excuse Grantee from paying and being responsible for other  
28 actual administrative expenses incurred by the City.  
29

30           (a) Grantee shall pay a franchise processing fee  
31 of \$3,000 within 30 calendar days of the effective date of this  
32 Franchise.  
33

34           (b) Grantee shall pay fees according to  
35 applicable sections of the City Code.  
36

37           (4) Grantee shall pay and be responsible for taxes  
38 permitted by law.  
39

40           (5) In addition to penalties and other remedies for  
41 which Grantee may be subjected, the City reserves the right to  
42 impose site-specific charges for placement of structures used to

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1 provide telecommunications services. Unless otherwise agreed by  
2 the parties, such charges shall be an amount equal to at least  
3 fifty percent (50%) of the costs of construction or installation  
4 of such structures.

5  
6 **Sec. 10. Access to Facilities and Universal Service.**

7  
8 (1) Grantee shall provide access to its facilities by  
9 hire, sale, or resale on a nondiscriminatory basis. Grantee  
10 shall make its telecommunications services available to any  
11 customer within its franchise area who shall request such  
12 service whenever feasible, without discrimination as to the  
13 terms, conditions, rates or charges for the Grantee's services;  
14 provided, however, that nothing in this section shall prohibit  
15 Grantee from making any reasonable classifications among  
16 differently situated customers.

17  
18 (2) Grantee shall provide Internet access to users of  
19 City property, at locations requested by the City, if it is  
20 practicable, upon Grantee's then-current market rates for such  
21 service and pursuant to a separate services agreement. Grantee  
22 and the City may enter into a separate agreement or agreements  
23 regarding the allocation of costs to construct, install,  
24 operate, maintain, repair, and remove facilities needed to  
25 provide such access; provided, however, that nothing herein  
26 shall require the City to accept construction or installation of  
27 facilities on City property.

28  
29 **Sec. 11. Acquisition of facilities.** Upon Grantee's  
30 acquisition of any facilities in the public way, or upon any  
31 addition or annexation to the City of any area in which Grantee  
32 has facilities, such facilities shall immediately be subject to  
33 the terms of this Franchise without further action of the City  
34 or Grantee.

35  
36 **Sec. 12. Vacation of public ways.** The City reserves the  
37 right to vacate any public way which is subject to rights,  
38 privileges, and authority granted by this Franchise. If Grantee  
39 has facilities in such public way, the City shall reserve an  
40 easement for Grantee, if requested by the Grantee.  
41

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1           **Sec. 13. Duty to provide information.**       Grantee's  
2 obligations under this section are in addition to those provided  
3 elsewhere in this Franchise. Within fifteen (15) days of a  
4 written request from the City, Grantee shall furnish the City  
5 with all requested information sufficient to demonstrate:  
6

7           (1) That Grantee has complied with all requirements of  
8 this Franchise;  
9

10          (2) That taxes, fees, charges, or other costs owed or  
11 payable by Grantee have been properly collected and paid; and  
12

13          (3) The names of the users of Grantee's facilities and  
14 the services and products those users are providing to the  
15 public.  
16

17  
18           **Sec. 14. Records.**  
19

20          (1) Grantee will manage all of its operations in  
21 accordance with a policy of keeping its documents and records  
22 open and accessible to the City. The City will have access to,  
23 and the right to inspect, any documents and records of Grantee  
24 and its affiliates that are reasonably necessary for the  
25 enforcement of this Franchise or to verify Grantee's compliance  
26 with terms or conditions of this Franchise. Grantee will not  
27 deny the City access to any of Grantee's records on the basis  
28 that Grantee's documents or records are under the control of any  
29 affiliate or a third party.  
30

31          (2) All documents and records maintained by Grantee  
32 shall be made available for inspection by the City at reasonable  
33 times and intervals; provided, however, that nothing in this  
34 section shall be construed to require Grantee to violate state  
35 or federal law regarding subscriber privacy, nor shall this  
36 section be construed to require Grantee to disclose proprietary  
37 or confidential information without adequate safeguards for its  
38 confidential or proprietary nature.  
39

40          (3) One copy of documents and records requested by the  
41 City will be furnished to the City at the cost of Grantee. If  
42 the requested documents and records are too voluminous or for

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1 security reasons cannot be copied or removed, then Grantee may  
2 request, in writing within ten (10) days of the City's request,  
3 that the City inspect them at Grantee's local office. If any  
4 documents or records of Grantee are not kept in a local office  
5 and/or are not made available in copies to the City, and if the  
6 City determines that an examination of such documents or records  
7 is necessary or appropriate for the enforcement of this  
8 Franchise, or to verify Grantee's compliance with terms or  
9 conditions of this Franchise, then all reasonable travel and  
10 related costs incurred in making such examination shall be paid  
11 by Grantee.  
12

13           **Sec. 15. Assignment or transfer.** Grantee's rights,  
14 privileges, and authority under this Franchise, and ownership or  
15 working control of facilities constructed or installed pursuant  
16 to this Franchise, may not, directly or indirectly, be  
17 transferred, assigned or disposed of by sale, lease, merger,  
18 consolidation or other act of Grantee, by operation of law or  
19 otherwise, except as provided herein, or without the prior  
20 written consent of the City, which consent shall not be  
21 unreasonably withheld or delayed. Any transfer, assignment or  
22 disposal of Grantee's rights, privileges, and authority under  
23 this Franchise, or ownership or working control of facilities  
24 constructed or installed pursuant to this Franchise, may be  
25 subject to reasonable conditions as may be prescribed by the  
26 City.  
27

28           (1) No rights, privileges, or authority under this  
29 Franchise shall be assigned, transferred, or disposed of in any  
30 manner within twelve (12) months after the effective date of  
31 this Franchise.  
32

33           (2) Absent extraordinary and unforeseeable  
34 circumstances, no facility shall be assigned, transferred, or  
35 disposed of before construction of the facility has been  
36 completed and restoration has been performed to the satisfaction  
37 of the City.  
38

39           (3) Grantee and the proposed assignee or transferee  
40 shall provide and certify the following information to the City  
41 not less than one hundred and fifty (150) days prior to the  
42 proposed date of assignment, transfer, or disposal:

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1  
2 (a) Complete information setting forth the  
3 nature, terms and conditions of the proposed assignment,  
4 transfer, or disposal;

5  
6 (b) Any other information reasonably required by  
7 the City; and

8  
9 (c) A transfer application fee in an amount to  
10 be determined by the City to recover actual administrative costs  
11 directly related to receiving and approving the proposed  
12 assignment, transfer, or disposal.

13  
14 (3) No assignment, transfer, or disposal may be made or  
15 shall be approved unless the assignee or transferee has the  
16 legal, technical, financial, and other requisite qualifications  
17 to operate, maintain, repair, and remove facilities constructed  
18 or installed pursuant to this Franchise and to comply with the  
19 terms and conditions of this Franchise.

20  
21 (4) Any transfer, assignment, or disposal of rights,  
22 privileges, and authority under this Franchise or ownership or  
23 working control of facilities constructed or installed pursuant  
24 to this Franchise, without prior written approval of the City  
25 pursuant to this section, shall be void and is cause for  
26 termination of this Franchise.

27  
28 (5) Any transactions which singularly or collectively  
29 result in a change of fifty percent (50%) or more of the  
30 ownership or working control (regardless of the percentage) of  
31 the Grantee or affiliated entities having fifty percent (50%) or  
32 more of the ownership or actual working control (regardless of  
33 the percentage) of Grantee, or of control of the  
34 telecommunications capacity or bandwidth of Grantee, shall be  
35 considered an assignment or transfer requiring City approval.  
36 Transactions between affiliated entities are exempt from City  
37 approval; provided that, Grantee shall promptly notify the City  
38 prior to any proposed change in, or transfer of, or acquisition  
39 by any other party of control of Grantee. Every change,  
40 transfer, or acquisition of control of Grantee shall cause a  
41 review of the proposed transfer. City approval shall not be

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1 required for mortgaging purposes or if said transfer is from  
2 Grantee to another person controlled by Grantee.

3  
4 (6) All terms and conditions of this Franchise shall be  
5 binding upon all permitted successors and assigns of Grantee and  
6 all persons who obtain ownership or working control of any  
7 facility constructed or installed pursuant to this Franchise.

8  
9 **Sec. 16. Violations, noncompliance, and other grounds**  
10 **for termination or cancellation.**

11  
12 (1) This Franchise, and any right, privilege or  
13 authority of Grantee to enter, occupy or use public ways may be  
14 terminated or cancelled by the City for the following reasons:

15  
16 (a) Violation of or noncompliance with any term  
17 or condition of this Franchise by Grantee;

18  
19 (b) Violation of or noncompliance with the  
20 material terms of any use and/or development authorization or  
21 required permit by Grantee;

22  
23 (c) Construction, installation, operation,  
24 maintenance, or repair of facilities on, in, under, over,  
25 across, or within any public way without Grantee first obtaining  
26 use and/or development authorization and required permits from  
27 the City and all other appropriate regulatory authorities;

28  
29 (d) Unauthorized construction, installation,  
30 operation, maintenance, or repair of facilities on City  
31 property;

32  
33 (e) Misrepresentation or lack of candor by or on  
34 behalf of Grantee in any application or written or oral  
35 statement upon which the City relies in making the decision to  
36 grant, review or amend any right, privilege or authority to  
37 Grantee;

38  
39 (f) Abandonment of facilities;

40  
41 (g) Failure of Grantee to pay taxes, fees,  
42 charges or costs when and as due; or

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(h) Insolvency or bankruptcy of Grantee.

(2) In the event that the City believes that grounds exist for termination or cancellation of this Franchise or any right, privilege or authority of Grantee to enter, occupy or use public ways, Grantee shall be given written notice and a reasonable period of time not exceeding thirty (30) days to furnish evidence:

(a) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation, noncompliance, or other grounds for termination or cancellation;

(b) That rebuts the alleged violation, noncompliance, or other grounds for termination or cancellation; or

(c) That it would be in the public interest to impose some penalty or sanction less than termination or cancellation.

(3) In the event that Grantee fails to provide evidence reasonably satisfactory to the City as provided in subsection (2) of this section, the City shall refer the apparent violation, noncompliance, or other grounds for termination or cancellation to the City Council. The City Council shall provide the Grantee with notice and a reasonable opportunity to be heard concerning the matter.

(4) If the City Council determines that the violation, noncompliance, or other grounds above for termination or cancellation exist, then, Grantee shall, at the election of the City Council, forfeit all rights, privileges and authority conferred under this Franchise or any use and/or development authorization or permit granted by the City, and this Franchise and any such use and/or development authorization or permit may be terminated or cancelled by the City Council. The City Council may elect, in lieu of the foregoing and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order compelling Grantee into compliance or to take corrective action, or to recover damages

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1 and costs incurred by the City by reason of Grantee's actions or  
2 omissions. The City Council shall utilize the following factors  
3 in analyzing the nature, circumstances, extent, and gravity of  
4 the actions or omissions of Grantee:

- 5  
6 (a) Whether the misconduct was egregious;  
7  
8 (b) Whether substantial harm resulted;  
9  
10 (c) Whether the violation was intentional;  
11  
12 (d) Whether there is a history of prior  
13 violations of the same or other requirements;  
14  
15 (e) Whether there is a history of overall  
16 compliance; and  
17  
18 (f) Whether the violation was voluntarily  
19 disclosed, admitted or cured.

20  
21 (5) The City Council's choice of remedy shall not  
22 excuse Grantee from compliance with any term or condition of  
23 this Franchise or the material terms of any use and/or  
24 development authorization or required permit. Grantee shall have  
25 a continuing duty to remedy any violation, noncompliance, or  
26 other grounds for termination or cancellation. Further, nothing  
27 herein shall be construed as limiting any remedies that the City  
28 may have, at law or in equity, for enforcement of this Franchise  
29 and any use and/or development authorization or permit granted  
30 to Grantee.

31  
32 **Sec. 17. Notices.**

33  
34 (1) Any regular notice or information required or  
35 permitted to be given to the parties under this Franchise may be  
36 sent to the following addresses unless otherwise specified:

37  
38 GRANTEE:  
39 Zayo Group, LLC  
40 400 Centennial Pkwy, Ste. 200  
41 Louisville, CO 80027  
42 Attn: General Counsel, ZFTI

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

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1  
2 (2) Grantee shall additionally provide a phone number  
3 and designated responsible officials to respond to emergencies.  
4 After being notified of an emergency, Grantee shall cooperate  
5 with the City and make its best efforts to immediately respond  
6 to minimize damage, protect the welfare, health and safety of  
7 the public and repair facilities to restore them to proper  
8 working order. Annually, on request of the City, Grantee will  
9 meet with City emergency response personnel to coordinate  
10 emergency management operations and, at least once a year, at  
11 the request of the City, actively participate in emergency  
12 preparations.

13  
14 **Sec. 18. Non-Waiver.** The failure of the City to  
15 exercise any rights or remedies under this Franchise or to  
16 insist upon compliance with any terms or conditions of this  
17 Franchise shall not be a waiver of any such rights, remedies,  
18 terms or conditions of this Franchise by the City and shall not  
19 prevent the City from demanding compliance with such terms or  
20 conditions at any future time or pursuing its rights or  
21 remedies.

22  
23 **Sec. 19. Eminent domain.** This Franchise is subject to  
24 the power of eminent domain and the right of the City Council to  
25 repeal, amend or modify the Franchise in the interest of the  
26 public. In any proceeding under eminent domain, the Franchise  
27 itself shall have no value.

28  
29 **Sec. 20. Limitation of liability.** Administration of  
30 this Franchise may not be construed to create the basis for any  
31 liability on the part of the City, its elected officials,  
32 officers, employees, agents, and representatives for any injury  
33 or damage; or by reason of any schedule or specification review,  
34 inspection, notice and order, permission, or other approval or  
35 consent by the City; for any action or inaction thereof  
36 authorized or done in connection with the implementation or  
37 enforcement of this Franchise by the City; or for the accuracy  
38 of plans submitted to the City.

39  
40 **Sec. 21. Damage to facilities.** Unless directly and  
41 proximately caused by the active sole negligence of the City,  
42 the City shall not be liable for any damage to or loss of any

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1 facilities as a result of or in connection with any public  
2 works, public improvements, construction, excavation, grading,  
3 filling, or work of any kind on, in, under, over, across, or  
4 within a public way done by or on behalf of the City.  
5

6 **Sec. 22. Competitive neutrality.** In order to maintain a  
7 level playing field among all similarly situated Grantees of the  
8 City, upon the grant or renewal of another franchise in the  
9 Rights-of-Way where material terms or conditions of this  
10 Franchise conflict with a change in the City Code, or the  
11 provisions of this Franchise provide a material competitive  
12 advantage over another similarly situated provider (such that it  
13 negatively impacts the City's ability to effectively manage the  
14 Rights-of-Way), then the City may elect to renegotiate with the  
15 Grantee in good faith to modify the terms and provisions of this  
16 Franchise to obtain material terms and conditions that, as a  
17 whole, are competitively neutral between Grantees.  
18

19 **Sec. 23. Resolution of disputes and governing law.**  
20

21 (1) **Alternative dispute resolution.** If a dispute  
22 arises from or relates to this Contract or the breach thereof  
23 and if the dispute cannot be resolved through direct  
24 discussions, the parties agree to endeavor first to settle the  
25 dispute in an amicable manner by mediation administered by a  
26 mediator under JAMS Alternative Dispute Resolution service rules  
27 or policies before resorting to arbitration. The mediator may  
28 be selected by agreement of the parties or through JAMS.  
29 Following mediation, or upon written Contract of the parties to  
30 waive mediation, any unresolved controversy or claim arising  
31 from or relating to this Contract or breach thereof shall be  
32 settled through arbitration which shall be conducted under JAMS  
33 rules or policies. The arbitrator may be selected by agreement  
34 of the parties or through JAMS. All fees and expenses for  
35 mediation or arbitration shall be borne by the parties equally.  
36 However, each party shall bear the expense of its own counsel,  
37 experts, witnesses, and preparation and presentation of  
38 evidence.  
39

40 (2) **Applicable law and jurisdiction.** This Contract  
41 shall be governed by the laws of the State of Washington.  
42 Although the agreed to and designated primary dispute resolution

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1 method as set forth above, in the event any claim, dispute or  
2 action arising from or relating to this Contract cannot be  
3 submitted to arbitration, then it shall be commenced exclusively  
4 in the King County Superior Court or the United States District  
5 Court, Western District of Washington as appropriate. In any  
6 claim or lawsuit for damages arising from the parties'  
7 performance of this Agreement, each party shall pay all its  
8 legal costs and attorney's fees incurred in defending or  
9 bringing such claim or lawsuit, in addition to any other  
10 recovery or award provided by law; provided, however, nothing in  
11 this paragraph shall be construed to limit the City's right to  
12 indemnification under Section XVII of this Contract.

13  
14 **(3) Amending franchise to conform to subsequent law.**  
15 The City reserves the right at any time to amend this Franchise  
16 to conform to any hereafter enacted, amended, or adopted  
17 federal or state statute or regulation relating to the public  
18 health, safety, and welfare, or relating to roadway regulation, or  
19 a City Ordinance enacted pursuant to such federal or state  
20 statute or regulation upon providing Grantee with thirty (30)  
21 days written notice of its action setting forth the full text of  
22 the amendment and identifying the statute, regulation, or  
23 ordinance requiring the amendment. Said amendment shall become  
24 automatically effective upon expiration of the notice period  
25 unless, before expiration of that period, the Grantee makes a  
26 written call for negotiations over the terms of the amendment.  
27 If the parties do not reach agreement as to the terms of the  
28 amendment within thirty (30) days of the call for negotiations,  
29 the City may enact the proposed amendment, by incorporating the  
30 Grantee's concerns to the maximum extent the City deems possible.

31  
32 **(4) Notification in the event of preemptive law.**  
33 Grantee shall use its best efforts to notify the City of any  
34 change in law that materially affects Grantee's rights or  
35 obligations under this Franchise.

36  
37 **Sec. 24. Severability.** If any section, sentence, clause  
38 or phrase of this Franchise or its application to any person or  
39 entity should be held to be invalid or unconstitutional by a  
40 court of competent jurisdiction, such invalidity or  
41 unconstitutionality will not affect the validity or  
42 constitutionality of any other section, sentence, clause or

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1 phrase of this Franchise or its application to any other person  
2 or entity.

3  
4 **Sec. 25. Miscellaneous.**

5  
6 (1) **Equal employment and nondiscrimination.** Throughout  
7 the term of this Franchise, Grantee will fully comply with all  
8 equal employment and nondiscrimination provisions and  
9 requirements of federal, state, and local laws, and in  
10 particular, FCC rules and regulations relating thereto.

11  
12 (2) **Local employment efforts.** Grantee will use  
13 reasonable efforts to utilize qualified local contractors,  
14 including minority business enterprises and woman business  
15 enterprises, whenever the Grantee employs contractors to perform  
16 work under this Franchise.

17  
18 (3) **Descriptive headings.** The headings and titles of  
19 the sections and subsections of this Franchise are for reference  
20 purposes only and do not affect the meaning or interpretation of  
21 the text herein.

22  
23 (4) **Force majeure.** Grantee shall not be required to  
24 perform any covenant or obligation in this Franchise, or be  
25 liable in damages to the City, so long as the performance or  
26 non-performance of the covenant or obligation is delayed, caused  
27 or prevented by an act of God or force majeure. An "act of God"  
28 or "force majeure" is defined for purposes of this Franchise as  
29 strikes, lockouts, sit-downs, material or labor restrictions by  
30 any governmental authority, unusual transportation delays,  
31 riots, floods, washouts, explosions, earthquakes, fire, storms,  
32 weather (including inclement weather which prevents  
33 construction), acts of the public enemy, wars, terrorism,  
34 insurrections, and/or any other cause not reasonably within the  
35 control of Grantee.

36  
37 (5) **No joint venture.** Nothing herein will be deemed to  
38 create a joint venture or principal-agent relationship between  
39 the parties, and neither party is authorized to, nor shall  
40 either party act toward third persons or the public in any  
41 manner that would indicate any such relationship with the other.  
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1           (6)     **Actions of the City or Grantee.** In performing their  
2     respective obligations under this Franchise, the City and  
3     Grantee will act in a reasonable, expeditious, and timely  
4     manner. Whenever this Franchise sets forth a time for any act to  
5     be performed by Grantee, such time shall be deemed to be of the  
6     essence, and any failure of Grantee to perform within the  
7     allotted time may be considered a material breach of this  
8     Franchise, and sufficient grounds for the City to invoke any  
9     relevant remedy.

10  
11           (7)     **Counterparts.** This Franchise may be executed in  
12     one or more counterparts, and each originally executed duplicate  
13     counterpart of this Franchise shall be deemed to possess the  
14     full force and effect of the original.

15  
16           (8)     **Entire agreement.** This Franchise represents the  
17     entire understanding and agreement between the parties with  
18     respect to the subject matter and supersedes all prior oral and  
19     written negotiations between the parties.

20  
21           (9)     **Modification.** The parties may alter, amend or  
22     modify the terms and conditions of this Franchise upon written  
23     agreement of both parties to such alteration, amendment or  
24     modification.

25  
26           (10)    **Non-exclusivity.** This Franchise shall be  
27     nonexclusive, and subject to all prior rights, interests,  
28     easements, permits or licenses granted by the City to any person  
29     to use any property for any purpose whatsoever, including the  
30     right of the City to use the same for any purpose it deems fit,  
31     including the same or similar purposes allowed Grantee hereunder.  
32     The City may at any time grant authorization to use the right-of-  
33     ways for any purpose not incompatible with Grantee's authority  
34     under this Franchise and for such additional franchises for  
35     telecommunications services and or cable systems as the City  
36     deems appropriate.

37  
38           (11)    **Rights granted.** This Franchise does not convey any  
39     right, title or interest in public ways, but shall be deemed  
40     only as authorization to enter, occupy, or use public ways for  
41     the limited purposes and terms stated in this Franchise.

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1 Further, this Franchise shall not be construed as any warranty  
2 of title.

3  
4 (12) **Contractors and subcontractors.** Grantee's  
5 contractors and subcontractors must be licensed and bonded in  
6 accordance with the City's ordinances, rules, and  
7 regulations. Work by contractors and subcontractors is subject  
8 to the same restrictions, limitations and conditions as if the  
9 work were performed by Grantee.

10  
11 **Sec. 26. Publication.** The City Clerk is authorized and  
12 directed to publish a summary hereof.

13  
14 **Sec. 27. Effective date.** This Ordinance shall be in  
15 full force and effect five days from and after its passage,  
16 approval and publication as required by law, but if, and only  
17 if, the Grantee has endorsed this Ordinance and accepted the  
18 terms and conditions thereof.

19  
20 **PASSED BY** the City Council of the City of Des Moines this  
21 \_\_\_\_ day of \_\_\_\_\_, 2013 and signed in authentication  
22 thereof this \_\_\_\_ day of \_\_\_\_\_, 2013.

23  
24  
25  
26  
27 \_\_\_\_\_  
M A Y O R

28  
29 APPROVED AS TO FORM:

30  
31  
32 \_\_\_\_\_  
33 City Attorney

34  
35 ATTEST:

36  
37  
38 \_\_\_\_\_  
39 City Clerk

40  
41 Published: \_\_\_\_\_  
42  
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**ACCEPTANCE:**

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) agrees that it will not oppose the City's intervening, to the extent that the City is legally entitled to do so, in any legal or regulatory proceeding affecting the Telecommunication System; (3) accepts and agrees to comply with each and every provision of this Franchise; and (4) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

**ZAYO GROUP, LLC**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: General Counsel, ZFTI

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[35.21.855](#) << [35.21.860](#) >> [35.21.865](#)

## RCW 35.21.860

### Electricity, telephone, or natural gas business, service provider — Franchise fees prohibited — Exceptions.

(1) No city or town may impose a franchise fee or any other fee or charge of whatever nature or description upon the light and power, or gas distribution businesses, as defined in RCW [82.16.010](#), or telephone business, as defined in RCW [82.16.010](#), or service provider for use of the right-of-way, except:

(a) A tax authorized by RCW [35.21.865](#) may be imposed;

(b) A fee may be charged to such businesses or service providers that recovers actual administrative expenses incurred by a city or town that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter [43.21C](#) RCW;

(c) Taxes permitted by state law on service providers;

(d) Franchise requirements and fees for cable television services as allowed by federal law; and

(e) A site-specific charge pursuant to an agreement between the city or town and a service provider of personal wireless services acceptable to the parties for:

(i) The placement of new structures in the right-of-way regardless of height, unless the new structure is the result of a mandated relocation in which case no charge will be imposed if the previous location was not charged;

(ii) The placement of replacement structures when the replacement is necessary for the installation or attachment of wireless facilities, and the overall height of the replacement structure and the wireless facility is more than sixty feet; or

(iii) The placement of personal wireless facilities on structures owned by the city or town located in the right-of-way. However, a site-specific charge shall not apply to the placement of personal wireless facilities on existing structures, unless the structure is owned by the city or town.

A city or town is not required to approve the use permit for the placement of a facility for personal wireless services that meets one of the criteria in this subsection absent such an agreement. If the parties are unable to agree on the amount of the charge, the service provider may submit the amount of the charge to binding arbitration by serving notice on the city or town. Within thirty days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or arbitrators shall determine the charge based on comparable siting agreements involving public land and rights-of-way. The arbitrator or arbitrators shall not decide any other disputed issues, including but not limited to size, location, and zoning requirements. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(2) Subsection (1) of this section does not prohibit franchise fees imposed on an electrical energy, natural gas, or telephone business, by contract existing on April 20, 1982, with a city or town, for the duration of the contract, but the franchise fees shall be considered taxes for the purposes of the limitations established in RCW [35.21.865](#) and [35.21.870](#) to the extent the fees exceed the costs allowable under subsection (1) of this section.

[2007 c 6 § 1020; 2000 c 83 § 8; 1983 2nd ex.s. c 3 § 39; 1982 1st ex.s. c 49 § 2.]

**Notes:**

**Part headings not law -- Savings -- Effective date -- Severability -- 2007 c 6:** See notes following RCW [82.32.020](#).

**Findings -- Intent -- 2007 c 6:** See note following RCW [82.14.495](#).

**Construction -- Severability -- Effective dates -- 1983 2nd ex.s. c 3:** See notes following RCW [82.04.255](#).

**Intent -- Construction -- Effective date -- Fire district funding -- 1982 1st ex.s. c 49:** See notes following RCW [35.21.710](#).

"Service provider" defined: RCW [35.99.010](#).



[RCWs](#) > [Title 82](#) > [Chapter 82.16](#) > [Section 82.16.010](#)

Beginning of Chapter << [82.16.010](#) >> [82.16.020](#)

## **RCW 82.16.010**

### **Definitions. (Effective until June 30, 2013.)**

For the purposes of this chapter, unless otherwise required by the context:

(1) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(2) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(3) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or 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.

(4) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(5) "Log transportation business" means the business of transporting logs by truck, except when such transportation meets the definition of urban transportation business or occurs exclusively upon private roads.

(6) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier, or contract carrier as defined by RCW [81.68.010](#) and [81.80.010](#). However, "motor transportation business" does not mean or include: (a) A log transportation business; or (b) the transportation of logs or other forest products exclusively upon private roads or private highways.

(7)(a) "Public service business" means any of the businesses defined in subsections (1), (2), (4), (6), (8), (9), (10), (12), and (13) of this section or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business and low-level radioactive waste site operating companies as redefined in RCW [81.04.010](#). It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(b) The definitions in this subsection (7)(b) apply throughout this subsection (7).

(i) "Competitive telephone service" has the same meaning as in RCW [82.04.065](#).

(ii) "Network telephone service" means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes the provision of transmission to and from the site of an internet provider via a telephone network, toll line or

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channel, cable, microwave, or similar communication or transmission system. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, the providing of broadcast services by radio or television stations, nor the provision of internet access as defined in RCW 82.04.297, including the reception of dial-in connection, provided at the site of the internet service provider.

(iii) "Telephone business" means the business of providing network telephone service. It includes cooperative or farmer line telephone companies or associations operating an exchange.

(iv) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in (b)(i) and (ii) of this subsection.

(8) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(9) "Railroad car business" means the business of operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(10) "Telegraph business" means the business of affording telegraphic communication for hire.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(13) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(14) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" applies equally in the provisions of this chapter.

[2010 c 106 § 224. Prior: 2009 c 535 § 1110; 2009 c 469 § 701; 2007 c 6 § 1023; 1996 c 150 § 1; 1994 c 163 § 4; 1991 c 272 § 14; 1989 c 302 § 203; prior: 1989 c 302 § 102; 1986 c 226 § 1; 1983 2nd ex.s. c 3 § 32; 1982 2nd ex.s. c 9 § 1; 1981 c 144 § 2; 1965 ex.s. c 173 § 20; 1961 c 293 § 12; 1961 c 15 § 82.16.010; prior: 1959 ex.s. c 3 § 15; 1955 c 389 § 28; 1949 c 228 § 10; 1943 c 156 § 10; 1941 c 178 § 12; 1939 c 225 § 20; 1937 c 227 § 11; 1935 c 180 § 37; Rem. Supp. 1949 § 8370-37.]

**Notes:**

**Expiration date -- 2010 c 106 § 224:** "Section 224 of this act expires June 30, 2013." [2010 c 106 § 410.]

**Effective date -- 2010 c 106:** See note following RCW 35.102.145.

**Intent -- Construction -- 2009 c 535:** See notes following RCW 82.04.192.

**Expiration date -- 2009 c 469 §§ 701 and 702:** "Sections 701 and 702 of this act expire June 30, 2013." [2009 c 469 § 905.]

**Effective date -- 2009 c 469:** See note following RCW [82.08.962](#).

**Part headings not law -- Savings -- Effective date -- Severability -- 2007 c 6:** See notes following RCW [82.32.020](#).

**Findings -- Intent -- 2007 c 6:** See note following RCW [82.14.495](#).

**Effective date -- 1996 c 150:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 150 § 3.]

**Effective dates -- 1991 c 272:** See RCW [81.108.901](#).

**Finding, purpose -- 1989 c 302:** See note following RCW [82.04.120](#).

**Effective date -- 1986 c 226:** "This act shall take effect July 1, 1986." [1986 c 226 § 3.]

**Construction -- Severability -- Effective dates -- 1983 2nd ex.s. c 3:** See notes following RCW [82.04.255](#).

**Effective date -- 1982 2nd ex.s. c 9:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 9 § 4.]

**Intent -- 1981 c 144:** "The legislature recognizes that there have been significant changes in the nature of the telephone business in recent years. Once solely the domain of regulated monopolies, the telephone business has now been opened up to competition with respect to most of its services and equipment. As a result of this competition, the state and local excise tax structure in the state of Washington has become discriminatory when applied to regulated telephone company transactions that are similar in nature to those consummated by nonregulated competitors. Telephone companies are forced to operate at a significant state and local tax disadvantage when compared to these nonregulated competitors.

To remedy this situation, it is the intent of the legislature to place telephone companies and nonregulated competitors of telephone companies on an equal excise tax basis with regard to the providing of similar goods and services. Therefore competitive telephone services shall for excise tax purposes only, unless otherwise provided, be treated as retail sales under the applicable state and local business and occupation and sales and use taxes. This shall not affect any requirement that regulated telephone companies have under Title [80](#) RCW, unless otherwise provided.

Nothing in this act affects the authority and responsibility of the Washington utilities and transportation commission to set fair, just, reasonable, and sufficient rates for telephone service." [1981 c 144 § 1.]

**Severability -- 1981 c 144:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 144 § 12.]

**Effective date -- 1981 c 144:** "This act shall take effect on January 1, 1982." [1981 c 144 § 13.]

**Effective date -- 1965 ex.s. c 173:** See note following RCW [82.04.050](#).

**RCW 82.16.010****Definitions. (Effective June 30, 2013.)**

For the purposes of this chapter, unless otherwise required by the context:

(1) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(2) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(3) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or 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.

(4) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(5) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier, or contract carrier as defined by RCW [81.68.010](#) and [81.80.010](#). However, "motor transportation business" does not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

(6)(a) "Public service business" means any of the businesses defined in subsections (1), (2), (4), (5), (7), (8), (9), (11), and (12) of this section or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business and low-level radioactive waste site operating companies as redefined in RCW [81.04.010](#). It includes, among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(b) The definitions in this subsection (6)(b) apply throughout this subsection (6).

(i) "Competitive telephone service" has the same meaning as in RCW [82.04.065](#).

(ii) "Network telephone service" means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes the provision of transmission to and from the site of an internet provider via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, the providing of broadcast services by radio or television stations, nor the provision of internet access as defined in RCW [82.04.297](#), including the reception of dial-in connection, provided at the site of the internet service provider.

(iii) "Telephone business" means the business of providing network telephone service. It includes cooperative or farmer line telephone companies or associations operating an exchange:

(iv) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in (b)(i) and (ii) of this subsection.

(7) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(8) "Railroad car business" means the business of operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(9) "Telegraph business" means the business of affording telegraphic communication for hire.

(10) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(11) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(12) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(13) The meaning attributed, in chapter [82.04](#) RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter.

[2009 c 535 § 1110; 2007 c 6 § 1023; 1996 c 150 § 1; 1994 c 163 § 4; 1991 c 272 § 14; 1989 c 302 § 203. Prior: 1989 c 302 § 102; 1986 c 226 § 1; 1983 2nd ex.s. c 3 § 32; 1982 2nd ex.s. c 9 § 1; 1981 c 144 § 2; 1965 ex.s. c 173 § 20; 1961 c 293 § 12; 1961 c 15 § [82.16.010](#); prior: 1959 ex.s. c 3 § 15; 1955 c 389 § 28; 1949 c 228 § 10; 1943 c 156 § 10; 1941 c 178 § 12; 1939 c 225 § 20; 1937 c 227 § 11; 1935 c 180 § 37; Rem. Supp. 1949 § 8370-37.]

### Notes:

**Reviser's note:** The definitions in this section have been alphabetized pursuant to RCW [1.08.015\(2\)\(k\)](#).

**Intent -- Construction -- 2009 c 535:** See notes following RCW [82.04.192](#).

**Part headings not law -- Savings -- Effective date -- Severability -- 2007 c 6:** See notes following RCW [82.32.020](#).

**Findings -- Intent -- 2007 c 6:** See note following RCW [82.14.495](#).

**Effective date -- 1996 c 150:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 150 § 3.]

**Effective dates -- 1991 c 272:** See RCW [81.108.901](#).

**Finding, purpose -- 1989 c 302:** See note following RCW [82.04.120](#).

**Effective date -- 1986 c 226:** "This act shall take effect July 1, 1986." [1986 c 226 § 3.]

**Construction -- Severability -- Effective dates -- 1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Effective date -- 1982 2nd ex.s. c 9:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 9 § 4.]

**Intent -- 1981 c 144:** "The legislature recognizes that there have been significant changes in the nature of the telephone business in recent years. Once solely the domain of regulated monopolies, the telephone business has now been opened up to competition with respect to most of its services and equipment. As a result of this competition, the state and local excise tax structure in the state of Washington has become discriminatory when applied to regulated telephone company transactions that are similar in nature to those consummated by nonregulated competitors. Telephone companies are forced to operate at a significant state and local tax disadvantage when compared to these nonregulated competitors.

To remedy this situation, it is the intent of the legislature to place telephone companies and nonregulated competitors of telephone companies on an equal excise tax basis with regard to the providing of similar goods and services. Therefore competitive telephone services shall for excise tax purposes only, unless otherwise provided, be treated as retail sales under the applicable state and local business and occupation and sales and use taxes. This shall not affect any requirement that regulated telephone companies have under Title 80 RCW, unless otherwise provided.

Nothing in this act affects the authority and responsibility of the Washington utilities and transportation commission to set fair, just, reasonable, and sufficient rates for telephone service." [1981 c 144 § 1.]

**Severability -- 1981 c 144:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 144 § 12.]

**Effective date -- 1981 c 144:** "This act shall take effect on January 1, 1982." [1981 c 144 § 13.]

**Effective date -- 1965 ex.s. c 173:** See note following RCW 82.04.050.

# City of Des Moines

Attachment #4



PLANNING, BUILDING AND PUBLIC WORKS  
 www.desmoineswa.gov  
 21630 11TH AVENUE SOUTH, SUITE D  
 DES MOINES, WASHINGTON 98198-6398  
 (206) 870-7576 FAX (206) 870-6544



March 29, 2013

**Subject: Public Notice**

Dear Property Owner/Business Owner/Tenant:

This notice is to inform you that Zayo Group, LLC ("Zayo") has requested from the City of Des Moines (the "City") a non-exclusive franchise to construct, install, operate, maintain, repair and remove fiber optic cables within the City public rights-of-way. Zayo's request for this franchise has been reviewed by City staff, including the Public Works Director and the City Attorney's office. On March 14, 2013, staff made a recommendation to the City Council to enact Draft Ordinance 12-191 granting the franchise to Zayo. The second reading of the Draft Ordinance is scheduled for April 25, 2013.

Zayo provides bandwidth infrastructure solutions, offering telecommunications services to wholesale and enterprise customers over fiber-optic network in metropolitan markets from coast-to-coast. Zayo plans to expand its network into the City of Des Moines as part of a regional upgrade of 4G service by one of the major national wireless providers. Once established in the City, Zayo will seek additional opportunities to provide increased broadband capacity to area businesses. Zayo's expansion will provide many benefits to Des Moines, including bringing additional advanced communications infrastructure and an increase in utility tax revenue to the community. Additional infrastructure will introduce more competition to the local telecommunications market and attract new economic development, which is good for business and ultimately consumers. Additional information about Zayo is available [www.zayo.com](http://www.zayo.com).

The first location Zayo is considering for the installation of this infrastructure is within the city's right-of-way along the west side of Pacific Highway South adjacent to your Business/Property. Zayo is currently proposing a construction technique called directional drilling, which will help minimize impacts to the public. A short video-clip of how this installation technique works can be seen at <http://www.youtube.com/watch?v=03hP3ZZaWxU>.

While Zayo will make every effort to minimize construction related impacts, some cannot be avoided. The City will require Zayo to maintain access to business at all time, and to restore disturbances to the surface of the right-of-way. Based on required Traffic Control and the anticipated construction schedule, Zayo plans on placing three

(3) directional bore crews on this project. They will also use a handhole/restoration crew for vault placement, tie-ins and cleanup. The project will take several weeks to complete. Construction hours will generally be between 7:00 AM and 5:00 PM.

If you have any questions or concerns regarding this project, please contact me at [dbrewer@desmoineswa.gov](mailto:dbrewer@desmoineswa.gov) or by letter to City of Des Moines, Attn: Dan Brewer, 21650 11<sup>th</sup> Avenue S, Des Moines WA 98198. Given that the Second Reading of the Draft Ordinance is set for April 25<sup>th</sup>, 2013, I would like to receive any comments by April 15, 2013. Of course you are welcome to attend the Council meeting on April 25<sup>th</sup> and express any concerns you have at that time as well.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan J. Brewer", with a long horizontal flourish extending to the right.

Daniel J. Brewer, P.E., P.T.O.E.  
Acting Public Works Director

## Attachment #5

**Dan Brewer**

---

**From:** Dan Brewer  
**Sent:** Thursday, April 04, 2013 2:14 PM  
**To:** 'duanerivab'  
**Subject:** RE: Zayo bandwidth drilling

Duane:

I don't have a schedule yet from them, but I've heard that they would like to start the project in the May/June timeframe. The project runs from Redmond to Joint Base Lewis McCord. I know they are proposing to run through Kent, probably on the west side of Pacific Highway South.

**Daniel J. Brewer, P.E., P.T.O.E.**  
 Acting Public Works Director  
 21650 11th Avenue South  
 Des Moines, WA 98198  
 (206) 870-6581

---

**From:** duanerivab [<mailto:duanerivab@comcast.net>]  
**Sent:** Tuesday, April 02, 2013 1:38 PM  
**To:** Dan Brewer  
**Subject:** Zayo bandwidth drilling

1) When will the project begin and aprox finish date  
 2) will the drilling only occur on property located in des moines I own vacant land on the west side of pac hiway at 252<sup>nd</sup> st so about 90% is in Kent jurisdiction with just southern end portion located in Des Moines although it is vacant ( no buildings) I do lease the land to various entitys (produce stand, fireworks stand & evangelist) thru the spring & summer months they would require the same consideration as brick & mortar businesses.

Thanks in advance for your time and reply to my questions

Duane Bjorklund



## AGENDA ITEM

### BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Mayor's Appointments to the Utility  
Occupation Tax for Des Moines  
Streets Pro and Con Committees

AGENDA OF: April 25, 2013

DEPT. OF ORIGIN: Planning, Building & Public  
Works

ATTACHMENTS:

1. Applications
2. Explanatory Statement

DATE SUBMITTED: April 16, 2013

CLEARANCES: *DSB*

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

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: *AS*

**Purpose and Recommendation:**

The purpose of this Agenda Item is for City Council approval of appointments to Committees to write Pro and Con statements regarding the Utility Occupation Tax increase for Des Moines Streets Proposition (Des Moines Resolution 1215). The following motion will appear on the Consent Calendar:

**Suggested Motion:**

"I move to confirm the Mayoral appointment of Al Isaac to the Pro Committee, and the appointment of Donald Wasson to the Con Committee for Proposition No. 1 - Utility Occupation Tax Increase to fund Street Pavement Overlays, effective immediately and expiring on June 17, 2013.

**Background:**

The Des Moines City Council passed Resolution 1215 to place a proposition on the August 6, 2013 Ballot to increase the City Utility Occupation Tax to fund pavement overlays on city streets. If passed, the proposition would increase the current 6% utility occupation tax to 8%, authorizing 2.0% for City street paving improvements, for 20 years.

**Discussion:**

The City has advertised for and is seeking residents to write Pro & Con Statements for Proposition No. 1. A statement for and a statement against are included in the voter pamphlet prepared by King County Elections. Attached are the applications we have received of those seeking appointment on the committees.

The persons appointed as committee members will be notified by the City Clerk and the applicant's information will be submitted to King County Elections by May 14, 2013, along with the Explanatory Statement (Refer to Attachment 2). King County Elections will contact each Committee for their statements. Statements are due to the King County Elections by May 20, 2013, and rebuttal statements are due by May 22, 2013.

A proof of the local voters' pamphlet page is sent to the committee members on June 14, 2013, and comments on the proof are due back to King County Elections by June 17, 2013.

The voters pamphlet is scheduled to be mailed out on July 17, 2013.

This Agenda Item seeks confirmation of the Mayoral appointment of Al Isaac to the Pro Committee and the appointment of Donald Wasson to the Con Committee. The Committee appointments will expire upon the completion of the required tasks on June 17, 2013.

**Alternatives:**

The Council could decide not to approve these appointments to the Pro and Con committees. By doing so, King County Elections may appoint interested citizens to the committees. If no appointments are made, there would be no statement for and no statement against included in the voters' pamphlet.

**Financial Impact:**

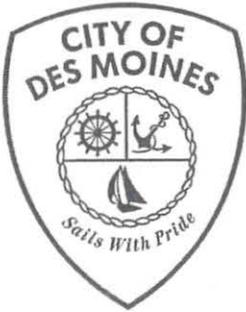
None.

**Recommendation/Conclusion:**

Staff recommends the Council approve the proposed motion.

**Concurrence:**

The Legal and Planning, Building, and Public Works Departments concur.



CITY OF DES MOINES  
PROPOSITION NO. 1  
UTILITY OCCUPATION TAX INCREASE TO FUND  
STREET PAVEMENT OVERLAYS

APPLICATION FOR PRO & CON COMMITTEES  
*Applications must be submitted by 4:30 p.m., April 12, 2013*

RECEIVED

Received. APR 12 2013

CITY OF DES MOINES  
CITY CLERK  
9:57 AM  
BBW

Submit Application to:  
Des Moines City Clerk  
21630 11th Avenue South  
Des Moines, WA 98198

Please Check One:  "PRO" Committee  "CON" Committee

NAME: Al Isaac \_\_\_\_\_

HOME ADDRESS: 22226 Cliff Ave. So., Unit 204 \_\_\_\_\_

CITY, ZIP: Des Moines, 98198 \_\_\_\_\_

PHONE: Home 206-878-8554 \_\_\_\_\_ Work Retired \_\_\_\_\_

E-MAIL ADDRESS: agisaac@aol.com \_\_\_\_\_

LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 8 1/2 years \_\_\_\_\_

AND/OR

BUSINESS OWNER NAME: \_\_\_\_\_

BUSINESS ADDRESS: \_\_\_\_\_

CITY, ZIP: \_\_\_\_\_

PHONE: Home \_\_\_\_\_ Work \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

LENGTH OF TIME AS OWNER OF BUSINESS \_\_\_\_\_

IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS COMMITTEE, PLEASE ANSWER THE FOLLOWING QUESTIONS.

1. Are you a registered City of Des Moines voter?  YES  NO

2. Are you able to meet time constraints as outlined (Pro and Con statements prepared by May 20, 2013 and rebuttal by May 22, 2013) in order to complete the work?  YES  NO

3. Why do you wish to serve in this capacity and what can you contribute?

. A) Why do you wish to serve in this capacity and (B) what can you contribute?

A) To promote responsible city infrastructure maintenance and growth to sustain and increase the cultural and economic attractiveness of the city.

b) Leader, City Manager experience, resident community awareness and involvement bring knowledgeable analysis, balanced perspective, and ability to articulate key points.

4. Please list any elective/appointive offices you currently hold or have been a candidate for previously:

Appointed City Manager/Garrison Commander of Fort Lewis, WA, 1991-1994, elected President of Des Moines Rotary Club, 2010-2011, Board member of Des Moines Legacy Foundation and Des Moines Farmer's Market Board of Directors; Member, Police Chief's Advisory Board

**PRO and CON COMMITTEES**

The City must appoint members to Pro and Con Committees who are willing to write statements for the voters' pamphlet. There is a limit of three members per Committee but Committees may seek advice of any person or persons. The Pro and Con Committees will agree to submit statements *in favor of* and *in opposition to* the ballot measure for the local voters' pamphlet.

The Committees are responsible for submitting the pro and con statements and rebuttal statement and following all guidelines to the King County Elections Office. Willingness to serve would be a confirmation of availability throughout the months of May and June 2013. Timelines include the submittal of pro and con statements by May 20, 2013, submittal of rebuttal by May 22, 2013, and response to local voters' pamphlet proof by June 17, 2013.

Staff and current elected officials are not eligible. A previous staff member or elected official may serve on these Committees. Qualified candidates will be subject to the Utility Occupation Tax as proposed.



CITY OF DES MOINES  
PROPOSITION NO. 1  
UTILITY OCCUPATION TAX INCREASE TO FUND  
STREET PAVEMENT OVERLAYS

APPLICATION FOR PRO & CON COMMITTEES  
Applications must be submitted by 4:30 p.m., April 12, 2013

RECEIVED

Received. APR 11 2013

CITY OF DES MOINES  
CITY CLERK

4:17pm  
FBW

Submit Application to:  
Des Moines City Clerk  
21630 11th Avenue South  
Des Moines, WA 98198

Please Check One:  "PRO" Committee  "CON" Committee

NAME: Donald F. Wasson

HOME ADDRESS: 22047 Cliff Ave. S.

CITY, ZIP: Des Moines, WA 98198

PHONE: Home 206-878-1022 Work N/A

E-MAIL ADDRESS: DWASSON26@GMAIL.COM

LENGTH OF RESIDENCE AT THE ABOVE ADDRESS Over 40 years

AND/OR

BUSINESS OWNER NAME: N/A

BUSINESS ADDRESS: N/A

CITY, ZIP: N/A

PHONE: Home N/A Work N/A

E-MAIL ADDRESS: N/A

LENGTH OF TIME AS OWNER OF BUSINESS N/A

IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS COMMITTEE, PLEASE ANSWER THE FOLLOWING QUESTIONS.

1. Are you a registered City of Des Moines voter?  YES  NO
2. Are you able to meet time constraints as outlined (Pro and Con statements prepared by May 20, 2013 and rebuttal by May 22, 2013) in order to complete the work?  YES  NO

3. Why do you wish to serve in this capacity and what can you contribute?

I am opposed to this position to raise taxes.

I believe I can explain why this proposition should be voted down by the voters. I think the voters should be informed of the reasons that I believe the proposition should be opposed.

4. Please list any elective/appointive offices you currently hold or have been a candidate for previously:

I was previously a member of the planning commission. I was previously a member of the City Council. I was previously the Mayor of the City of Des Moines.

**PRO and CON COMMITTEES**

The City must appoint members to Pro and Con Committees who are willing to write statements for the voters' pamphlet. There is a limit of three members per Committee but Committees may seek advice of any person or persons. The Pro and Con Committees will agree to submit statements *in favor of* and *in opposition to* the ballot measure for the local voters' pamphlet.

The Committees are responsible for submitting the pro and con statements and rebuttal statement and following all guidelines to the King County Elections Office. Willingness to serve would be a confirmation of availability throughout the months of May and June 2013. Timelines include the submittal of pro and con statements by May 20, 2013, submittal of rebuttal by May 22, 2013, and response to local voters' pamphlet proof by June 17, 2013.

Staff and current elected officials are not eligible. A previous staff member or elected official may serve on these Committees. Qualified candidates will be subject to the Utility Occupation Tax as proposed.

**Proposition No. 1 Utility Occupation Tax to Fund Street Pavement Overlays  
Explanatory Statement**

If approved by voters, Proposition 1 would authorize the City of Des Moines to increase the Utility Occupation Tax on utilities from 6% to 8% for a period of twenty (20) years to provide funding for paving existing city streets. The decline in Real Estate Excise Tax (REET) and reduction of property values has reduced the sources of revenue which had provided funding for the City's streets capital construction projects. Funds from the 2.0% increase would be dedicated to pavement overlays, rehabilitation, and reconstruction of existing City streets. Individual street projects would be selected based on pavement condition and the optimum time to minimize overall street system preservation, maintenance, and rehabilitation costs. Taxes received and money spent will be tracked so the public can be assured that their money is being used for these purposes.

Statement For

Statement Against



# AGENDA ITEM

## BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

**SUBJECT:** Task Order Assignment for Design/Permitting of the Lower Massey Creek Channel Modifications Project

**AGENDA OF:** April 25, 2013  
**DEPT. OF ORIGIN:** Planning, Building and Public Works

- ATTACHMENTS:**
1. Tetra Tech Task Order Assignment
  2. 2013 – 2018 CIP Budget worksheet

**DATE SUBMITTED:** April 15, 2013

- CLEARANCES:**
- Legal DB
  - Finance pl
  - Marina N/A
  - Parks, Recreation & Senior Services N/A
  - Planning, Building & Public Works DB
  - 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 a Task Order Assignment with Tetra Tech, Inc. (Attachment 1) that will provide for design and permitting services associated with the Lower Massey Creek Channel Modification Project for the widening of the creek channel and construction of a floodwall/berm along Kent-Des Moines Road between 10<sup>th</sup> Avenue South and Marine View Drive.

The following motion will appear on the Consent Calendar:

**Suggested Motion:**

**Motion** “I move to approve the Task Order Assignment with Tetra Tech, Inc. that will provide for design and permitting services associated with the Lower Massey Creek Channel Modification Project in the amount of \$328,686.00, plus a 10% contingency and further authorize the City Manager or his designee to sign said Task Order Assignment, substantially in the form as submitted.”

**Background:**

During major storm events, the area in the vicinity of the intersection of Kent-Des Moines Road and Marine View Drive, is often flooded causing disruption to traffic and restricting access by emergency vehicles, impacting the local businesses in the area and creating additional city costs for cleanup prior to re-opening of the intersection. Flooding of this area can occur when the peak flows exceed the stream channel's capacity causing the flows to overbank and then fill up the intersection's "depression". Overbanking of the channel can also be exacerbated when the peak period of the storm coincides with a high tide, which can influence upstream flows to as far as 10<sup>th</sup> Avenue South. In addition, because the slope of the storm drainage within the intersection is shallow and only drains gradually to Massey Creek, any flooding within the intersection will often remain until the creek level drops, thereby allowing the flooded areas to finally drain out (over several hours) through the system.

In 1994, a consultant was contracted to develop alternatives for addressing the flooding in the lower section of Massey Creek. The recommended alternative involved the installation of several large regional stormwater detention facilities throughout the basin as well as widening the channel and constructing a flood control berm between 10<sup>th</sup> Avenue South and Marine View Drive in order to provide more channel capacity and minimize channel overbanking. The selected alternative would provide a 25-year storm frequency level of protection. With the detention facilities with the basin now constructed, the frequency of flooding has been reduced. The last major project identified with the 1994 study is the current proposed project, which is the channel widening and flood control berm.

**Discussion:**

This project involves the widening of the Massey Creek channel between 10<sup>th</sup> Avenue South and approximately Marine View Drive and constructing a berm/floodwall along the north side of the stream. Due to site constraints and the proximity of Kent-Des Moines Road, the consultant will be evaluating different methods of construction for the floodwall to minimize impacts to traffic and the lessen (or eliminate the need for shoring). The consultant will also evaluate using the floodwall as a traffic barrier, thereby allowing the existing guardrail to be removed. Existing non-native vegetation will be removed and replaced with riparian vegetation as well as the installation of fish enhancements such as stream bank logs and stream boulders added.

It is anticipated that the new berm and floodwall will provide a minimum level of flood protection for a 25-year frequency storm. However, due to the hydraulics of the storm system within the Kent-Des Moines Road/Marine View Drive intersection that is subject to backflows during high tides, this scope also includes the evaluation for installing a storm water pump station that would collect ponded water from the intersection and pump by force main to the stream channel. Although the proposed pump station will provide some additional flood protection above the 25-year frequency, the main purpose of the pump system will be to rapidly eliminate any ponded water within the intersection following a storm and after the tide has gone down.

Environment permitting for this project is expected to be substantial, requiring permits from the Army Corps of Engineers, the Department of Fish and Wildlife, National Marine Fisheries, Ecology and local permits and SEPA. A biological assessment will be required, although an adverse impact to endangered species (salmon) is not anticipated. A wetland and/or stream buffer mitigation plan will likely be required for the project.

The term of the Task Order Assignment is 1-year with design and permitting to be completed by May of 2014. If all permits can be completed by that time, construction of the project could happen as early as the summer of next year rather than the scheduled summer of 2015.

**Financial Impact:**

A copy of the project budget is provided as Attachment 2. The total budget for the design and permitting phase of the project is \$325,000, slightly less than the task order amount of \$328,686. While the 2013 budget is sufficient to cover work done this year, next year's CIP will need to be adjusted to cover the remaining cost of the task order as well as provide for any design changes that may be needed. At this time, no budget amendment is necessary as there is sufficient project funding for 2013.

**Alternatives:**

The City Council could decide not to proceed on the project at this time. This is not recommended by staff given the lead time needed to address the project's potentially lengthy permitting process.

**Recommendation/Conclusion:**

Staff requests that Council approve the proposed motion.

**Concurrence:**

Legal, Planning, Building and Public Works and the Finance Departments concur.



### Formal Task Assignment Document

Task Number 2012-02

The general provisions and clauses of Agreement dated January 26, 2012 shall be in full force and effect for this Task Assignment

Location of Project: Lower Massey Creek between approximately 10<sup>th</sup> Avenue South and Marine View Drive

Project Title: Lower Massey Creek Channel Modification Project

Maximum Amount Payable Per Task Assignment: \$328,686.00

Completion Date: May 1, 2014

Description of Work:  
(Note attachments and give brief description)

See attached scope.

Agency Project Manager Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Oral Authorization Date: \_\_\_\_\_ See Letter Dated: \_\_\_\_\_

Consultant Signature:  \_\_\_\_\_ Date: 4/15/13

Agency Approving Authority: \_\_\_\_\_ Date: \_\_\_\_\_

## EXHIBIT A

### CITY OF DES MOINES

### SCOPE OF WORK

## PS&E FOR LOWER MASSEY CREEK FLOODWALL AND CREEK ENHANCEMENT

The objective of this Agreement is to provide professional services necessary for the preparation of Plans, Specifications, and Estimates (PS&E) for the evaluation and design of a floodwall paralleling a portion of lower Kent-Des Moines Road plus the enhancement of Massey Creek between the 10<sup>th</sup> Ave S culvert and the end of City property near Taco Time. Also, the installation of a small pump station in City property to pump from the intersection area of Kent-Des Moines Road and Marine View Drive to Massey Creek is included.

The work within the channel of Massey Creek will require local, state and federal permits. The subconsultant ESA-Adolfson will perform this work. Geotechnical evaluation for the floodwall will be provided by the subconsultant AMEC Earth and Environmental. Site survey will be performed by Tetra Tech. Scopes defining each of these work efforts are included.

### DURATION

The project budgeting and fee estimate are based upon about a 12 month duration starting May 1, 2013 and completing May 1, 2014. This time period is dependent upon timely and responsive review by the Corps of Engineers (COE). The project duration may require extension depending upon COE comments and requirements imposed on the project.

### SERVICES

The CONSULTANT shall perform services and furnish materials necessary to accomplish the following work items:

1. **Project Administration:** This task includes administration of the contract between the CONSULTANT and the CITY, preparation of monthly progress reports and quality control. The task includes administrative efforts needed to coordinate with the subconsultants and to complete the project on time and within budget. Subtasks will include the following:
  - 1.1 Prepare monthly progress reports for inclusion with the invoice and invoice review.
  - 1.2 Prepare Subconsultant Agreements (2).
  - 1.3 Provide ongoing project management.
  - 1.4 Conduct an internal startup meeting with the project team at CONSULTANT'S Seattle Office.
  - 1.5 Conduct QA/QC Review of 90% submittal by a senior engineer.
    - 1.5.1 Quality Control Review by discipline leads.
    - 1.5.2 Quality Assurance Review for contract compliance and meeting project goals.
2. **Data Collection and Field Investigation:** This task is the initial effort to collect existing information and become familiar with the project site. It is anticipated that access to private property to collect data and do survey work will be gained through permission from local residents that the City of

Des Moines will obtain. Design criteria are summarized in Exhibit B-2. Sub-tasks will include the following:

- 2.1 Collect and review existing plans, GIS data, and flow data.
- 2.2 Conduct site reconnaissance of existing drainage facilities. Photo document project limits.
- 3. Support Services:** Under this task, the following services will be provided to support final design efforts and produce contract documents. This task includes obtaining input from utilities that may exist in the area. A geotechnical evaluation is budgeted with services provided by AMEC Earth and Environmental. Permit assistance is budgeted using the subconsultant ESA-Adolfson. The survey will be performed by Tetra Tech. There are no known wetlands at the site. The City of Des Moines will be responsible for public relations associated with this project.

The Support Services include the following:

- 3.1 **Utility Contact:** Utilities believed located in the area will be provided with a basemap indicating area of project construction to solicit input from the utility concerning the location of and issues with their utilities. Review of utility record drawings will be performed to confirm or supplement the surface evidence obtained in the field survey mapping.
- 3.2 **Potholing Coordination:** Critical conflicts with proposed design improvements may require potholing to confirm the utility location. Potholing is assumed to be performed by the utility. Tetra Tech has not budgeted any funds for potholing. In the event of unavoidable utility conflicts, the CONSULTANT will notify the City who will contact the applicable utility agency to initiate the relocation of their utility prior to construction of the improvements by the City.
- 3.3 **Survey of Project Site:** Tetra Tech will perform the project survey. This survey includes the field survey, CAD base map development, including existing right-of-way, and visible surface features. If wetlands are found on-site, a supplemental survey would be required and is not included in the scope of this project. This supplemental survey includes locating the wetland boundary flagging and adding it to the base map. This supplemental survey is not budgeted in this scope. Right-of-entry will be obtained by the City for the parcels in the project area. See Exhibit B-6 for the detailed survey scope of work.
- 3.4 **Geotechnical Evaluation:** A geotechnical evaluation is required to establish subsurface soil conditions at the floodwall footing, and material type and construction requirements for replaced backfill material. See Exhibit B-7 for the detailed scope of work.
- 3.5 **Permit Application:** Permits will be required for the channel enhancement work. The subconsultant ESA-Adolfson will take the lead in applying for and obtaining the necessary project permits. The budget is based upon the ESA scope included in Exhibit B-8.
- 4. Channel Enhancement, Floodwall and Stormwater Pump Station Analysis:** The channel enhancement will include regrading the channel with the anticipation of adding some channel meander, bench area, and a gradual channel side-slope to grade. This regrading will occur on the north side of the channel on City property and occur between 10<sup>th</sup> Ave S and the Taco Time property. Large woody debris is anticipated to be added into the regraded channel. The peak flood flows developed in the 'Lower Massey Creek Alternative Analysis' (KCM, August 1994) will be used to provide peak flood flows for use in the design of the channel and features.

To support the channel design for fish passage, WDFW guidelines will be used to determine a streambed gravel gradation and streambed channel stabilization features will be included, which are further described below. The scour analysis performed for the 10<sup>th</sup> Ave S culvert will be reviewed and the scour depth for the floodwall will be set using the results and the design of the culvert under 10<sup>th</sup> Ave S. Consequently, a scour analysis will not be performed for the floodwall. For scour design purposes, the top

of floodwall footings will be 2 feet below the existing surveyed grade of the channel or at the elevation of the top of the wingwall footings, whichever is greater.

The City wishes to have the capability of pumping from the low lying intersection area of Kent-Des Moines Road and Marine View Drive (in the vicinity of Taco Time) into Massey Creek during periods of high water level in the creek and consequently the intersection. A prepackaged stormwater pump station will be identified to address this need. Characteristics such as discharge rate and TDH will be determined and be part of the performance criteria that the Contractor must provide for the installed pump station. Note that the area and capacity of prepackaged stormwater pump stations are limited. It is unknown at this time the tributary area that may contribute runoff to this low lying intersection area. The resulting functionality of the pump station and its ability to reduce intersection flooding will depend upon this tributary area and resulting runoff reaching the pump station.

Subtasks will include the following:

- 4.1 **Hydraulic Evaluation:** A limited reach HEC-RAS model between the 10<sup>th</sup> Ave S culvert to Puget Sound will be developed for Massey Creek using the peak flood flows developed in the 'Lower Massey Creek Alternative Analysis' (KCM, August 1994) and existing channel features as City records provide. No survey work is budgeted to document the channel downstream of the project site. The model will be used to estimate water surface elevation and velocity in the project area and to provide discharge head needed for the intersection pump station specifications. The tidal tailwater condition used for the modeling will use a 20-year average of the mean higher high tide as recorded by NOAA or as predicted by tidal software. The City of Des Moines will specify the flood frequency for the design condition, such as the 25 or 100-year flood.
- 4.2 **Streambed Gravel Determination:** The existing material in the channel will be qualitatively evaluated and compared to gravel gradation recommendations in the WDFW guidelines. This gradation will be used as guidance for the gravel that will be placed in the enhanced channel reach through the project site. The gravel mix will use ratios of standard WSDOT streambed gravel mixes.
- 4.3 **Channel Feature Sizing and Placement:** The existing channel is anticipated to be enhanced through excavating bench areas and creating some meander. The side slopes are also anticipated to be flattened. Opportunities for habitat enhancement will be evaluated including the sizing and incorporation of large woody debris. This task includes developing layouts of the channel, large woody debris and stream boulders.
- 4.4 **Development of Intersection Flows:** The area draining into the intersection area of Kent-Des Moines Road and Marine View Drive will be delineated using existing City storm drain records and City topographic mapping of the area. This area is expected to be a limited area of less than 2 acres and consist of paved roads and commercial area. The WWHM (DOE) will be used to calculate peak runoff rate. The 25-year flood flow from the intersection area will be used to size the pumps and the creek tailwater determined in Task 4.1.
- 4.5 **Floodwall Considerations:** The City has requested a WSDOT standard detail cast-in-place retaining wall similar to the one constructed in lower Des Moines Creek for use as a floodwall. A WSDOT standard detail traffic barrier would be installed onto the wall with the intent to replace the existing guardrails. The floodwall will generally parallel Kent-Des Moines Road. The floodwall is to abut the wingwall at the 10<sup>th</sup> Ave S culvert. The City of Des Moines will provide Tetra Tech the as-built drawings of the wingwall and 10<sup>th</sup> Ave S culvert. The floodwall at the west terminus will flare away from the road and terminate in an earthen berm that would connect

to Massey Creek. The structural details of the wall, traffic barrier and connection details will be developed under this task.

Because of the expected wall height (approximately 8-feet above footing grade (5 feet to creek invert plus 2 feet for scour plus 1-foot footing thickness)) the footing for a WSDOT standard cast-in-place retaining wall is estimated to be 7 feet wide. To construct the wall would require a temporary vertical support system to minimize road encroachment during construction. Instead of the expense for a temporary vertical support, a permanent vertical support system could be used which would likely save the City construction cost over a cast-in-place retaining wall. The magnitude of excavation for the retaining wall in the restricted channel immediately downstream of 10th Ave (between Kent-Des Moines Road and the storage yard) would be significant and require more restoration (road and channel). Instead, a sheet pile or soldier pile wall (with a traffic barrier installed on top) will have a smaller footprint and less encroachment into the stream channel and the adjacent roadway. This concept will also likely have less impact to the sewer line that appears to be located in the vicinity.

After obtaining the subgrade soil profile, an assessment of floodwall alternatives will be made. The assessment will consider construction methods, traffic impacts, utility impacts, expected durability, stream impacts, and estimated costs. This will be summarized in a tech memo.

4.6 **Technical Memorandum:** A technical memorandum summarizing the analyses and results of Task 4 will be prepared and submitted to the City.

**5. Final Design and Contract Documents:** Under this task, the final contract documents to construct the project will be prepared using accepted engineering practices, comments from the City, and the standards set forth in Exhibits B-1 and B-2. Deliverable documents are described in Exhibit B-4. The preliminary drawing list is described in Exhibit B-5. Plan-set scales have been set based on using full size drawings for construction. Tetra Tech will prepare the special provisions required for project construction based on WSDOT standards. The City will prepare the complete specification package which will include the Tetra Tech prepared special provisions. No traffic control plan will be prepared. No curb and gutter or driveway profiling will be prepared. Construction easements, if required, will be shown dimensionally on the drawings, however, the legal description will be prepared by the City.

The design is based on the following assumptions and guidelines:

- A WSDOT standard plan retaining wall with a traffic barrier on top is to be used for the floodwall
- Channel work will be kept within City property between 10<sup>th</sup> Ave S culvert and Taco Time property. Some wood placement in the channel is expected.
- The existing road section and profile geometry will be matched to replace the portion of the road removed for the floodwall construction.
- A prepackaged stormwater pump station will be specified. The performance of the pump station will be specified but the design of components will be the responsibility of the supplier.

Subtasks will include the following:

5.1 Thirty percent (30%) PS&E: Through the following subtasks the 30-percent PS&E will be prepared for CITY review. This drawing set will be used for the permit application. Tasks include the following:

- 5.1.1 Prepare 30% design plans representing the significant elements of construction will be included.
- 5.1.2 Prepare bid items, quantities, and construction cost estimate.
- 5.1.3 Prepare outline of special provisions for items of work not covered by the WSDOT/APWA Standard Specifications.
- 5.1.4 Submit 30% plans to CITY for comment.
- 5.2 Sixty percent (60%) PS&E: Through the following subtasks the 60-percent PS&E will be prepared for CITY review. Tasks include the following:
  - 5.2.1 Participate in a meeting with CITY staff for a design coordination review of comments of the 30% submittal.
  - 5.2.2 Prepare 60% design plans incorporating review comments received from the CITY.
  - 5.2.3 Prepare bid items, quantities, and construction cost estimate.
  - 5.2.4 Prepare preliminary special provisions for items of work not covered by the WSDOT/APWA Standard Specifications.
  - 5.2.5 Submit 60% plans to CITY for comment.
- 5.3 Ninety-percent (90%) PS&E: Through the following subtasks, CITY comments will be incorporated from the previous tasks and 90-percent PS&E will be prepared for CITY review. Input from the permitting agencies will be incorporated into this design set. Tasks will include the following:
  - 5.3.1 Participate in a meeting with CITY staff for a design coordination review of comments of the 60% submittal.
  - 5.3.2 Prepare 90% design plans incorporating review comments received from the CITY.
  - 5.3.3 Prepare bid items, quantities and a construction cost estimate.
  - 5.3.4 Prepare special provisions for items of work not covered by the WSDOT/APWA Standard Specifications.
  - 5.3.5 Submit 90% plans to CITY for comment.
- 5.4 Final Contract Documents: Through the following subtasks, using the 90-percent PS&E and associated materials from the previous tasks, the final camera-ready bid documents will be prepared:
  - 5.4.1 Participate in a meeting with CITY staff for design coordination review of comments on the 90% submittal.
  - 5.4.2 Complete final special provision specifications and submit to the CITY.
  - 5.4.3 Prepare final plans and submit a check copy for CITY staff final approval.
  - 5.4.4 Submit bid items, quantities and a construction cost estimate including copies of the quantity and design computations.
  - 5.4.5 Incorporate final CITY comments and submit final stamped and signed plan originals for copying and distribution by the CITY.

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# **PS&E FOR LOWER MASSEY CREEK FLOODWALL AND CREEK ENHANCEMENT EXHIBIT B-1 GRAPHIC STANDARDS**

All plans shall be prepared in accordance with standard practices of the CITY. Sample plans will be provided by the CITY as a guide. All plan units will be English. Plans shall be prepared as follows:

1. The full size horizontal scale for site plans shall be 1"=20' and the full size vertical scale for profiles shall be 1"=5' unless otherwise noted in the preliminary drawing list.
2. The plans shall be completed in AutoCAD 2011; the cost estimate shall be done in Excel.
3. Line types and layers shall be consistent with the APWA CAD standard.
4. Full-size plan sheets shall be 22"x34" on standard CITY title and border.
5. Plan sheets utilizing topographic base mapping shall utilize reference files so that the base map will remain as a single computer file.

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# PS&E FOR LOWER MASSEY CREEK FLOODWALL AND CREEK ENHANCEMENT

## EXHIBIT B-2

### DESIGN CRITERIA

Reports, specifications, and plans, to the extent feasible, shall be developed in accordance with the project design criteria. The latest edition and amendments of the following documents and input from the CITY will be utilized to develop the project design criteria:

1. Washington State Department of Transportation/American Public Works Association (WSDOT/APWA), *Standard Specifications for Road, Bridge, and Municipal Construction* (2012 English Edition).
2. WSDOT/APWA, *Standard Plans for Road, Bridge, and Municipal Construction* (2012 English Edition).
3. U.S. Department of Transportation, Federal Highway Administration (FHWA), *Manual on Uniform Traffic Control Devices for Streets and Highways*.
4. Standard drawings and sample documents prepared by the CITY and furnished to the CONSULTANT shall be used as a guide in all cases where applicable.
5. Washington State Department of Fish and Wildlife, *Fish Passage Design at Road Culverts* (2003 edition).

# **PS&E FOR LOWER MASSEY CREEK FLOODWALL AND CREEK ENHANCEMENT**

## **EXHIBIT B-3**

### **ITEMS TO BE FURNISHED TO THE CONSULTANT BY THE CITY**

The CITY will furnish for the CONSULTANT copies of documents which are available to the CITY that will facilitate the preparation of the plans, specifications, estimates and analyses. These include the following:

1. Existing topographic mapping in the intersection area of Kent-Des Moines Road and Marine View Drive.
2. Existing drainage system in the intersection area of Kent-Des Moines Road and Marine View Drive.
3. Copies of applicable "as-built" plans in the project vicinity including the 10<sup>th</sup> Ave S culvert and wingwall.
4. Example plans and specifications.
5. Bid tabulations of previous projects as available.
6. CITY'S current AutoCAD title and border drawings (including title sheet, plan sheet, and plan/profile sheet).
7. All right-of-way acquisition efforts including additional title reports, appraisals, right-of-entry for fieldwork, negotiations, right-of-way cost estimates, deed preparation.
8. Printing and distribution of plans and specifications for bidding.
9. Hydrology and hydraulic data defining flows and channel features in the project area to Puget Sound.
10. Tidal elevation to be used coincident with flood flows.
11. Utility information as available to the City.

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# PS&E FOR LOWER MASSEY CREEK FLOODWALL AND CREEK ENHANCEMENT

## EXHIBIT B-4

### DOCUMENTS TO BE FURNISHED BY THE CONSULTANT

The following documents, exhibits, or other presentations for the work covered by this Agreement shall be furnished by the CONSULTANT to the CITY upon completion of the various phases of the work.

#### 1. Administration

- 1.1 Monthly invoice and brief progress report.

#### 2. Data Collection and Field Investigation:

- 2.1 One (1) electronic copy of digital photographs on CD.

#### 3. Special Services

##### 3.1 Utility Contact

Electronic copy of utility data request letters.

##### 3.2 Potholing Coordination

Copy of utility measure-down data. (contingency)

##### 3.3 Survey of Project Site

Electronic copy of the basemap of the project area.

##### 3.4 Geotechnical Evaluation

Electronic copy of the project geotechnical evaluation.

##### 3.5 Permit Application

Electronic copy of draft permit application.

Electronic copy of final permit application.

#### 4. Channel Enhancement, Floodwall and Stormwater Pump Station Analysis

- 4.6 One (1) electronic copy of the technical memorandum summarizing Task 4.

#### 5. Final Design and Contract Documents

##### 5.1 Thirty percent (30%) PS&E:

- 5.1.1 One (1) copy of the special provision specification outline, submitted electronically.
- 5.1.2 One (1) copy of the construction cost estimate, submitted electronically.
- 5.1.3 One (1) half-size copy of the plans, submitted electronically in PDF format.

5.2 Sixty percent (60%) PS&E:

- 5.2.1 One (1) copy of meeting minutes, submitted electronically.
- 5.2.2 One (1) copy of the special provision specifications, submitted electronically.
- 5.2.3 One (1) copy of the construction cost estimate, submitted electronically.
- 5.2.4 One (1) half-size copy of the plans, submitted electronically in PDF format.

5.3 Ninety percent (90%) PS&E:

- 5.3.1 One (1) copy of meeting minutes, submitted electronically.
- 5.3.2 One (1) copy of the special provision specifications, submitted electronically.
- 5.3.3 One (1) copy of the construction cost estimate, submitted electronically.
- 5.3.4 One (1) half-size copy of the plans, submitted electronically in PDF format.

5.4 Final Contract Documents

- 5.4.1 One (1) copy of meeting minutes, submitted electronically.
- 5.4.2 One (1) copy of the check set of special provision specifications, submitted electronically.
- 5.4.3 One (1) copy of the final special provision specifications, submitted electronically.
- 5.4.4 One (1) half-size check set copy of plans, submitted electronically in PDF format.
- 5.4.5 One (1) copy of final stamped and signed full-size white opaque mylar plans, via surface mail.
- 5.4.6 One (1) copy of the quantity, cost estimate, and design computations, hard-copy via surface mail.
- 5.4.7 Electronic copy of the CAD files, special provision specifications and cost estimate files on CD format.

# PS&E FOR LOWER MASSEY CREEK FLOODWALL AND CREEK ENHANCEMENT

## EXHIBIT B-5 PRELIMINARY DRAWING LIST

The following is a list of budgeted drawings for the project:

<b>Drawing Title</b>
Title Sheet / Drawing Index (1)
Legend and Abbreviations (1)
Site Plan, floodwall and creek (1"=30') (1)
Floodwall Plan and Elevation (1"=20') (1)
Floodwall Sections/Details (1)
Cap and Traffic Barrier Details (1)
Creek Plan (1"=10') (2)
Creek Details (2)
Pump Station Plan/Details (1)
Stream Bypass Plan (1"=30') (1)
Erosion and Sediment Control Plan (1"=30') (1)
Miscellaneous Details (2)
Landscaping Plan (2) (produced by ESA)
Landscaping Details (1) (produced by ESA)
<b>Total Number of Drawings = 18</b>

**PS&E FOR LOWER MASSEY CREEK FLOODWALL AND  
CREEK ENHANCEMENT  
EXHIBIT B-6  
SURVEY SCOPE OF WORK**

Scope of work and fee estimate for the survey on the project follows.

## Survey

### Scope of Work

#### **Massey Creek Floodwall near Kent-Des Moines Road and 10<sup>th</sup> Ave S**

Tetra Tech will perform the following survey of the project area:

Project consists of channel reconstruction (widening, adding wood, etc.), building a concrete floodwall parallel to the roadway, and a small pump station to pump down drainage from the intersection area of KDM Road and Marine View Drive into Massey Creek during periods of high creek level.

Survey will consist of:

Map scale of 1"=10'

Datum: Vertical – local Des Moines

Horizontal – NAD 83/91, Washington State Plane, North Zone, based on WSDOT monument (if locally available)

Detailed topo (1' contours on the road and 2' contours off the road with numerous spot elevations, about 1 pt per 100 sf) defining:

- The open channel between 10<sup>th</sup> Ave S and the property line behind Taco Time
- The undeveloped property in the triangular wedge east of Taco Time
- The road surface features (ROW to ROW) from just upstream of the 10<sup>th</sup> Ave S culvert to the intersection of KDM Road and Marine View Drive capturing EOP, paint line, guardrail, utility features, roadside ditch, drainage CBs, inlets, visible low points, etc.

Channel invert elevations on the up- and downstream side of the Maine View Drive culvert.

Control points will be shown on the base map.

ROW lines and approximate (GIS based) property lines will be shown on the base map.



**PS&E FOR LOWER MASSEY CREEK FLOODWALL AND  
CREEK ENHANCEMENT**

**EXHIBIT B-7**

**GEOTECHNICAL SCOPE OF WORK**

Scope of work and fee estimate from AMEC Earth and Environmental, Inc. for geotechnical evaluation on the project follows.



February 20, 2013  
91P-22027

Tetra Tech  
1420 Fifth Avenue, Suite 600  
Seattle, Washington 98101

Attn: Greg Gaasland, P.E.

**Subject: Proposal for Geotechnical Services  
Massey Creek Flood Wall  
Des Moines, Washington**

Dear Greg:

At your request, AMEC Environment & Infrastructure, Inc. (AMEC) is pleased to submit this proposal to conduct a geotechnical evaluation for the above-referenced project. The contents of this proposal are based on written/verbal information supplied by you; our meeting with you and Mr. Loren Reinhold with the City of Des Moines, and on our knowledge of subsurface conditions in the site vicinity.

#### **SITE AND PROJECT DESCRIPTION**

The project site is the area bordered by South Kent- Des Moines (KDM) Road on the north, Massey Creek on the south, the intersection with 10<sup>th</sup> Avenue South/ South 230<sup>th</sup> Street on the east and the Taco Time property (809 KDM Road) on the west, in Des Moines, Washington. The property is about 480 feet in length along KDM Road, as narrow as 15 to 20 feet on the eastern half, and as wide as about 140 feet on the western half. The site is generally flat-lying, with Massey Creek incised about five feet lower than surrounding grade.

Plans are to provide added flood protection in the area, by constructing a flood wall along the south side of KDM Road on the narrow eastern half of the property. The flood protection would transition to an earthen berm on the wider western half of the site. Other improvements include installation of an emergency pump station at the northwest corner of the property.

Based on our previous explorations in the site vicinity and according to published geologic maps, soil conditions in the site vicinity are characterized by alluvial deposits from Massey Creek overlying glacially overridden Vashon Drift and Advance outwash. The alluvial deposits consist of silt and very fine sand with minor amounts of peat and clay; the alluvial deposits, typically, are in a loose or soft condition and have low shear strength. The asphalt-paved KDM

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Bothell, Washington 98011  
(425) 368-1000 Phone  
(425) 368-1001 Facsimile  
www.amec.com

roadway appears to be supported on a fill embankment placed above the native alluvial soils. Groundwater probably lies at depths on the order of 5 feet below existing grade (approximate creek invert), although perched water might exist at shallower depths.

## **OBJECTIVE**

Based on our understanding of the project and on our expectation of subsurface conditions at the site, we infer that our evaluation will need to address the following:

- Characterizing soil conditions to a depth of 25 feet, to establish soil design parameters for evaluating foundation bearing and settlement for the proposed flood wall;
- Determining the local groundwater depth, for construction dewatering and drainage design purposes; and
- Providing a general assessment of soil conditions on the western half of the property for consideration of settlement potential at the embankment and pump station sites.

## **SCOPE OF WORK DESCRIPTION**

To address these geotechnical issues, we propose a scope of work consisting of field explorations, laboratory testing, geotechnical engineering analyses, and report preparation. Our specific tasks are described in the following sections.

### **1.1 Contract Administration**

This task includes setting up a contract with Tetra Tech, and subcontracts for each of the subcontracted services (drilling and laboratory testing). This also includes project setup, invoicing and tracking, and project close.

### **1.2 Field Preparation**

This will include the following:

- Obtain a Type C-1 Right of Way Use permit from City of Des Moines. This will include preparation of a traffic control plan for City approval.
- Provide description of drilling work. A description of work and restoration with accompanying sketches will be provided to the City for work to be conducted within the right of way, and for work within adjacent private properties.
- Notify the Underground Utility Location Center prior to any drilling.
- Schedule drilling, traffic control, and lab testing subcontractors.

### 1.3 Geological Reconnaissance

A geological reconnaissance will be performed by an AMEC geologist, who will walk the overall site, to observe surface conditions. The purpose of this reconnaissance will be to collect information regarding any geologic features (such as seepage zones, slumps or erosion features) that could adversely affect the planned flood wall and embankment design or construction. AMEC will record observations by means of notes, sketches, and/or photographs. If any significant geologic features are identified, AMEC will mark them with lath and flagging, so that these features could be more accurately located by survey (by others).

### 1.4 Borings

AMEC will advance up to 3 borings along the planned flood wall alignment. The locations will be determined after discussions with the design team, then visiting the site to clear locations with respect to overhead and underground utility restrictions.

The planned locations of borings are south of the KDM Road guardrail, so that traffic control will be limited to traffic cones and signage, however no closure of the roadway shoulder is anticipated. AMEC will subcontract a licensed traffic control company to develop a traffic control plan, and to provide any required signage during drilling.

Boring depths are estimated at 25 feet below existing grade. However, if the actual thickness of unfavorable soils is found to be significantly greater than anticipated, additional exploration depths might be necessary; in this event, AMEC will notify the client before continuing with the exploration. Groundwater levels will be noted in each boring at the time of drilling.

Borings will be advanced with a hollow-stem auger, using lightweight portable tracked equipment that can access each drill site, operated by an independent firm working under subcontract to AMEC. Throughout the drilling operation, soil samples will be obtained at 2½- or 5-foot depth intervals by driving split-spoon samplers in accordance with the Standard Penetration Test procedure (American Society for Testing and Materials [ASTM] D-1586) or similar method. An experienced geologist or geotechnical engineer from AMEC will continuously observe the borings, log the subsurface conditions, collect representative soil samples, and transport all samples to the AMEC office for further visual examination. After drilling, each borehole will be backfilled with bentonite. Excess cuttings will be disposed of in grass/ shrub areas on site.

### 1.5 Laboratory Testing

AMEC will subcontract a local testing lab to conduct a series of geotechnical laboratory tests on selected soil samples obtained from the borings to evaluate the engineering and index properties of the site soils. These tests will likely include moisture content determinations and grain-size analyses. If appreciable layers of fine-grained soils are encountered, Atterberg limit determinations would be performed on representative samples.

## 1.6 Review and Analysis

To supplement field exploration and laboratory testing, AMEC will review readily available sources of geotechnical information concerning the project site. These sources will likely include geologic maps, seismologic literature, soil logs, and other published documents. AMEC will analyze the borings, lab test results and available data to develop conclusions and recommendations concerning the geotechnical aspects of the project.

## 1.7 Geotechnical Report Preparation

After analyzing the site conditions, AMEC will prepare a *Geotechnical Engineering Report* for the project, including the following specific items:

- Site plan, showing approximate exploration locations on a base map supplied to AMEC;
- Surficial geologic map, showing the interpreted geologic features on the site;
- Descriptive logs of the borings;
- Results of laboratory tests;
- Description of surface, soil, groundwater, and seismic conditions;
- Conclusions regarding feasibility of floodwall and embankment construction;
- Discussion of suitable flood wall foundation type (spread footing, sheet pile or soldier pile) and depth;
- Recommended design parameters including allowable vertical bearing pressure, estimated lateral pressures acting on the wall and estimated lateral resistance including passive earth pressure and base friction between soil and foundation;
- Estimated settlement of flood wall;
- Recommendations for site preparation, including temporary drainage and dewatering;
- Recommendations concerning excavations, including temporary slope angles and shoring, if necessary;
- Recommendations concerning structural fill, and feasibility of re-use of onsite soils as structural fill;
- Recommendations for construction monitoring;
- Explanation of report limitations; and
- Recommendations for further geotechnical study, if warranted.

## 1.8 On-Call Consultation

After report submittal, AMEC will be available for consultation regarding the geotechnical and hydrogeological aspects of the project. This typically involves written correspondence, telephone conversations, and meetings with the owner and design team; supplemental analyses due to design changes; and preliminary or informal reviews of design details, plans, and specifications. A budget of 8 hours involvement by the AMEC project manager is included.

## DELIVERABLES

AMEC will initially submit an electronic pdf draft (unsigned and unstamped) version of the geotechnical report for review and comment. AMEC will submit a final (signed and stamped) electronic pdf version plus three hard copies of the report that addresses the review comments.

## ESTIMATED COST

AMEC services will be performed on a time-and-expenses not-to-exceed basis according to the attached Exhibit G-1, using WSDOT-audited rates in attached Exhibit G-2. We understand these will be attached to your negotiated subconsultant services agreement.

If adverse conditions arise during the evaluation, AMEC will inform Tetra Tech as soon as possible and will perform no work beyond the authorized scope without prior approval.

## SCHEDULE

Upon receiving authorization to proceed, we estimate the following schedule

- Coordination of Access, Right of Way Permits, and Traffic Control Plans – 2 weeks
- Geologic Reconnaissance and Drilling – 1 day
- Lab Testing – 1 week
- Engineering Analysis and Draft Report Preparation – 2 weeks
- Issue Draft Report – (Estimated 5 to 6 weeks after notice to proceed)
- Report Review (by others) – 1 week
- Final Report Preparation – 2 weeks

## ASSUMPTIONS

The following assumptions pertain to this work:

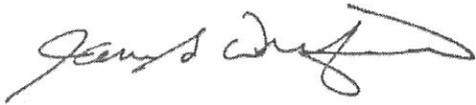
- Permits – AMEC will submit the application for a Type C-1 Right of Way Use permit, however since it is a project for the City, the associated fees will be waived.
- Access – Any required access agreements with WSDOT and / or adjacent private properties will be provided by the City.
- Traffic control – AMEC will prepare a traffic control plan (TCP) in accordance with WSDOT criteria, and AMEC will subcontract for any required signage. The TCP will be part of the Right of Way Use permit application. The City will review the TCP and coordinate with WSDOT regarding any special requirements.
- Utility Locate - Before drilling, AMEC will notify the Underground Utility Location Center and request them to mark any underground utilities at each exploration location, but additional assistance from City of Des Moines might be needed to identify all underground utilities (by providing any as-built information).
- Working hours – To be established by the ROW permit conditions, but it is assumed that work can be performed on week days during daylight hours.
- The scope includes drilling of 3 borings along the proposed flood wall alignment. No borings have been included for the levee embankment or pump station sites. A cost for additional borings at these locations can be provided upon request;
- Groundwater monitoring wells are not included, but a cost for installing wells can be provided upon request;
- Soil cuttings will be disposed of on-site. A cost for hauling cuttings off site and disposing at a landfill can be provided upon request. Alternatively, cuttings can be disposed of at a location designated by the City.
- Costs do not include environmental sampling and testing if potentially contaminated soils are encountered, but these services can be provided if requested.
- Site restoration will conform with the permit requirements, but some surface disturbance such as small soil mounds/ bare spots, and slight subsidence could occur. AMEC will perform general clean-up and restoration tasks before leaving the site, however complete restoration of these disturbed areas is *not* included in the scope of work.
- Sample Storage – Soil samples are saved for about 30 days after testing has been completed then discarded, unless prior arrangements are made for longer-term storage.

**CLOSURE**

We appreciate the opportunity to submit this proposal, and we look forward to serving your geotechnical needs. We understand you will append one copy of this proposal to your standard subconsultant agreement. If you have any questions or need additional information, please feel free to contact our office.

Sincerely,

**AMEC Environment & Infrastructure, Inc.**



James S. Dransfield, P.E.  
Principal

Reviewed by: Stephen A. Siebert, P.E.  
Associate

Attachments: Exhibit G-1  
Exhibit G-2



EXHIBIT G1 - SUMMARY OF COSTS  
 Geotechnical Study  
 Massey Creek Flood Wall  
 Des Moines, Washington

AMEC Environment & Infrastructure, Inc.

**DIRECT SALARY COST (DSC):**

Task	Classification (AMEC Class Code)	Hours	x	Hourly Rate	=	Cost	Task Total
	Principal Geotechnical Engineer (620 to 624)	28		\$69.95		\$1,958.60	
	Associate Engineer (618 to 619)	2		\$49.92		\$99.84	
	Senior Geologist/ Engineer (616 to 617)	50		\$41.89		\$2,094.50	
	Project Geologist/ Engineer (615)	0		\$38.03		\$0.00	
	Staff Geologist/ Engineer (613 to 614)	7		\$32.10		\$224.70	
	CAD Drafter (516)	6		\$30.29		\$181.74	
	Clerical/ Word Processor (806 to 809)	9		\$24.66		\$221.94	
	<b>TOTAL DSC</b>	<b>102</b>					<b>\$4,781.32</b>

**OVERHEAD COST (OH COST - including salary additives):**

OH Rate of 1.4983 x DSC                      1.4983 x     \$4,781.32 =                      \$7,163.85

**FIXED FEE (FF):**

FF Rate of 0.30 x (DSC)                      0.3 x     \$4,781.32 =                      \$1,434.40

**REIMBURSABLES:**

Field Expenses (mileage, equipment, etc.)                      \$152.13

Subcontract Expenses (driller, traffic, lab) (0% mark-up)                      \$3,923.25

**TOTAL REIMBURSABLES**                      =                      **\$4,075.38**

**TOTAL**

**\$17,454.94**

## EXHIBIT G-2 Subconsultant Fee Determination Summary Sheet

ACTUALS NOT TO EXCEED TABLE

Massey Creek Flood Wall

AMEC Environment & Infrastructure, Inc.  
 11810 North Creek Parkway North  
 Bothell, Washington 98011  
 Prepared 1/15/2013  
 Rates Valid through 12/31/2014



Class Code	Class Code Description	Direct Labor Rate NTE*	Overhead 149.83%	Fixed Fee 30%	All Inclusive Hourly Billing Rate
<b>PROFESSIONAL LEVELS</b>					
601	Professional Level 1	12.31	18.44	3.69	34.44
602	Professional Level 2	13.94	20.89	4.18	39.02
603	Professional Level 3	15.58	23.35	4.67	43.60
604	Professional Level 4	17.23	25.82	5.17	48.22
605	Professional Level 5	18.87	28.27	5.66	52.80
606	Professional Level 6	20.51	30.72	6.15	57.38
607	Professional Level 7	22.14	33.18	6.64	61.97
608	Professional Level 8	23.79	35.65	7.14	66.58
609	Professional Level 9	25.43	38.10	7.63	71.16
610	Professional Level 10	27.07	40.56	8.12	75.75
611	Professional Level 11	30.38	45.51	9.11	85.00
612	Professional Level 12	33.11	49.60	9.93	92.64
613	Professional Level 13	36.04	53.99	10.81	100.84
614	Professional Level 14	39.17	58.68	11.75	109.60
615	Professional Level 15	42.53	63.72	12.76	119.00
616	Professional Level 16	45.73	68.51	13.72	127.96
617	Professional Level 17	49.55	74.24	14.86	138.65
618	Professional Level 18	53.24	79.76	15.97	148.97
619	Professional Level 19	56.92	85.28	17.08	159.28
620	Professional Level 20	60.61	90.81	18.18	169.59
621	Professional Level 21	64.29	96.33	19.29	179.91
622	Professional Level 22	67.98	101.85	20.39	190.22
623	Professional Level 23	71.66	107.37	21.50	200.53
624	Professional Level 24	75.35	112.89	22.60	210.85
625	Professional Level 25	79.03	118.42	23.71	221.16
626	Professional Level 26	87.13	130.55	26.14	243.82
<b>TECHNICAL LEVELS</b>					
501	Technician Level 1	8.40	12.59	2.52	23.51
502	Technician Level 2	9.35	14.00	2.80	26.15
503	Technician Level 3	10.29	15.42	3.09	28.79
504	Technician Level 4	11.24	16.83	3.37	31.44
505	Technician Level 5	12.18	18.25	3.65	34.08
506	Technician Level 6	13.13	19.67	3.94	36.73
507	Technician Level 7	14.18	21.24	4.25	39.67
508	Technician Level 8	15.23	22.81	4.57	42.60
509	Technician Level 9	16.28	24.38	4.88	45.54
510	Technician Level 10	17.85	26.74	5.36	49.95
511	Technician Level 11	19.43	29.10	5.83	54.36
512	Technician Level 12	21.53	32.25	6.46	60.23
513	Technician Level 13	24.15	36.18	7.25	67.58

514	Technician Level 14	26.78	40.12	8.03	74.92
515	Technician Level 15	29.40	44.05	8.82	82.27
516	Technician Level 16	32.87	49.24	9.86	91.97
517	Technician Level 17	34.65	51.92	10.40	96.96
518	Technician Level 18	42.00	62.93	12.60	117.53
ADMINISTRATIVE LEVELS					
801	Administrative Level 1	9.63	14.43	2.89	26.94
802	Administrative Level 2	11.48	17.20	3.44	32.11
803	Administrative Level 3	13.32	19.96	4.00	37.29
804	Administrative Level 4	15.17	22.73	4.55	42.46
805	Administrative Level 5	17.02	25.50	5.11	47.63
806	Administrative Level 6	18.87	28.27	5.66	52.80
807	Administrative Level 7	21.50	32.22	6.45	60.17
808	Administrative Level 8	24.66	36.95	7.40	69.02
809	Administrative Level 9	27.83	41.69	8.35	77.86
810	Administrative Level 10	52.50	78.66	15.75	146.91

Labor rates below the Washington State Minimum Wage apply to employees in other states

\* Direct Salary NTE rates include a 5% increase to cover annual salary increases

# **PS&E FOR LOWER MASSEY CREEK FLOODWALL AND CREEK ENHANCEMENT**

## **EXHIBIT B-8**

### **PERMITTING SCOPE OF WORK**

Scope of work and fee estimate from ESA-Adolfson, Inc. for permitting application on the project follows.

LOWER MASSEY CREEK FLOODWALL

I. BACKGROUND

The City of Des Moines is evaluating the feasibility of constructing a series of low floodwalls and/or earthen berms in conjunction with the restoration and reconstruction of the lower reach of Massey Creek between approximately 10<sup>th</sup> Avenue S and Marine View Drive. The project involves the development of preliminary alternatives, support during the selection of a preferred alternative, and the design and permitting of the preferred alternative. The following environmental reviews or approvals are expected to be necessary to implement the project:

Permit Responsibility Table 1.

Lead Agency	Permits/Approvals/Reviews	Application/Documentation	Consultant Team Lead
Corps of Engineers	Section 404/401/10	JARPA (50%)	ESA
	NEPA	n/a	-
	ESA Section 7 Review	BA	ESA
	404(b)(1) Alternatives Analysis	n/a	-
	Section 106 Review	n/a	ESA
WDFW	HPA	JARPA (90%)	ESA
USFWS/NMFS	Section 7 ESA Consultation/MSA Consultation	Biological Opinion (by others)	ESA
WA Dept of Ecology	CZM Consistency Determination	CZM Form/Checklist	ESA
	Section 401 Water Quality Certification	JARPA (50%)	ESA
City of Des Moines	Environmental Review	Land Use Permit Master Application	ESA
	SEPA	Draft SEPA and Final Environmental Checklist	ESA
	SEPA Signage	Sign Design	ESA
	Shoreline Permit	NA	ESA
	ESA Development Exception	Development Exception Application	ESA
	Environmentally Critical Areas Review	Critical Areas Study	ESA
	18.86.120/160 – Limited exemptions	Compensatory Mitigation Plan	ESA
	Clearing, Grading and Filling Permit	Land Clearing Application	ESA
	Tree Retention Plan	Tree survey, preparation of tree protection and replacement plan	Tt
	Flood Hazard Area Development Permit	Master Application	Tt

Unless otherwise stated, it is assumed that all other necessary building, construction, and environmental permit applications would be prepared by others.

## II. SCOPE OF WORK

Based on the information outlined above, ESA's scope of work in support of Des Moines Floodwall and Creek Enhancement project includes the following tasks:

### **Task 1 Environmental Documentation and Permit Applications**

#### *SEPA Checklist*

For the purpose of this scope of work, ESA has assumed that the City of Des Moines will be the SEPA lead agency and that they will issue a SEPA determination consistent with their SEPA rules. Although an Environmental Impact Statement (EIS) may ultimately be required for this project, the preparation of an Environmental Checklist (Checklist) is currently assumed as the basis for determining a scope and cost estimate for this task. This task includes design of the SEPA sign per City standards.

ESA will rely on previously completed environmental documentation from other local projects as well as technical information provided by Tt and others on the consultant team. At this time it is reasonable to assume that previous studies and information developed as part of this scope of work will be sufficient to complete the Checklist and that no additional studies would be necessary (traffic studies, groundwater studies, geotechnical, air quality, noise, etc). This task anticipates that the City will be the sole SEPA lead agency. Should cooperating agencies be determined to be the SEPA lead agency or co-lead agencies for this project, additional coordination and document preparation may be required and will be negotiated separately.

#### *JARPA*

The JARPA form is a joint application form that will be prepared in support of a Corps of Engineers Section 404 Permit, Ecology 401 Water Quality Certification, and Washington Department of Fish and Wildlife (WDFW) Hydraulic Project Approval (HPA). ESA will assemble JARPA materials for submittal by the City to the Corps of Engineers, Ecology, and WDFW. ESA will prepare Corps of Engineers JARPA figures for the Project approximately 50%-level design information provided by Tt. JARPA submittals shall also include 50%-level design drawings and narrative descriptions of the proposed work provided by Tt and others.

#### *City of Des Moines Development and Land Use Permit Applications*

ESA shall complete applications City development and land use permits identified in Table 1. ESA will prepare mailing labels, radius maps, and narrative project descriptions required for each application. All site plans, survey maps, property exhibits, design drawings, and other technical reports required to complete the applications will be provided by the City based on work completed by T, or others on the design team. ESA will assemble and deliver applications to the City for signature and submittal.

#### *Environmentally Critical Areas*

ESA shall prepare a *Critical Areas Study* for use during project permitting for the project area from the existing culvert at 10<sup>th</sup> Avenue S downstream to Marine View Drive S at the MHHW line. The critical areas study will include a field delineation of wetlands and streams in the project area and prepare a special study per Des Moines Municipal Code 18.86.050. The report will be submitted to the Corps of Engineers and Department of Ecology pursuant to a Section 404/401 permit. Information to evaluate project impacts on other Environmentally Critical Areas will be provided by others and addressed in separate technical reports, if needed. ESA's scope of work for this task includes wetlands and streams delineations. Survey and mapping will be provided by Tt.

#### *Conceptual and Final Mitigation Plan*

ESA shall prepare a conceptual mitigation plan based on the level of environmental impacts associated with the stream restoration or relocation, the flood management berm and walls, and bank stabilization within the project area. The conceptual mitigation plan will describe approximately 50%-level mitigation site design (per Task 3). The plans shall include identification of site-specific performance criteria and standards for success and a proposed monitoring and maintenance plan per 18.86.130. Additional in-channel stream mitigation may be required to comply with the mitigation requirements per 18.86.170. The mitigation plan report will include a description of potential planned stream mitigation; however, all in-channel stream mitigation design work will be provided by Tt as part of the PSE package. The final mitigation plan will be completed based on the 90% PSE and will be the document of record for the environmental permits for this project.

#### *Section 106*

ESA has assumed that the Corps of Engineers will complete the required Section 106 consultation with the Washington State DAHP and potentially affected tribes as part of their internal review and that the required notification for Section 106 consultation will occur concurrently with the public notice for this project. Therefore, a stand-alone APE determination and Section 106 report is not included in this task. ESA shall provide support to the City and Corps of Engineers during the Section 106 review process. ESA staff will conduct a brief review of DAHP records and conduct a pedestrian-level site evaluation to identify listed or eligible properties that are known to occur within the area of potential effect for the project. No sampling, testing, or other site-specific investigation is included at this time. If the Corps determines that the project will affect listed or eligible properties within the area of potential effect of the project or if additional study is required to support their review, additional work including detailed site testing, excavation, and data analysis may be required as an additional service.

#### *Biological Evaluation*

ESA shall prepare a Biological Evaluation (BE) for the project. The BE evaluation will be prepared to support consultation efforts under Section 7 of the Endangered Species Act of 1973 (ESA) among the federal lead agency and Services. The BE will be submitted to the Corps with the JARPA form and will include a narrative of the Project based on the approximately 50%-level design provided to ESA. Based on similar work completed by the City for lower Des Moines Creek, ESA assumes that the same determination of effect (May Affect, Not Likely to Adversely Affect) will apply to this project. Work to support formal consultation with the Services is not included in this task.

#### Deliverables

Draft and Final SEPA Checklist.  
Draft and Final 50% JARPA  
Draft and Final Corps of Engineers 50% JARPA Figures  
Draft and Final CZM Form  
DAHP Data for 1 Mile Radius of project area  
Address List for parcels adjoining project corridor  
Draft and Final City of Des Moines Land Use Permit Master Application  
Draft and Final SEPA Sign Design  
Draft and Final Development Exception Application  
Draft and Final Critical Areas Study  
Draft and Final Compensatory Mitigation Plan  
Draft and Final Land Clearing Application  
Draft and Final 300' Radius Maps  
Draft and Final Narratives of Project Work  
Address List and Mailing Labels for parcels in 300' Radius of the Project Corridor  
Draft and Final Biological Evaluation Supplement  
Draft and Final Section 106 Support Technical Memorandums

## **Task 2 Project Meetings and Agency Coordination**

ESA staff shall prepare for and attend up to 4 regularly scheduled monthly meeting for the project for a period of 12 months from the time a notice to proceed is issued for the project. ESA shall prepare for and attend agency coordination meetings (up to 2) with the City and other environmental agencies during the permit process. The following agencies have been identified as requiring coordination:

- Corps of Engineers
- Washington Department of Fish and Wildlife
- Washington Department of Ecology
- US Fish and Wildlife Service
- National Marine Fisheries Service

## **TASK 3. Wetland and Stream Corridor Mitigation Design**

### *50% Mitigation Design*

ESA shall prepare 50%-level design and quantity estimates for one on-site wetland/stream buffer landscape design mitigation area in the project area based on site civil drawings provided by Tt. This does not include an irrigation plan. We assume no supplemental irrigation will be required for the project. This does not include mitigation design of off-site mitigation, if required.

### *90% Mitigation Design*

ESA shall prepare 90%-level design, specifications, and quantity estimates for the landscape plan.

### *100% Mitigation Design*

ESA shall prepare 100%-level design, specifications, and quantity estimates for the on-site wetland mitigation area.

### Deliverables

50% landscape design with submittal of Plans and Quantities Estimate

90% landscape design with submittal of Plans, Specifications, and Quantities Estimate

100% landscape design with submittal of Plans, Specifications, and Quantities Estimate

## **TASK 4 CONTINGENCIES AND ADDITIONAL COORDINATION**

Because of the nature of this project, including specific levels of effort as required for design contingencies and to meet additional coordination within the permitting and design tasks is not practicable. The ultimate level of coordination required to complete the project will be largely dependent on specific design elements that are not known at this time. Similarly, it is likely that some design elements will be revised in response to agency and public feedback, therefore, ESA is proposing to include a contingency and additional coordination task for these items. Work under this task would only be authorized under separate written approval by the City and Tt. Work that may be incorporated under this Task includes:

### *NEPA Compliance/ 40 CFR Part 230 Section 404(b)(1) Alternatives Analysis*

A NEPA Environmental Impact Statement (EIS) or an Environmental Assessment (EA), and/or a Section 404(b)(1) Alternatives Analysis may ultimately be required for this project; however, for purposes of this scope of work, ESA has assumed that the Corps of Engineers will complete the required NEPA Compliance/40 CFR Part 230 Section 404(b)(1) Alternatives Analysis as part of their internal review and publish their respective determinations concurrently with their permit decision. Therefore, a standalone EIS, EA, or Alternatives Analysis is not included, but ESA shall provide support to the Corps of Engineers during their internal review process. Up to 16 hours of support is included in the scope of work.

### *Biological Opinion Coordination*

The project is not anticipated to result in a “May affect, likely to adversely affect” determination for the project based on the BA completed by FEMA for the Phase 1 project. If formal consultation is required, additional coordination and evaluation could be needed to be completed during the Section 7 consultation process to assist the Services prepare their Biological Opinion(s). A fisheries and/or wildlife biologist will be available for up to 16 hours to assist with this additional coordination efforts for this project.

### *City of Des Moines Council Coordination*

It is anticipated that additional coordination with the Des Moines City Council will be necessary at times throughout this project. ESA staff will be available for up to 6 hours to assist with these efforts for this project.

### *City of Des Moines Public Involvement/Hearings*

ESA staff will be available for up to 6 hours of coordination to attend public meetings, respond to public comment on City-issued permit decisions, and attend public hearings, if required.

### *Corps of Engineers Public Notice Coordination/Comment Responses*

The project is not anticipated to require a Corps of Engineers Individual Permit at this time, but an Individual Permit may be triggered by bank stabilization or dredging necessary to successfully implement the project. If an Individual Permit is required, the Corp of Engineers will be required to publish a Public Notice for the project and must respond to any public comments submitted during the formal comment period. It is anticipated that additional coordination and review will be required to respond to public comments. ESA staff will be available to provide up to 32 hours of time to assist the City to respond to public comments following the Corps Public Notice for this project.

### *Revisions to Permit Applications and/or 50% or 90% Design Drawings in response to Agency Comments.*

The project will include review by both regulatory agencies and the public as part of the Corps of Engineers permit process and SEPA review process. The City may elect to revise, omit, add, or otherwise alter permit applications or design documents in response to public and/or agency review comments and this may require additional drafts or submittals not otherwise identified as Deliverables under Tasks 1, 2, or 3. ESA staff will be available to respond to the requests for additional submittals up to the budget provided for this task. For the purpose of determining a level of effort for this subtask, ESA has assumed up to 32 hours of time to complete interim or additional submittals.

## **ASSUMPTIONS**

- Unless specifically stated in this scope of work, ESA will rely solely on previously conducted work or work prepared by others to complete the environmental documentation and permit applications. This scope of work does not include fieldwork or site-specific investigations or any field sampling not specifically identified herein.
- All draft materials will be submitted for review electronically in either their native file format or as PDF files.
- All design drawings will be submitted electronically as camera-ready PDF drawings for inclusion within the larger PSE submittals prepared by Tt. No printing or reproduction costs for drawings are included herein.
- ESA shall submit the number of copies of applications and supporting documentation identified on the application forms, plus two additional copies for the project files. The City shall be responsible for additional copies. The City shall be responsible for distributing permit materials and the publication of any required notifications.
- The City shall produce and install the SEPA notice sign based on the design provided.
- The City shall be responsible for all permit fees or third-party review fees.
- ESA will be provided copies of documents that are available to the City that will facilitate the preparation of the plans and studies within the limits of this project. These are:
  - Existing surveys of the project area in AutoCAD-compatible file format. All surveys shall be converted to a common datum prior to providing ESA.
  - Legal descriptions of affected properties as required by ESA for permit preparation.

- The City will secure rights-of-entry as necessary to access the project area.
- The City will acquire R/W and easements necessary for construction of the project.
- The City or Tt will be the lead for all negotiations with utilities and adjoining property owners regarding construction.
- The City or Tt will be responsible for providing notice for utility locates, if needed, prior to any field work by ESA.
- The City will be the sole SEPA lead agency.
- The City will sign and be responsible for delivering all permit applications.
- The City will be responsible for publishing all notices required by the approving agencies.
- The City will be responsible for forwarding all permit-related correspondence to ESA in a timely manner.
- The Corps of Engineers will be the federal lead agency.
- A SEPA EIS or a NEPA EA/EIS are not included in this scope of work.
- Wetland and/or Stream Buffer Mitigation, if needed, will be constructed within City owned parcels within the project area. The scope of work assumes a maximum of three sheets (two - planting plans and a details and schedules sheet).
- The project will be designed based on WSDOT 2012 specifications. ESA will provide text for Division 8 and Division 9 specifications for the landscape plan to Tt, who will be responsible for incorporating into the contract documents.
- No Shoreline Management Act permit will be required for the project.
- Unless specified in this scope, no other project specific discipline reports or technical memorandum are anticipated to be required in support of the NEPA or SEPA documentation process, but can be completed as an additional task(s), if required.



**LOWER MASSEY CREEK FLOODWALL**  
Environmental Science Associates

Prepared By: BCB  
Prepared Date: 13-Feb-13

Labor Category	Director I	Technical Associate	Senior Managing Associate	Senior Managing Associate I	Managing Associate I	Technical Associate I	Senior Associate I	Senior Associate II	Senior Graphics	Associate III	Administrative	Associate II	Clerical	Total
Rate	\$ 175.98	\$ 170.97	\$ 146.73	\$ 142.60	\$ 142.36	\$ 136.12	\$ 135.07	\$ 113.51	\$ 105.07	\$ 99.04	\$ 98.53	\$ 78.30		
<b>Task 1 Environmental Documentation and Permit Applications</b>														
Draft and Final SEPA Checklist	4		4				24	2	12	8	2	2	1	57.00
Draft and Final 50% JARPA	2					16	16	1	8				1	28.00
Draft and Final Corps of Engineers 50% JARPA Figures	2						2		8				0.5	26.50
Draft and Final CZM Form						4	0.5						0.5	2.50
DAHP Data for 1 Mile Radius of project area						1							0.5	5.00
Address List for parcels adjoining Project Corridor	1					4	8	1					0.5	1.50
Draft and Final City of Des Moines Land Use Permit Master Application						4							0.5	10.50
Draft and Final SEPA Sign Design	1					4							0.5	4.00
Draft and Final Development Exception Application	1					4							0.5	3.50
Draft and Final Critical Areas Study	8				4	16	8	4		32	2	4	2	54.00
Draft and Final Compensatory Mitigation Plan	1					4	4						0.5	51.00
Draft and Final Land Clearing Application	1					2	0.5						0.5	9.50
Draft and Final 300' Radius Maps	2					8	8						0.5	3.00
Draft and Final Narratives of Project Work	8					4	4	1					0.5	10.50
Address List and Mailing Labels for parcels in 300' Radius of Beach Park	8			32		4	4	1	8	16	4	4	1	81.00
Draft and Final Biological Evaluation	4				16	4	4	4	24	24	2		1	67.00
Draft and Final Section 106 Support Technical Memorandum	4					4	16						1	67.00
<b>Subtotal hours</b>	49	0	4	32	20	63	95	13	32	80	13	18	12	418.0
<b>Subtotal labor</b>	\$ 8,623.16	\$ -	\$ 586.93	\$ 4,563.08	\$ 2,847.18	\$ 8,575.71	#####	\$ 1,287.54	\$ 3,632.46	\$ 8,405.96	\$ 1,773.59	\$ 939.57	\$	\$ 54,066.97
<b>Reimbursables</b>														\$ 250.00
<b>Subconsultant</b>														\$ 54,316.97
<b>Task 2 Project Meetings and Agency Coordination</b>														
Monthly Coordination Meetings (4)	12													12.00
Corps of Engineers	3													3.00
Washington Department of Fish and Wildlife	3													3.00
Washington Department of Ecology	3													3.00
<b>Subtotal hours</b>	21	0	0	0	0	0	0	0	0	0	0	0	0	21.0
<b>Subtotal labor</b>	\$ 3,695.64	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,695.64
<b>Reimbursables</b>														\$ 250.00
<b>Subconsultant</b>														\$ 3,945.64
<b>Task 3 Wetland Mitigation Design</b>														
50% Mitigation Design	24				24				16			2	1	67.00
90% Mitigation Design	16				24				24			2	1	67.00
100% Mitigation Design	8				12							2	1	47.00
<b>Subtotal hours</b>	48	0	0	0	60	0	0	0	64	0	0	6	3	181.0
<b>Subtotal labor</b>	\$ 8,447.18	\$ -	\$ -	\$ -	\$ 8,541.54	\$ -	\$ -	\$ -	\$ 7,264.92	\$ -	\$ -	\$ 591.20	\$ 234.89	\$ 25,079.72
<b>Reimbursables</b>														\$ 100.00
<b>Subconsultant</b>														\$ 25,179.72
<b>Task 4 Contingencies and Additional Coordination</b>														
NEPA/Section 404(B)(1)	8						8							16.00
Biological Opinion Coordination	4			12										16.00
City Council Coordination	6													6.00
Public Meetings/Hearings	6													6.00
Corps PN Comment Responses	16				16	6	8	4					2	32.00
Revisions to Materials based on Agency Comments	4													32.00
<b>Subtotal hours</b>	44	0	0	12	16	6	16	4	0	0	4	0	2	108.0
<b>Subtotal labor</b>	\$ 7,743.24	\$ -	\$ -	\$ 1,711.16	\$ 2,277.74	\$ 816.73	\$ 2,161.15	\$ 396.16	\$ -	\$ -	\$ 156.59	\$ -	\$	\$ 16,230.01
<b>Reimbursables</b>														\$
<b>Subconsultant</b>														\$ 16,230.01

**Total Estimate** \$ 99,672.34

**PS&E FOR LOWER MASSEY CREEK FLOODWALL AND  
CREEK ENHANCEMENT**

**EXHIBIT B-9**

**ESTIMATE OF PROFESSIONAL SERVICES**

The estimate of professional services follows.



Tetra Tech, Inc.  
1420 Fifth Avenue, Suite 600  
Seattle WA 98101  
(206) 883-9300  
(206) 883-9301 (FAX)

# EXHIBIT B-2: Estimate of Professional Services

CLIENT: City of Des Moines

PROJECT : Lower Massey Creek Floodwall

P.D. No.: 100-SWW-P130042

Proj. No.:

Date: 4/2/2013

Phase Description	TETRA TECH					EXPENSES @ 1.10					SUBCONSULTANTS @ 1.15			PHASE TOTALS			
	Principal Engineer	Senior Engineer	Engineer	Structural Engineer	CAD Operator	Administrative II	Totals	Total Labor	Travel/Meals	Printing/Reports	Computer/CAD	Misc.	Total Expenses		ESA-Adolfson	Geotechnical	Survey (no markup)
<b>1.0 Project Administration</b>																	
1.1 Project Management (12 months)	4	48	10			12	70	\$14,129					\$231				\$14,430
1.2 QA/QC Review		12	4			1	21	\$10,571			\$210		\$69				\$10,802
<b>2.0 Data Collection and Field Investigation</b>																	
2.1 Collect existing information		8	16				24	\$5,690	\$40		\$72		\$123				\$5,853
2.2 Site reconnaissance		6	6				12	\$3,769			\$36		\$40				\$3,893
<b>3.0 Support Services</b>																	
3.1 Utility Contact		24	24				48	\$13,109									\$13,109
3.2 Pole Coordination		4	8				12	\$7,684	\$60		\$144		\$224				\$7,908
3.3 Survey of Project Site		4	4				8	\$1,885			\$36		\$40				\$1,924
3.4 Geotechnical Evaluation		4	4				8	\$1,281			\$24		\$26			\$14,752	\$16,059
3.5 Permit Application		4	4				8	\$979			\$18		\$20	\$17,455			\$20,073
<b>4.0 Channel Enhancement, Floodwall and Pump Station Analysis</b>														\$99,673			\$114,624
4.1 Hydraulic Evaluation		16	24				40	\$27,273									\$27,273
4.2 Streambed Gravel Determination		8	8				16	\$6,331			\$120		\$132				\$6,483
4.3 Channel feature sizing and placement		8	16				24	\$1,208			\$24		\$26				\$1,235
4.4 Development of intersection flows		8	20				28	\$3,769			\$72		\$79				\$3,849
4.5 Floodwall considerations	2	4	4	24	4	4	42	\$4,374			\$84		\$92				\$4,466
4.6 Technical Memorandum		12	16			2	30	\$6,988			\$170		\$187				\$7,175
<b>5.0 Final Design and Contract Documents</b>																	
5.1 Thirty-percent (30%) PS&E								\$41,603			\$90		\$99				\$41,792
5.1.1 Prepare Plans		66	30	50	95		241	\$111,938									\$111,938
5.1.2 Develop quantities and estimate		4	16				20	\$3,949			\$1,768		\$1,945				\$36,894
5.1.3 Prepare specification outline		2	4				6	\$942			\$60		\$66				\$3,159
5.1.4 Submit to the City		3					4	\$386			\$18		\$20				\$962
5.2 Sixty-percent (60%) PS&E																	
5.2.1 Review Meeting		4	4				9	\$1,359			\$27		\$63				\$1,422
5.2.2 Prepare Plans		50	22	38	71		181	\$26,290	\$30		\$1,324		\$1,456				\$27,747
5.2.3 Calculate quantities and develop cost estimate		12	4				16	\$2,634			\$48		\$53				\$2,687
5.2.4 Prepare special provisions		12	12			2	26	\$3,999			\$78		\$86				\$4,085
5.2.5 Submit to the City		3					4	\$386			\$12		\$13				\$599
5.3 Ninety-percent (90%) PS&E																	
5.3.1 Review Meeting		4	4				9	\$1,359			\$27		\$63				\$1,422
5.3.2 Prepare Plans		30	18	25	47		120	\$17,369	\$50		\$877		\$965				\$18,334
5.3.3 Calculate quantities and develop cost estimate		8	4				12	\$1,957			\$36		\$40				\$1,997
5.3.4 Prepare special provisions		8	8				16	\$2,561			\$48		\$53				\$2,614
5.3.5 Submit to the City		3					4	\$386			\$12		\$13				\$599
5.4 Final PS&E																	
5.4.1 Review Meeting		4	4				9	\$1,359			\$27		\$63				\$1,422
5.4.2 Prepare Plans		16	8	12	23		59	\$8,556	\$30		\$27		\$63				\$9,249
5.4.3 Finalize quantities and cost estimate		4	4				8	\$1,281	\$200		\$430		\$693				\$9,249
													\$24				\$1,507







**2013-2018 CAPITAL IMPROVEMENT PLAN  
Surface Water Management**

**CAPITAL IMPROVEMENT PLAN  
REQUEST FORM**

**CATEGORY** Surface Water Management City Project # 451.821  
Dept Project # SWM-01  
**PROJECT** Lower Massey Creek Channel Modifications Project Type: Enhancement  
Council Goals met: 4  
**LOCATION** Massey Creek from 10th Avenue S to Marine View Drive Project Status: Approved  
**DESCRIPTION:** Stream channel widening, berms and fish habitat features.

**EXPENDITURE SCHEDULE**

COST ELEMENTS	TOTAL*	FY 10 Act	FY 11 Act	FY 12 Est	FY 12 Amd	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
ADMINISTRATION	\$ 40,000					\$ 10,000	\$ 10,000	\$ 20,000			
CIP PROJ MANAGEMENT	10,000					2,500	2,500	5,000			
DESIGN / ENGINEERING	120,000					90,000	30,000				
PERMITTING	100,000					75,000	25,000				
BUILDINGS	-										
IMPROVEMENTS	600,000							600,000			
INSPECTION	90,000							90,000			
CONTINGENCY	320,000					35,000	45,000	240,000			
OTHER	-										
<b>TOTAL</b>	<b>\$ 1,280,000</b>					<b>\$ 212,500</b>	<b>\$ 112,500</b>	<b>\$ 955,000</b>			

FUNDING SOURCES	TOTAL*	FY 10 Act	FY 11 Act	FY 12 Est	FY 12 Amd	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18
SWM CIP	\$ 1,100,000					\$ 212,500	\$ 112,500	\$ 775,000			
King County Flood Control Fund	180,000							180,000			
<b>TOTAL</b>	<b>\$ 1,280,000</b>					<b>\$ 212,500</b>	<b>\$ 112,500</b>	<b>\$ 955,000</b>			

\*Excludes FY 12 Amd



**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: SeaMar Right-of-Way Dedication

FOR AGENDA OF: April 25, 2013

ATTACHMENTS:

- 1. Statutory Warranty Deed with Exhibits A-1 and A-2
- 2. Real Estate Excise Tax Affidavits, SeaMar Health Center (Grantor)
- 3. Resolution No. 1175
- 4. Ordinance No. 1521

DEPT. OF ORIGIN: PBPW

DATE SUBMITTED: April 17, 2013

CLEARANCES:

- Legal RB
- Finance N/A
- Marina N/A
- Parks, Recreation & Senior Services N/A
- Planning, Bldg & Public Works DJB
- Police N/A
- Courts N/A

APPROVED BY CITY MANAGER  
FOR SUBMITTAL 

**Purpose and Recommendation**

The purpose of this item is to obtain City Council’s approval to convey and warrant real property from SeaMar Community Health Center (SeaMar) to Des Moines by Statutory Warranty Deed. The following motion will appear on the consent calendar:

**Suggested Motion**

**Motion:** “I move to accept the deed of the land dedication from SeaMar which is at the southeast corner of 27<sup>th</sup> Avenue South and South 242<sup>nd</sup> Street, and authorize the City Manager to sign the deed substantially in the form as attached.”

**Background**

Pursuant to RCW 35A.11.010, code cities may, through its legislative body, purchase, lease, receive, or otherwise acquire real property to hold, convey, or otherwise dispose of for common benefit. At a public hearing that was held on October 13, 2011, the City Council vacated a portion of Yukon Avenue pursuant to Resolution No. 1175 (Attachment 3). Ordinance No. 1521 (Attachment 4) vacated the subject property pursuant to conditions identified in said Ordinance.

Ordinance No. 1521 classified the vacated right-of-way as Class "B" right-of-way since the right-of-way was undeveloped and no public funds were ever expended in its acquisition; therefore, compensation was required at fifty percent (50%) of the full appraised value. Furthermore, dedication of the new 5 feet of right-of-way along South 242<sup>nd</sup> Street and 27<sup>th</sup> Avenue South provided adequate compensation for the vacated Class "B" right-of-way.

**Discussion**

SeaMar Community Health Center is required to improve South 242<sup>nd</sup> Street and 27<sup>th</sup> Avenue South adjacent to their property with half street improvements including paving and installation of curb, gutter, and sidewalk. During the civil plan review process it was found that in order to construct the sidewalk at the southeast corner of South 242<sup>nd</sup> Street and 27<sup>th</sup> Avenue South that additional right-of-way would be needed. The additional right-of-way shown in Exhibit A-1 and A-2 (Attachment 1) to be obtained through the Statutory Warranty Deed allows SeaMar to construct frontage improvements consistent with the current Street Development Standards. Attachment 2 contains the corresponding Real Estate Excise Tax Affidavits associated with the deed.

**Alternatives**

None. The sidewalk cannot be constructed to current development standards without this additional right-of-way.

**Financial Impact**

None.

**Recommendation or Conclusion**

It is recommended that the City Council approve the conveyance of the subject property.

**Concurrence**

Administration, Planning, Building, and Public Works, and Legal Departments concur.

Recorded at the Request of  
and after Recording Return to:

City of Des Moines  
ATTN: City Attorney  
21630 11<sup>th</sup> Avenue South  
Des Moines, WA 98198

Legal Description (abbreviated): Portion of Lots 1 and 32-40 inclusive, Block 8 of Interurban Heights, Fifth Section, Volume 17 of Plats, p. 85, City of Des Moines, WA.  
Additional legal description(s) are on pages 3 of this document.  
Assessor's Tax Parcel Nos. 3603000005, 3603000024.

**STATUTORY WARRANTY DEED**

THE GRANTOR, SEA-MAR COMMUNITY HEALTH CENTER, d/b/a SEA-MAR COMMUNITY HEALTH CENTERS, a Washington nonprofit corporation, for valuable consideration, conveys and warrants to CITY OF DES MOINES, a Washington municipal corporation, ("Grantee"), the real property identified as Parcel A, legally described on attached **Exhibit A-1** with a plan depicting Parcel A on attached **Exhibit A-2**, located in the County of King, State of Washington (the "Property"), subject to all matters of record.

Dated: \_\_\_\_\_, 2013.

SEA-MAR COMMUNITY HEALTH CENTER,  
a Washington nonprofit corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_



**Exhibit A-1**  
**Legal Description of the Property**

**Parcel A**

THAT PORTION OF LOT 40, BLOCK 8, INTERURBAN HEIGHTS, FIFTH SECTION, RECORDED IN VOLUME 17, PAGE 85, RECORDS OF KING COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 40;  
THENCE SOUTH  $01^{\circ}02'40''$  WEST, ALONG THE WEST LINE OF SAID LOT 40, A DISTANCE OF 5.00 FEET;  
THENCE SOUTH  $88^{\circ}57'13''$  EAST, PARALLEL WITH THE NORTH LINE OF SAID LOT 40, A DISTANCE OF 5.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID BEARING, SOUTH  $88^{\circ}57'13''$  EAST, A DISTANCE OF 0.46 FEET TO A NON TANGENT CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 19.50 FEET;  
THENCE SOUTHWESTERLY ALONG SAID CURVE, AN ARC DISTANCE OF 0.63 FEET, THROUGH A CENTRAL ANGLE OF  $01^{\circ}51'11''$ , TO A LINE BEING 5.00 FEET EASTERLY AND PARALLEL WITH THE WEST LINE OF SAID LOT 40;  
THENCE NORTH  $01^{\circ}02'40''$  EAST, ALONG SAID LINE, A DISTANCE OF 0.43 FEET TO THE TRUE POINT OF BEGINNING;

CONTAINING AN AREA OF 0.0981 SQUARE FEET, MORE OR LESS;

SITUATE IN THE CITY OF DES MOINES, KING COUNTY, WASHINGTON.



03/20/13

SEA MAR COMMUNITY CENTER  
SEA MAR MIXED USE HOUSING & RECOVERY CENTER  
TAYLOR R. SCHULTE, P.L.S. 44646  
BRH JOB NO. 2010041-04  
MARCH 12, 2013

BUSH, ROED & HITCHINGS, INC.  
2009 MINOR AVENUE EAST  
SEATTLE, WA 98102  
(206) 323-4144





PLEASE TYPE OR PRINT

REAL ESTATE EXCISE TAX AFFIDAVIT
CHAPTER 82.45 RCW - CHAPTER 458-61A WAC

This form is your receipt when stamped by cashier.

THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ON ALL PAGES ARE FULLY COMPLETED (See back of last page for instructions)

Check box if partial sale of property If multiple owners, list percentage of ownership next to name.

Form sections 1 and 2: Seller/Grantor and Buyer/Grantee information including names, addresses, and phone numbers.

Form section 3: Property tax correspondence and parcel account information.

Form section 4: Street address and legal description of the property.

Form sections 5, 6, and 7: Land use codes, exemptions, and tax calculations.

Form section 8: Signature lines for Grantor and Grantee agents.

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both imprisonment and fine (RCW 9A.20.020 (1C)).



PLEASE TYPE OR PRINT

REAL ESTATE EXCISE TAX AFFIDAVIT
CHAPTER 82.45 RCW - CHAPTER 458-61A WAC

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(See back of last page for instructions)

Check box if partial sale of property

If multiple owners, list percentage of ownership next to name.

Form sections 1, 2, 3: Seller/Grantor and Buyer/Grantee information, including names, addresses, and tax correspondence details.

Section 4: Street address of property (27th Avenue South and South 242nd Street) and location details.

Section 5: Land Use Code selection and exemption questions.

Section 6: Property classification questions regarding forest land, current use, and special valuation.

Section 6 (continued): Continuation notice instructions and signature lines for Deputy Assessor and Owner(s).

Section 6 (continued): Compliance notice instructions and signature line for Owner(s).

Section 7: Personal property included in selling price.

Section 7 (continued): Exemption details including WAC number and reason for exemption.

Section 7 (continued): Document type, date, and detailed tax calculation table showing Gross Selling Price, taxes, and Total Due.

Section 8: Certification statement and signature lines for Grantor/Grantor's Agent and Grantee/Grantee's Agent.

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both imprisonment and fine (RCW 9A.20.020 (1C)).



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Check box if partial sale of property

If multiple owners, list percentage of ownership next to name.

Form sections 1-3: Seller/Grantor and Buyer/Grantee information, including names, addresses, and tax correspondence details.

Section 4: Street address of property, location in Des Moines, and legal description of the property.

Section 5: Select Land Use Code(s) and exemption questions regarding property tax per chapter 84.36 RCW.

Section 6: Exemption questions regarding forest land, current use, and special valuation as historical property.

Section (1) NOTICE OF CONTINUANCE (FOREST LAND OR CURRENT USE) and continuation questions.

Section (2) NOTICE OF COMPLIANCE (HISTORIC PROPERTY) and compliance questions.

Section (3) OWNER(S) SIGNATURE and PRINT NAME fields.

Section 7: List all personal property (tangible and intangible) included in selling price.

Section 7: Exemption details including WAC number and reason for exemption.

Section 7: Type of Document, Date of Document, and tax calculation table including Gross Selling Price, Excise Tax, and Total Due.

Section 8: I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. Signature and name fields for Grantor and Grantee.

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both imprisonment and fine (RCW 9A.20.020 (1C)).



PLEASE TYPE OR PRINT

REAL ESTATE EXCISE TAX AFFIDAVIT
CHAPTER 82.45 RCW - CHAPTER 458-61A WAC

This form is your receipt when stamped by cashier.

THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ON ALL PAGES ARE FULLY COMPLETED (See back of last page for instructions)

Check box if partial sale of property If multiple owners, list percentage of ownership next to name.

Form sections 1, 2, and 3: Seller/Grantor and Buyer/Grantee information, including names, addresses, and tax correspondence details.

Section 4: Street address of property (27th Avenue South and South 242nd Street) and location details in Des Moines.

Section 5: Land Use Code selection and exemption status from property tax per chapter 84.36 RCW.

Section 6: Designation of forest land, current use, or special valuation as historical property.

Section 6 (continued): Notice of Continuation (Forest Land or Current Use) and compliance instructions.

Section 6 (continued): Notice of Compliance (Historic Property) and owner signature line.

Section 7: Personal property included in selling price and tax calculation table with a total due of \$10.00.

Section 8: Certification of truth and correctness, and signature lines for Grantor and Grantee.

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00).

# INSTRUCTIONS

**Note:** To report a transfer of a controlling interest in real property, please use the Real Estate Excise Tax Affidavit Controlling Interest Transfer Return, Revenue Form No. 84-0001B. This form is available online at <http://dor.wa.gov>.

## Section 1:

Enter the name(s) of seller/grantor. This is the person(s) conveying interest in the property.

## Section 2:

Enter the name(s) of buyer/grantee. This is the person(s) receiving interest in the property.

## Section 3:

- Enter the **name and address** where you would like all future property tax information sent.
- Enter the **tax parcel number** and **current assessed value** for real and personal property being conveyed. Check the box to indicate personal property.

## Section 4:

- Enter the street address of the property.
- Enter the county if in unincorporated area. Enter city name if located within a municipality.
- Enter the legal description of the property.

## Section 5:

- Enter the appropriate land use code for the property. Please list all codes that apply on the lines provided in section 5. See WAC 458-53-030 (5) for a complete list.

09 - Land with mobile home	23 - Apparel and other finished products made from fabrics, leather, and similar materials	33 - Primary metal industries	71 - Cultural activities/nature exhibitions
10 - Land with new building	24 - Lumber and wood products (except furniture)	34 - Fabricated metal products	74 - Recreational activities (golf courses, etc.)
11 - Household, single family units	25 - Furniture and fixtures	35 - Professional scientific and controlling instruments; photographic and optical goods; watches/clocks manufacturing	75 - Resorts and group camps
12 - Multiple family residence (2-4 Units)	26 - Paper and allied products	39 - Miscellaneous manufacturing	80 - Water or mineral right
13 - Multiple family residence (5 + Units)	27 - Printing and publishing	50 - Condominiums-other than residential	81 - Agriculture (not in current use)
14 - Residential condominiums	28 - Chemicals	53 - Retail Trade - general merchandise	83 - Agriculture current use RCW 84.34
15 - Mobile home parks or courts	29 - Petroleum refining and related industries	54 - Retail Trade - food	86 - Standing Timber (separate from land)
16 - Hotels/motels	30 - Rubber and miscellaneous plastic products	58 - Retail trade - eating & drinking (restaurants, bars)	88 - Forest land designated RCW 84.33
17 - Institutional Lodging (convalescent homes, nursing homes, etc.)	31 - Leather and leather products	59 - Tenant occupied, commercial properties	91 - Undeveloped Land (land only)
18 - All other residential not coded	32 - Stone, clay and glass products	64 - Repair services	94 - Open space land RCW 84.34
19 - Vacation and cabin		65 - Professional services (medical, dental, etc.)	95 - Timberland classified RCW 84.34
21 - Food and kindred products			96 - Improvements on leased land
22 - Textile mill products			

## Section 6:

Indicate whether the property is designated as forest land per chapter 84.33 RCW, classified as current use (open space, farm, agricultural, or timber) per chapter 84.34 RCW, or receiving special valuation as historic property per chapter 84.26 RCW.

## Section 7:

- List **personal property** included in the selling price of the real property. For example, include tangible (furniture, equipment, etc) and intangible (goodwill, agreement not to compete, etc).
- **Use Tax** is due on personal property purchased without payment of the sales tax. Use Tax may be reported on your Combined Excise Tax Return or a Consumer Use Tax Return, both available at <http://dor.wa.gov>.
- If you are claiming a **tax exemption**, cite the specific Washington Administrative Code (WAC) number, section and subsection and provide a brief explanation. Most tax exemptions require specific documentation. Refer to the appropriate WAC to determine documentation requirements. Chapter 458-61A WAC is available online at <http://dor.wa.gov>.
- Enter the **type of document** (quit claim deed, statutory warranty deed, etc.), and **date of document** (MM/DD/YYYY)
- Enter the **selling price** of the property.

**Selling price:** For tax purposes, the selling price is the true and fair value of the property conveyed. When property is conveyed in an arm's length transaction between unrelated persons for valuable consideration, there is a presumption that the selling price is equal to the total consideration paid or contracted to be paid, including any indebtedness. Refer to RCW 82.45.030 for more information about selling price.

- **Deduct** the amount of **personal property** included in the selling price.
- **Deduct** the amount of **tax exemption** claimed per chapter 458-61A WAC.

**Due Date, Interest and Penalties:** Tax is due at the time of sale/transfer. If tax is not paid within one month of the date of sale/transfer, interest and penalties will apply. The interest rate is variable and determined per RCW 82.32.050. Delinquent penalties are 5% one month after the due date; 10% two months after the due date; and 20% three months after the due date. (RCW 82.45.100)

**State Technology Fee** - A \$5.00 Electronic Technology Fee that is due on all transactions.

**Affidavit Processing Fee** - A minimum of \$5.00 shall be collected in the form of tax and processing fee. A processing fee is due on all transactions where no tax is due and on all taxable transactions where the tax due is less than \$5.00.

## Section 8:

Both grantor (seller) and grantee (buyer), or the agent of each, must sign this form, certifying that all the information provided is correct. Note: Original signatures required on the "County Treasurer" copy. Signatures may be required on the "Assessors" copy. Check with your county.

## Where to send completed forms:

Completed forms should be submitted to the County Treasurer's or Recorder's Office where the property is located.

## Audit:

Information you provide on this form is subject to audit by the Department of Revenue. Underpayments of tax will result in the issuance of a tax assessment with interest and penalties. Note: in the event of an audit, it is the taxpayers' responsibility to provide documentation to support the selling price or any exemption claimed. **This documentation must be maintained for a minimum of four years from date of sale. (RCW 82.45.100)**

## Ruling requests:

You may request a predetermination of your tax liability. The written opinion will be binding on both you and the Department based on the facts presented (WAC 458-20-100(9)). Send your ruling request to:

Department of Revenue  
Taxpayer Information & Education  
P.O. Box 47478  
Olympia, WA 98504-7478  
FAX (360) 705-6655



## RESOLUTION NO. 1175

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, fixing a time for a combined public hearing to consider Draft Ordinance No. 10-184 which updates and amends chapter 18.80 DMMC in order to effectuate a zoning reclassification and the vacation of a portion of public right-of-way known as Yukon Street located in the City of Des Moines both affecting property owned by SeaMar Community Health Center.

WHEREAS, the City Council will be considering a zoning reclassification of property owned by SeaMar Community Health Center to achieve consistency with the City of Des Moines Comprehensive Plan which also requires amending Chapter 18.80 DMMC, and

WHEREAS, a public hearing is necessary to receive public comment regarding the possible zoning reclassification and textual code amendments to chapter 18.80 DMMC, and

WHEREAS, a public hearing is required for adoption of an ordinance which amends any portion of the Title 18 DMMC commonly referred to as the Zoning Code, and

WHEREAS, the City Council is considering vacation of a portion of public right-of-way dedicated as Yukon Street in the City of Des Moines and adjacent to the SeaMar Community Health Center property as shown on Exhibit "A", attached hereto and incorporated by reference, and

WHEREAS, RCW 35.79.010 authorizes the City Council to initiate the street vacation process by resolution and fix a time for a public hearing in order to receive public comment regarding the proposed vacation, and

WHEREAS, chapter 36.70B RCW adopted by chapter 18.56 DMMC requires that local jurisdiction provide for a single consolidated open record hearing; now therefore,

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

Amendments to chapter 18.80 DMMC, the Zoning Map, and the vacation of the following described portions of public rights-of-way in the City of Des Moines, are set for a public hearing before the City Council on Thursday, October 13, 2011, at 7:30

Resolution No. 1175

Page 2 of 2

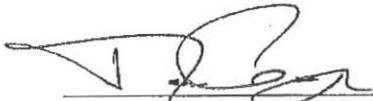
p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Avenue South, Suite B, Des Moines, Washington:

A portion of Yukon Street located in the City of Des Moines lying south of South 242<sup>nd</sup> Street and bisecting property owned by SeaMar Community Health Center as further described and illustrated on Exhibit "A"

**ADOPTED BY** the City Council of the City of Des Moines, Washington this 22nd day of September, 2011 and signed in authentication thereof this 22nd day of September, 2011.

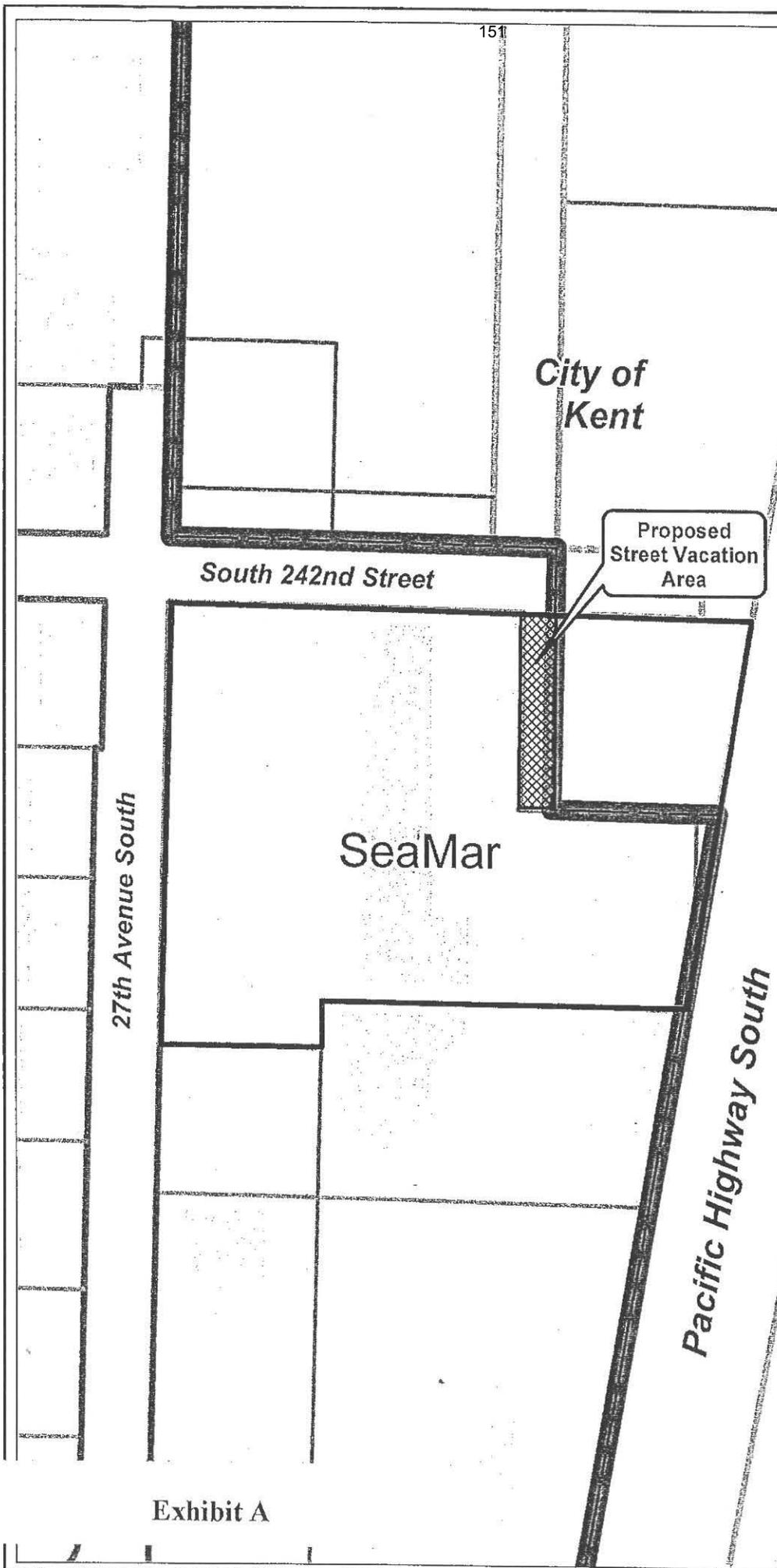
  
MAYOR

APPROVED AS TO FORM:

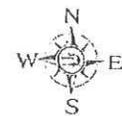
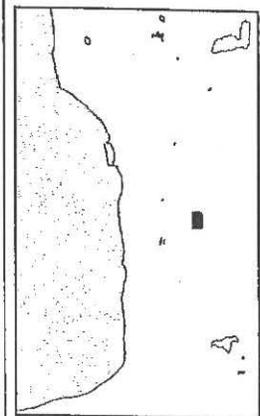
  
Assistant City Attorney

ATTEST:

  
City Clerk



**LUA2011-029**  
**SeaMar**  
**Street Vacation**



**Exhibit A**

21630 11th Ave S  
 Des Moines, WA 98198-6398  
 PHONE: (206) 878-4595 | FAX: (206) 870-7628  
 WEB: <http://www.desmoineswa.org>

151





20120203000853

CITY OF DES MOINES  
PAGE-001 OF 009  
02/03/2012 11:41  
KING COUNTY, WA 120.00

**Return Address:**

City of Des Moines  
Attn: City Clerk  
21630 11<sup>th</sup> Avenue South  
Suite D  
Des Moines, WA 98198-6398

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

**Document Title(s)** (or transactions contained therein): (all areas applicable to your document must be filled in)

- 1. Yukon Street Vacation - Ordinance 1521
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_

**Reference Number(s) of Documents assigned or released:**

Additional reference #'s on page \_\_\_\_\_ of document

**Grantor(s)** (Last name, first name, initials)

- 1. City of Des Moines
  - 2. \_\_\_\_\_
- Additional names on page \_\_\_\_\_ of document.

**Grantee(s)** (Last name first, then first name and initials)

- 1. SeaMar Community Health Center
  - 2. \_\_\_\_\_
- Additional names on page \_\_\_\_\_ of document.

**Legal description** (abbreviated: i.e. lot, block, plat or section, township, range)

Block 7, Lots 1 - 8 Block 8, and Lots 32 - 40 Block 8 Interurban Heights Fifth Section filed in Volume 17 of Plats, Page 85, Records of King County, Washington

Additional legal is on page 2 - 5 of document.

**Assessor's Property Tax Parcel/Account Number**  Assessor Tax # not yet assigned

Right-of-way is not assigned a Tax Parcel Number, however, the street vacation and corresponding dedication affect the adjacent tax parcel - Tax Parcel 3603000024

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

*Sandy Paul* Signature of Requesting Party

## ORDINANCE NO. 1521

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, vacating a portion of City right-of-way identified as Yukon Street on the Interurban Heights Fifth Section Plat, subject to the Applicant's compliance with requirements set forth herein.

WHEREAS, DMMC 12.12.040 adopts the street vacation procedures of chapter 35.79 RCW, and

WHEREAS, RCW 35.79.010 authorizes the City Council to initiate such street vacation procedures by resolution, and

WHEREAS, the City Council initiated the vacation of a portion of Yukon Avenue pursuant to Resolution No. 1175, and

WHEREAS, RCW 35.79.010 also requires that the City Council set the public hearing and date by resolution which was, in this case, established by Resolution No. 1175 fixing the public hearing for October 13, 2011, to be followed by City Council action, and

WHEREAS, notice of the public hearing was given in accordance with RCW 35.79.020 and the public hearing was held before the Des Moines City Council on October 13, 2011, and all persons wishing to be heard were heard, and

WHEREAS, no objections to the vacation were filed by any abutting property owner prior to the hearing, and the City Council finds that no person has demonstrated special injury due to substantial impairment of access to such person's property; now therefore,

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

Sec. 1. Findings adopted. Based on the evidence presented, the City Council adopts the following findings of fact:

(1) The public right-of-way subject to this Ordinance consists of a segment of public right-of-way identified as Yukon Street further legally described in Section 2 of this ordinance; and

(2) The public right-of-way described in Section 2 of this Ordinance is not improved for transportation purposes but

Ordinance No. 1521  
Page 2 of 5

was dedicated by the Interurban Heights Fifth Section recorded on April 12, 1909 and, as such, is not subject to vacation by operation of law under the Laws of 1889-90; and

(3) The public right-of-way which is described in section 2 of this Ordinance is not necessary for present and future use by public utilities or for native growth protection; and

(4) The public right-of-way described in section 2 is not currently used by the public for vehicular or pedestrian travel; and

(5) The right-of-way is not required for the present and future needs of the citizens of the City of Des Moines for vehicular transportation or pedestrian purposes; and

(6) It is in the public interest to vacate this right-of-way; and

(7) The right-of-way is classified as a Class "B" right-of-way since right-of-way is undeveloped and no public funds have were ever been expended in its acquisition; therefore, compensation is required at fifty percent (50%) of the full appraised value; and

(8) Dedication of the new 5 feet right-of-way along south 242<sup>nd</sup> Street and 27<sup>th</sup> Avenue South provides adequate compensation for the vacated Class "B" right-of-way; and

**Sec. 2. Right-of-way vacation.** Subject to the requirement set forth in section 3 this Ordinance, the following legally described public right-of-way as depicted on the attached map (incorporated herein by this reference) entitled Exhibit "A" is vacated and the property within the right-of-way so vacated shall belong to the respective abutting property owners to the east side of the vacated right-of-way:

**Yukon Street:** The Yukon Street right-of-way within the North half of the Northeast quarter of Section 21, Township 22 North, Range 4 East, W.M., in King County, Washington described as follows;

Ordinance No. 1521  
Page 3 of 5

Commencing at the Northwest corner of Lot 1 Block 7 of Interurban Heights Fifth Section filed in volume 17 of Plats, Page 85, Records of King County, Washington; Thence, South  $01^{\circ} 02' 22''$  West, along the west line of said Lot 1, a distance of 5.00 feet, to the **True Point of Beginning**; Thence South  $01^{\circ} 02' 22''$  West along west line of said Block 7 a distance of 115.00 feet; Thence North  $88^{\circ} 48' 45''$  West, a distance of 20 feet; Thence South  $1^{\circ} 02' 22''$  West a distance of 115.00 feet; Thence South  $88^{\circ} 48' 45''$  East, a distance of 20 feet to the **True Point of Beginning**.

**Sec. 3. Condition of right-of-way vacation.** The right-of-way subject to vacation under this Ordinance shall be subject to the following condition:

Pursuant to DMMC 12.12.050(2), Sea Mar Community Health Center shall be required to compensate the City of Des Moines for vacation of this Class B right-of-way, in the form of dedication of approximately 2,400 square feet of right-of-way legally described below and illustrated in Exhibit "B" (incorporated herein by this reference):

**South 242<sup>nd</sup> Street:** That portion of the North half of the Northeast quarter of Section 21, Township 22 North, Range 4 East, W.M., in King County, Washington described as follows;

Beginning at the Northwest corner of Lot 40 Block 8 of Interurban Heights Fifth Section filed in volume 17 of Plats, Page 85, Records of King County, Washington; Thence, South  $01^{\circ} 02' 22''$  West, along the west line of said Lot 40, a distance of 5.00 feet; Thence South  $88^{\circ} 48' 45''$  East a distance of 220.00 feet; Thence North  $01^{\circ} 02' 22''$  East, a distance of 5 feet; Thence North  $88^{\circ} 48' 45''$  West a distance of 220.00 feet to the **Point of Beginning**.

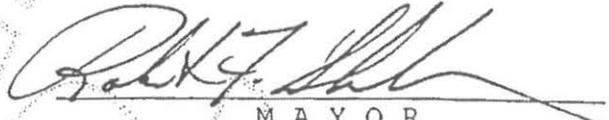
**27<sup>th</sup> Avenue South:** That portion of the North half of the Northeast quarter of Section 21, Township 22 North, Range 4 East, W.M., in King County, Washington described as follows;



Ordinance No. 1521  
Page 5 of 5

Sec. 6. Effective date. This Ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

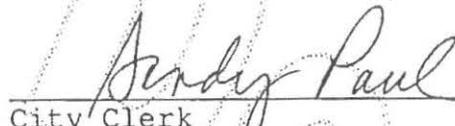
PASSED BY the City Council of the City of Des Moines this 13th day of October, 2011 and signed in authentication thereof this 13th day of October, 2011.

  
MAYOR

APPROVED AS TO FORM:

  
Assistant City Attorney

ATTEST:

  
City Clerk

Effective Date: November 12, 2011

Published: October 25, 2011



LEGAL NOTICE  
SUMMARY OF ADOPTED ORDINANCE  
CITY OF DES MOINES

ORDINANCE NO. 1521, Adopted October 13, 2011.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance vacates a portion of City right-of-way identified as Yukon Street on the Interurban Heights Fifth Section Plat, subject to the Applicant's compliance with requirements set forth herein.

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

Sandy Paul, CMC  
City Clerk

Published: October 25, 2011



SeaMar  
Street Vacation  
Exhibit A

City of  
Kent

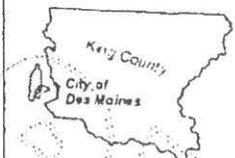
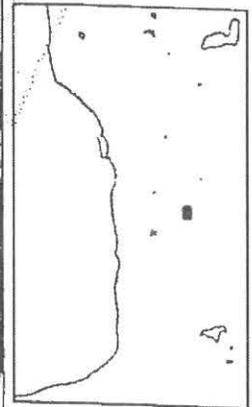
South 242nd Street

27th Avenue South

SeaMar

Street Vacation  
Area

Pacific Highway South





SeaMar  
Street Vacation  
Exhibit B

City of  
Kent

South 242nd Street

South 242nd Street  
5 Foot Dedication

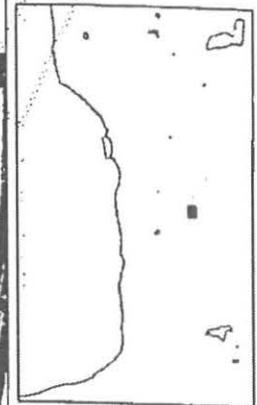
SeaMar

Street Vacation  
Area

27th Avenue South

27th Avenue South  
5 Foot Dedication

Pacific Highway South





# AGENDA ITEM

## BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Transportation Gateway Project  
S. 216<sup>th</sup> Street Segment 2: 18<sup>th</sup>  
Avenue S. to 24<sup>th</sup> Avenue S.  
King County Metro  
Bus Stop Improvements

AGENDA OF: April 25, 2013

DEPT. OF ORIGIN: Planning, Building & Public  
Works

DATE SUBMITTED: April 9, 2013

ATTACHMENTS:

1. Proposed Agreement King County  
Department of Transportation, Metro  
Transit Division
2. TIB Matching Commitment, King County,  
8/18/11

CLEARANCES:

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

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: [Signature]

**Purpose and Recommendation:**

The purpose of this item is to authorize the City Manager to approve an Agreement (refer to Attachment 1) with King County to fund bus stop improvements for the S. 216<sup>th</sup> Street, Segment 2 improvement project, one of three arterial corridor segments referred to collectively as the Transportation Gateway Project. The following motion will appear on the consent calendar:

**Suggested Motion**

“I move to approve an Agreement with King County to fund bus stop improvements for the S. 216<sup>th</sup> Street, Segment 2 Project, and authorize the City Manager to sign the agreement substantially in the form submitted.”

**Background:**

King County Metro and the City of Des Moines have worked collaboratively through the design and engineering process to incorporate four bus stop improvements in the S. 216<sup>th</sup> Street Project. A request for funding of the improvements was preliminarily agreed upon as noted in Attachment 2 including the use of solar lighting in bus shelters where installed. King County Metro restructured service, and at the request of the City, maintained ½ hour service on S. 216<sup>th</sup> Street (Route 156) between Highline

Community College and Southcenter via the Marina District, and the Link Light Rail Station at Sea-Tac Airport. The partnership was considered as part of TIB funding for the project.

**Discussion**

A proposed agreement with King County Metro is included herein as Attachment 1. The agreement provides for the City to install bus stop and solar shelter footing improvements at four locations along the project located near the major intersections of 20<sup>th</sup> Avenue S. and 24<sup>th</sup> Avenue S. Two bus shelters with solar lighting will be installed upon completion of the improvements. Passengers will benefit by the multi-modal improvements including sidewalks, planters and bicycle lanes all which provide greater pedestrian separation from vehicular traffic. ADA crossings of driveways and intersections are improved and an increase in pedestrian and street lighting will provide a more secure place to walk at night.

Two bus shelters with solar lighting will be installed and maintained by King County as part of this agreement. The location of shelters may change as ridership warrants. Normally King County Metro installs shelters where boarding's average 25 per day. This agreement anticipates significant improvements in ridership as pedestrian amenities are installed and the Des Moines Business Park is developed. Staff will work with Metro to monitor the ridership and determine the best locations for the shelters as the improvements are completed and pedestrian usage grows. These shelter locations will be the subject of modifications to the agreement.

**Financial impact:**

The S. 216<sup>th</sup> Street, Segment 2 improvement is an element of the City of Des Moines CIP, 2013 to 2018 supporting the City of Des Moines Comprehensive Plan, as amended. Action to approve the agreement, upon acceptance of the improvements by King County, provides a supplement of \$20,000 in local funding which is required by TIB for project funding. If the agreement is not approved, City Council will need to City use resources from the CIP to match the project. No design changes or change orders are required and the improvements are within the scope of the existing construction contract. The overall improvements are within the 2013 budget for the project.

**Recommendation:**

Staff recommends that the City Council approve the motion.

**Concurrence**

The Legal, Finance, Planning, Building and Public Works Departments concur.

**AGREEMENT BETWEEN KING COUNTY AND THE CITY OF DES MOINES FOR  
FUNDING AND CONSTRUCTION OF BUS STOP IMPROVEMENTS  
South 216<sup>th</sup> Street Segment 2**

THIS BUS STOP IMPROVEMENTS FUNDING AND CONSTRUCTION AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by and between the City of Des Moines, a municipal corporation of the State of Washington (the "City"), and King County, a home rule charter county of the State of Washington, acting through its Department of Transportation, Metro Transit Division (the "County"), either of which entities may be referred to hereinafter individually as "Party" or collectively as the "Parties."

WHEREAS, the City has undertaken a project to construct multiple road improvements along a section of S. 216th Street (from 24<sup>th</sup> Avenue South to 18<sup>th</sup> Avenue South) including a center left turn lane, bicycle lanes, curb, gutter and sidewalks, lighting, and landscaping (the "Project"); and

WHEREAS, it is the Parties' desire that transit service continue to be provided on S. 216th Street; and

WHEREAS, the County has determined it would be in the public interest to enter into an agreement with the City to arrange for the construction of solar shelter footings and pedestrian pads by the City, as further specified herein, to provide transit access and other transit amenities, and to meet the Americans with Disabilities Act ("ADA") guidelines; and

WHEREAS, the County is willing to reimburse the City an amount not to exceed \$20,000 toward funding the improvements;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the sufficiency of which is acknowledged, the Parties hereto agree as follows:

**1. City Responsibilities**

- 1.1 The City will be responsible for the design, construction, and acceptance of all improvements, including those identified in Section 1.4 of this Agreement, as further detailed in Attachment A: Design Details of Bus Stop Improvements, which is incorporated herein by this reference (the "Bus Stop Improvements").
- 1.2 The City will be responsible for the administration of any contracts it enters into for the performance of its responsibilities under this Agreement. The City will provide the County with a construction schedule and meet a Project completion date of April 1<sup>st</sup>, 2014. Prior to issuance of acceptance of any contractor's work, the City will notify the County and provide the County with the opportunity to inspect and comment on the Bus Stop Improvements included in the Project. However, neither the County's comments

nor the County's inspection of City-led improvements under this Agreement will relieve the City of its responsibility for said improvements.

- 1.3 The City will notify the County Construction Inspector, Paul Miller, at 206-684-2224, for framing inspection of each solar shelter footing two (2) working days prior to pouring concrete. At the time of inspection, the solar shelter footings should be framed, presented with supporting re-bar, conduit and electrical copper grounding. The conduit location should be located in the right-rear corner of each solar shelter footing as seen from the street.
- 1.4 The City will install four (4) bus stop solar shelter footings and pads at the locations of the bus stops identified with particularity in this Subsection 1.4. All four of these bus stops will connect the sidewalk to the curb in order to meet ADA requirements. All four of these bus stops will be a minimum of thirty feet (30') long (along the face-of-curb) and will be a minimum of five feet (5') deep and will include the installation of a solar shelter footing built to the City plans and conformed in the bid document, November 14, 2012 for S. 216<sup>th</sup> Street – Segment 2, which is incorporated herein by this reference. The four bus stop locations at which the City will install Bus Stop Improvements as provided for in this Agreement are as follows:

Bus Stop Identification and Location:

---

47403 Westbound on S. 216th Street; West of 24<sup>th</sup> Avenue S  
 47404 Westbound on S. 216th Street; West of 20<sup>th</sup> Avenue S  
 47417 Eastbound on S. 216th Street; East of 20<sup>th</sup> Avenue S  
 47418 Eastbound on S. 216th Street; West of 24<sup>th</sup> Avenue S

- 1.5 The City authorizes the County to install transit amenities, at the County's discretion, including, but not limited to, shelters with solar lighting, seating, lighting, signage and trash receptacles when the City notifies the County of completion of the Project, subject to City approval of a traffic control plan.

**2. County Responsibilities**

- 2.1 Upon notification for inspection of each solar shelter footing, and subsequent inspection, the County will notify the City in writing of a positive inspection and approval of concrete pour. If at the time of inspection, the solar shelter footings are not prepared correctly, the County will instruct the City of the changes needed and will request an additional solar shelter footing inspection if needed. Should the County fail to inspect within the time period specified in Section 1.3, it shall mean that the County defers said decision making to the City who shall act on behalf of the County in approving and accepting the improvements from the contractor.

- 2.2 Upon notification by the City of the completion of all four solar shelter footing locations, and prior to City acceptance of the work, the County will inspect the improvements. If the County finds that any work does not meet the terms of this Agreement, or any specifications or terms established hereunder, the County will prepare a punch list of such items and submit it to the City. Work that does not comply with the agreed upon specifications and terms will be corrected by the City at no cost to the County. Notice of acceptance will not constitute acceptance of any unauthorized or defective work or material. The County retains all rights hereunder and at law to require the City to remove, repair, replace, or dispose of any unauthorized or defective work or to recover damages for any such work or material.
- 2.3 Upon notification by the City of completion of the Project, and notification by the County that the bus stop signs, paint, solar shelters and other amenities are ready for installation; the County will install said bus stop signs, paint and other amenities. The County will install shelter frames, with solar shelter lighting on the constructed solar shelter footings at the following two bus stop locations:

Stop Identification and Location:

---

47403 Westbound on S. 216th Street; West of 24<sup>th</sup> Avenue S  
 47417 Eastbound on S. 216th Street; East of 20<sup>th</sup> Avenue S

**3. Payment**

- 3.1 The County will reimburse the City an amount not to exceed \$20,000 for completion of the Bus Stop Improvements as specified in this Agreement.
- 3.2 The City will invoice the County (in writing) upon completion of the tasks identified in Section 1.4, by sending the invoice to the County Project Contact at the address as shown in Section 8.2. The County will make payment to the City within thirty (30) working days of receipt of an invoice for work determined to be performed in accordance with the terms of the Agreement.

**4. Ownership and Maintenance**

- 4.1 Unless otherwise agreed to by the Parties, the City will own and maintain all Bus Stop Improvements constructed by the City as part of this Project. The County will own and maintain all of the transit amenities installed after the completion of this Project including the bus shelters, cleaning the bus zones by emptying trash cans, removing graffiti, washing and other related maintenance of the solar lighting system.

## 5. Legal Relations

- 5.1 It is understood that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other person or entity. No joint venture, agent-principal relationship or partnership is formed as a result of this Agreement. No employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees or agents of the other Party.
- 5.2 Each Party shall defend, indemnify, and hold harmless the other Party and all of its officials, employees, principals, and agents from all claims, demands, suits, actions and liability of any kind, including injuries to persons or damage to property, that arise out of, are connected with, or are due to any negligent acts or omissions of the indemnifying Party and/or its contractors, officials, employees, agents and representatives in performing work under this Agreement. Each Party specifically assumes potential liability for actions brought by its own employees against the other Party and for that purpose only each Party specifically waives, as to the other Party only, any immunity under the Industrial Insurance Act, Title 51 RCW, and Parties acknowledge that this waiver was the subject of mutual negotiation. The provisions of this section shall survive the expiration or earlier termination of this Agreement.
- 5.3 The City and the County shall comply and shall ensure that their contractors, if any, comply with all federal, state and local laws, regulations, and ordinances applicable to work and services to be performed under this Agreement.
- 5.4 In the event any Party incurs attorney's fees, costs or other legal expenses to enforce provisions of this Agreement against the other Party, each Party shall be responsible to pay all its own fees, costs and expenses.
- 5.5 This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.
- 5.6 The provisions of this Section shall survive any expiration or termination of this Agreement.

## 6. Records and Audit

During the progress of the design and construction of all improvements covered by this Agreement and for a period no less than six (6) years from the date of completion of all improvements, records and accounts pertaining to the work of this Agreement and accounting therefore are to be kept available for inspection and audit by representatives of the Parties. Copies of the records shall be furnished upon request.

## 7. Agreement Duration and Termination

- 7.1 This Agreement shall take effect upon execution by both Parties and shall expire December 31<sup>st</sup>, 2015, unless extended by mutual agreement of the Parties or unless terminated in accordance with the provisions of this Section.
- 7.2 Either Party may terminate this Agreement in the event that the other party materially breaches this Agreement. Written notice of such termination must be given via certified mail by the Party terminating this Agreement to the other Party not less than fourteen (14) days prior to the effective date of termination.
- 7.3 Either Party may terminate for its convenience and without cause by providing written notice to the other Party not less than thirty (30) days prior to the effective date of termination.
- 7.4 Failure by either Party to require full and timely performance of any provision of the Agreement at any time shall not waive or reduce the right of either Party to insist upon complete and timely performance of such provisions or any other provision thereafter.

## 8. Identification of Party Contacts

- 8.1 The City and the County will both appoint a Project Manager to represent the interests of their respective agencies. The two Project Managers will work collaboratively to implement this Agreement.
- 8.2 All official communication concerning this Agreement should be directed to the following Project Contacts:

Leonard Madsen  
 Special Transportation Project Manager  
 Public Works Department  
 City of Des Moines  
 206.870.6523  
 lmadsen@desmoineswa.gov

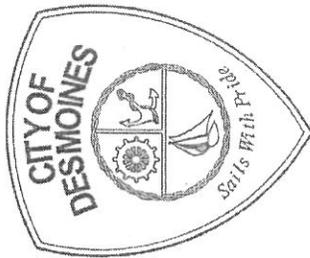
Daniel M. Wells  
 Senior Transit Planner  
 Transit Route Facilities, Service  
 Development  
 King County Dept of Transportation  
 206.263.4745  
 daniel.wells@kingcounty.gov

Any changes in agency contacts from those noted above must be confirmed and acknowledged in writing to the other Party.



Attachment A: Design Details of Bus Stop Improvements

# CITY OF DES MOINES TRANSPORTATION GATEWAY PROJECT SOUTH 216TH STREET - SEGMENT 2



**CITY MANAGER**  
Tony Plasecki

**CITY COUNCIL**  
Jeanette Burrage  
Dan Caldwell  
Melissa Musser  
Carmen Scott  
Bob Sheckler

**PUBLIC WORKS DIRECTOR**  
Daniel J. Brewer, P.E., P.I.O.E.

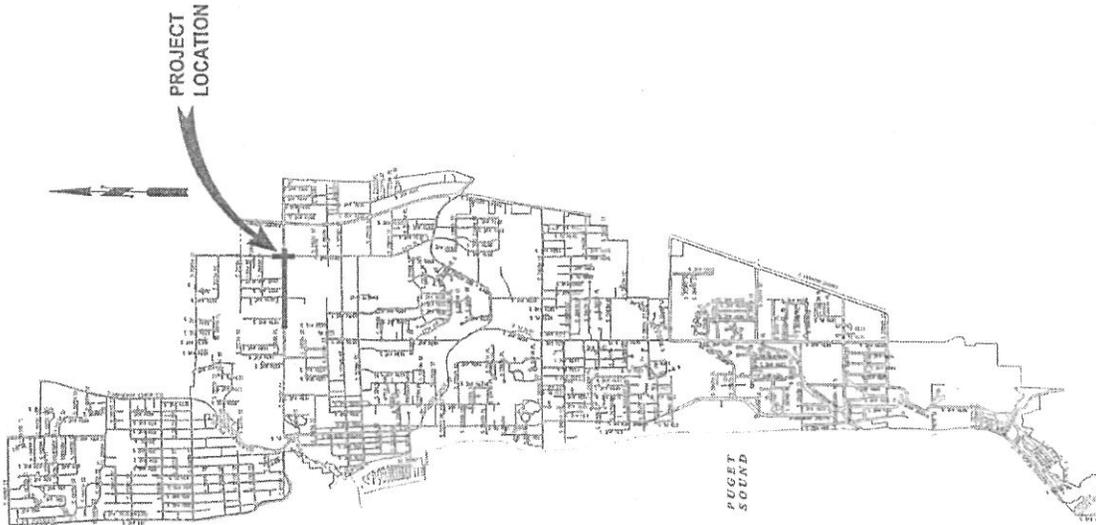
**MAYOR**  
Dave Kaplan  
**MAYOR PRO TEM**  
Matt Piro

**VOLUME 1  
SCHEDULE OF DRAWINGS**

SHEET NO.	TITLE
1	COVER SHEET
2	SHEET INDEX
3	LEGEND & SURVEY DATA
4 - 8	TYPICAL ROADWAY SECTIONS
9 - 12	ROADWAY DETAILS
13 - 14	DRAINAGE DETAILS
15 - 23	SITE PREPARATION & TESC PLANS
24 - 30	ROADWAY PLANS
31 - 32	INTERSECTION PLANS
33 - 41	ROADWAY PROFILES
42	DETENTION POND PLAN
43 - 47	DRIVEWAY PLANS & PROFILES
48 - 59	URBAN DESIGN PLANS & DETAILS
60 - 68	IRRIGATION PLANS, SCHEDULE & DETAILS
69 - 78	LANDSCAPE PLANS, SCHEDULE & DETAILS
79 - 86	ILLUMINATION PLANS & DETAILS
87 - 96	SIGNALIZATION PLANS & DETAILS
97 - 103	CHANNELIZATION & SIGNING PLANS
104 - 111	JOINT UTILITY TRENCH PLANS & DETAILS
112 - 118	EXISTING CONDITIONS PLANS

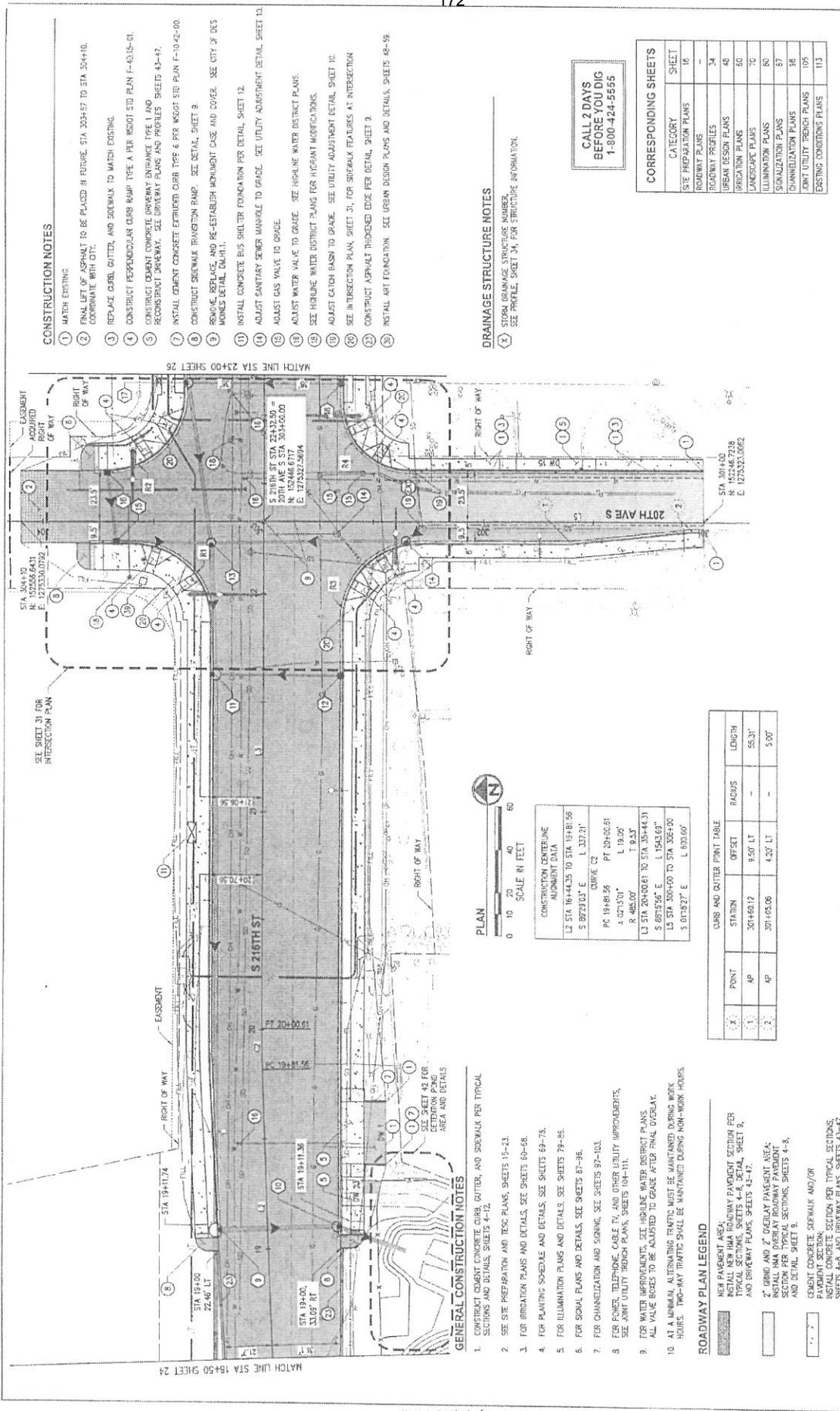
**VOLUME 2  
SCHEDULE OF DRAWINGS**

**RIGHT OF WAY PLANS**  
HIGHLINE WATER DISTRICT CONTRACT PLANS  
(FOR SCHEDULE E PROPOSAL)  
  
FRANCHISE UTILITY PLANS (PSE, COMCAST, &  
CENTURY LINK) FOR AERIAL UTILITY CONVERSION



APPROVED FOR CONSTRUCTION:  
*Daniel J. Brewer* 10-9-2012 DATE  
DANIEL J. BREWER, P.E., P.I.O.E.  
PUBLIC WORKS DIRECTOR

**BID DOCUMENTS**  
CALL 2 DAYS BEFORE YOU DIG  
1-800-424-5555



- CONSTRUCTION NOTES**
1. MATCH EXISTING
  2. FINAL LIFT OF ASPHALT TO BE PLACED IN FUTURE. STA 30+57 TO STA 30+40.
  3. REPLACE CURB, GUTTER, AND SIDEWALK TO MATCH EXISTING.
  4. CONSTRUCT PERPENDICULAR CURB RAMP TYPE A PER MSDOT STD PLAN F-40-15-01.
  5. CONSTRUCT CONCRETE DRIVEWAY ENTRANCE TYPE 1 AND RECONSTRUCT DRIVEWAY. SEE DRIVEWAY PLANS AND PROFILES, SHEETS 43-47.
  6. INSTALL CONCRETE EXTERIOR CURB TYPE 6 PER MSDOT STD PLAN F-10-42-00.
  7. CONSTRUCT SIDEWALK TRANSITION RAMP. SEE DETAIL, SHEET 9.
  8. REMOVE, REPLACE, AND RE-ESTABLISH MONUMENT CASE AND COVER. SEE CITY OF DES MOINES DETAIL, 04.01.1.
  9. INSTALL CONCRETE BUS SHELTER FOUNDATION PER DETAIL, SHEET 12.
  10. ADJUST SANITARY SEWER MANHOLE TO GRADE. SEE UTILITY ADJUSTMENT DETAIL, SHEET 13.
  11. ADJUST GAS VALVE TO GRADE.
  12. ADJUST WATER VALVE TO GRADE. SEE HIGHLINE WATER DISTRICT PLANS.
  13. SEE HIGHLINE WATER DISTRICT PLANS FOR HYDRANT MODIFICATIONS.
  14. ADJUST CATCH BASIN TO GRADE. SEE UTILITY ADJUSTMENT DETAIL, SHEET 10.
  15. SEE INTERSECTION PLAN, SHEET 31, FOR SIDEWALK FEATURES AT INTERSECTION.
  16. CONSTRUCT ASPHALT THICKNESS EDGE PER DETAIL, SHEET 9.
  17. INSTALL ART FOUNDATION. SEE URBAN DESIGN PLANS AND DETAILS, SHEETS 48-59.

- DRAINAGE STRUCTURE NOTES**
1. STORM DRAINAGE STRUCTURE NUMBER. SEE PROFILE, SHEET 13A, FOR STRUCTURE INFORMATION.

CALL 2 DAYS BEFORE YOU DIG  
1-800-324-5555

CORRESPONDING SHEETS	
CATEGORY	SHEET
SITE PREPARATION PLANS	16
ROADWAY PLANS	17
ROADWAY PROFILES	34
URBAN DESIGN PLANS	48
PRECISION PLANS	60
LANDSCAPE PLANS	70
ILLUMINATION PLANS	80
SIGNALIZATION PLANS	87
CHANNELIZATION PLANS	96
JOINT UTILITY TRENCH PLANS	105
EXISTING CONDITIONS PLANS	113



CONSTRUCTION CENTERLINE ADJUSTMENT DATA	
L2 STA 16+44.35 TO STA 19+81.56	L 337.21'
S 89270.03° E	
PC 19+81.56	CURVE C2
A 0713.00°	L 19.05'
R 485.00'	T 9.53'
L3 STA 20+00.61 TO STA 25+44.31	L 1542.69'
S 89155.95° E	
L5 STA 300+00 TO STA 306+00	L 630.00'
S 013927° E	

CURB AND OUTER POINT TABLE			
POINT	STATION	OFFSET	RADIUS
1	AP	9.50' LT	-
2	AP	4.20' LT	-
			5.90'

- GENERAL CONSTRUCTION NOTES**
1. CONSTRUCT COUNTY CONCRETE CURB, GUTTER, AND SIDEWALK PER TYPICAL SECTIONS AND DETAILS, SHEETS 4-12.
  2. SEE SITE PREPARATION AND T&E PLANS, SHEETS 15-23.
  3. FOR PLANTING SOXEDAE AND DETAILS, SEE SHEETS 69-73.
  4. FOR IRRIGATION PLANS AND DETAILS, SEE SHEETS 79-86.
  5. FOR ILLUMINATION PLANS AND DETAILS, SEE SHEETS 79-86.
  6. FOR SIGNAL PLANS AND DETAILS, SEE SHEETS 87-96.
  7. FOR CHANNELIZATION AND SIGNING, SEE SHEETS 97-103.
  8. FOR POWER, TELEPHONE, CABLE TV, AND OTHER UTILITY IMPROVEMENTS, SEE JOINT UTILITY TRENCH PLANS, SHEETS 104-111.
  9. FOR WATER IMPROVEMENTS, SEE HIGHLINE WATER DISTRICT PLANS. ALL VALVE BODIES TO BE ADJUSTED TO GRADE AFTER FINAL OVERLAY.
  10. AT A MINIMUM, ALTERNATING TRAFFIC MUST BE MAINTAINED DURING WORK HOURS. TWO-WAY TRAFFIC SHALL BE MAINTAINED DURING NON-WORK HOURS.

**ROADWAY PLAN LEGEND**

- NEW PAVEMENT AREA:
- INSTALL NEW HMA ROADWAY PAVEMENT SECTION PER TYPICAL SECTIONS, SHEETS 4-8, DETAIL, SHEET 9, AND DRIVEWAY PLANS, SHEETS 43-47.
- EXISTING CONCRETE SIDEWALK AND/OR
- INSTALL CONCRETE SECTION PER TYPICAL SECTIONS, SHEETS 4-8, AND DRIVEWAY PLANS, SHEETS 43-47.

**CITY OF DES MOINES**

TRANSPORTATION GATEWAY PROJECT

SOUTH 216TH STREET - SEGMENT 2

ROADWAY PLAN

STA 19+50 TO STA 29+00

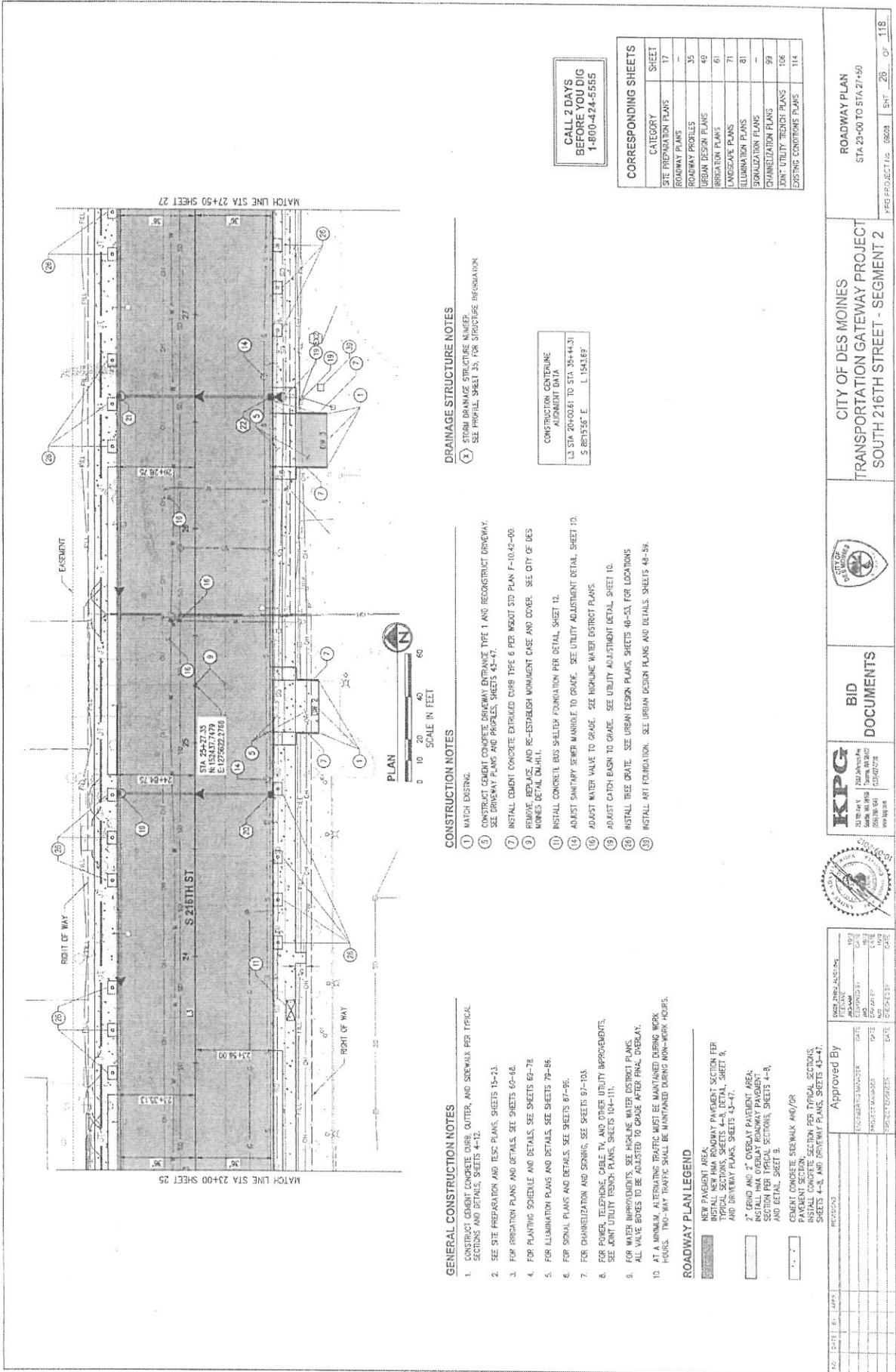
NSP PROJECT NO. 0892 SHT 25 OF 118

Approved By \_\_\_\_\_

DATE \_\_\_\_\_

PROJECT MANAGER \_\_\_\_\_

DATE \_\_\_\_\_



**GENERAL CONSTRUCTION NOTES**

1. CONSTRUCT CONCRETE CURB, OUTER, AND SIDEWALK PER TYPICAL SECTIONS AND DETAILS, SHEETS 4-12.
2. SEE SITE PREPARATION AND TEST PLANS, SHEETS 15-23.
3. FOR IRRIGATION PLANS AND DETAILS, SEE SHEETS 60-68.
4. FOR PLUMBING SCHEDULE AND DETAILS, SEE SHEETS 69-78.
5. FOR ILLUMINATION PLANS AND DETAILS, SEE SHEETS 79-85.
6. FOR SIGNAL PLANS AND DETAILS, SEE SHEETS 87-95.
7. FOR CHANNELED DRAINAGE AND SINKING, SEE SHEETS 97-103.
8. FOR POWER, TELEPHONE, CABLE TV, AND OTHER UTILITY IMPROVEMENTS, SEE JOINT UTILITY TRENCH PLANS, SHEETS 104-111.
9. FOR WATER IMPROVEMENTS, SEE HICKLING WATER DISTRICT PLANS. ALL VALVE BOXES TO BE ADJUSTED TO GRADE AFTER FINAL OVERLAY.
10. AT A MINIMUM, ALTERNATING TRAFFIC MUST BE MAINTAINED DURING WORK HOURS. TWO-WAY TRAFFIC SHALL BE MAINTAINED DURING NON-WORK HOURS.

**ROADWAY PLAN LEGEND**

- NEW PAVEMENT AREA
- INSTALL NEW HMA ROADWAY PAVEMENT SECTION PER TYPICAL SECTIONS, SHEETS 4-8, DETAIL, SHEET 9, AND UTILITY PLANS, SHEETS 43-47.
- 2" GRIND AND 2" OVERLAY PAVEMENT AREA
- INSTALL OVERLAY PAVEMENT SECTION PER TYPICAL SECTIONS, SHEETS 4-8, AND DETAIL, SHEET 9.
- CONCRETE SIDEWALK AND/OR PAVEMENT SECTION
- INSTALL CONCRETE SECTION PER TYPICAL SECTIONS, SHEETS 4-8, AND DRIVEWAY PLANS, SHEETS 43-47.

**CONSTRUCTION NOTES**

1. MATCH EXISTING.
2. CONSTRUCT GROUND CONCRETE DRIVEWAY ENTRANCE TYPE 1 AND RECONSTRUCT DRIVEWAY. SEE PROFILE SHEET 35, FOR STRUCTURE INFORMATION.
3. INSTALL GROUND CONCRETE EXTERIOR CURB TYPE 6 PER M300T STD PLAN F-10.42-00.
4. REMOVE CURBS AND RE-ESTABLISH MONUMENT CASE AND COVER. SEE CITY OF MOINES DETAIL (M411).
5. INSTALL CONCRETE BID SHELTER FOUNDATION PER DETAIL, SHEET 12.
6. ADJUST SANITARY SEWER MANHOLE TO GRADE. SEE HICKLING WATER DISTRICT PLAN, SHEET 10.
7. ADJUST WATER VALVE TO GRADE. SEE HICKLING WATER DISTRICT PLANS.
8. ADJUST CATCH BASIN TO GRADE. SEE UTILITY ADJUSTMENT DETAIL, SHEET 10.
9. INSTALL TREE GRADE. SEE URBAN DESIGN PLANS, SHEETS 48-53, FOR LOCATIONS.
10. INSTALL ART FOUNDATION. SEE URBAN DESIGN PLANS AND DETAILS, SHEETS 48-58.

**DRAINAGE STRUCTURE NOTES**

1. STORM DRAINAGE STRUCTURE NUMBER. SEE PROFILE SHEET 35, FOR STRUCTURE INFORMATION.

CONSTRUCTION CENTERLINE ALIGNMENT DATA  
 L3 STA 20+00.01 TO STA 25+44.31  
 S 88°15'58" E L 1543.67'

CALL 2 DAYS BEFORE YOU DIG  
 1-800-424-5555

CATEGORY	SHEET
SITE PREPARATION PLANS	17
ROADWAY PLANS	35
ROADWAY PROFILES	49
URBAN DESIGN PLANS	61
IRRIGATION PLANS	71
ILLUMINATION PLANS	81
SIGNALIZATION PLANS	99
COMMUNICATION PLANS	106
JOINT UTILITY TRENCH PLANS	114
EXISTING CONDITIONS PLANS	114

NO.	DATE	BY	REVISION



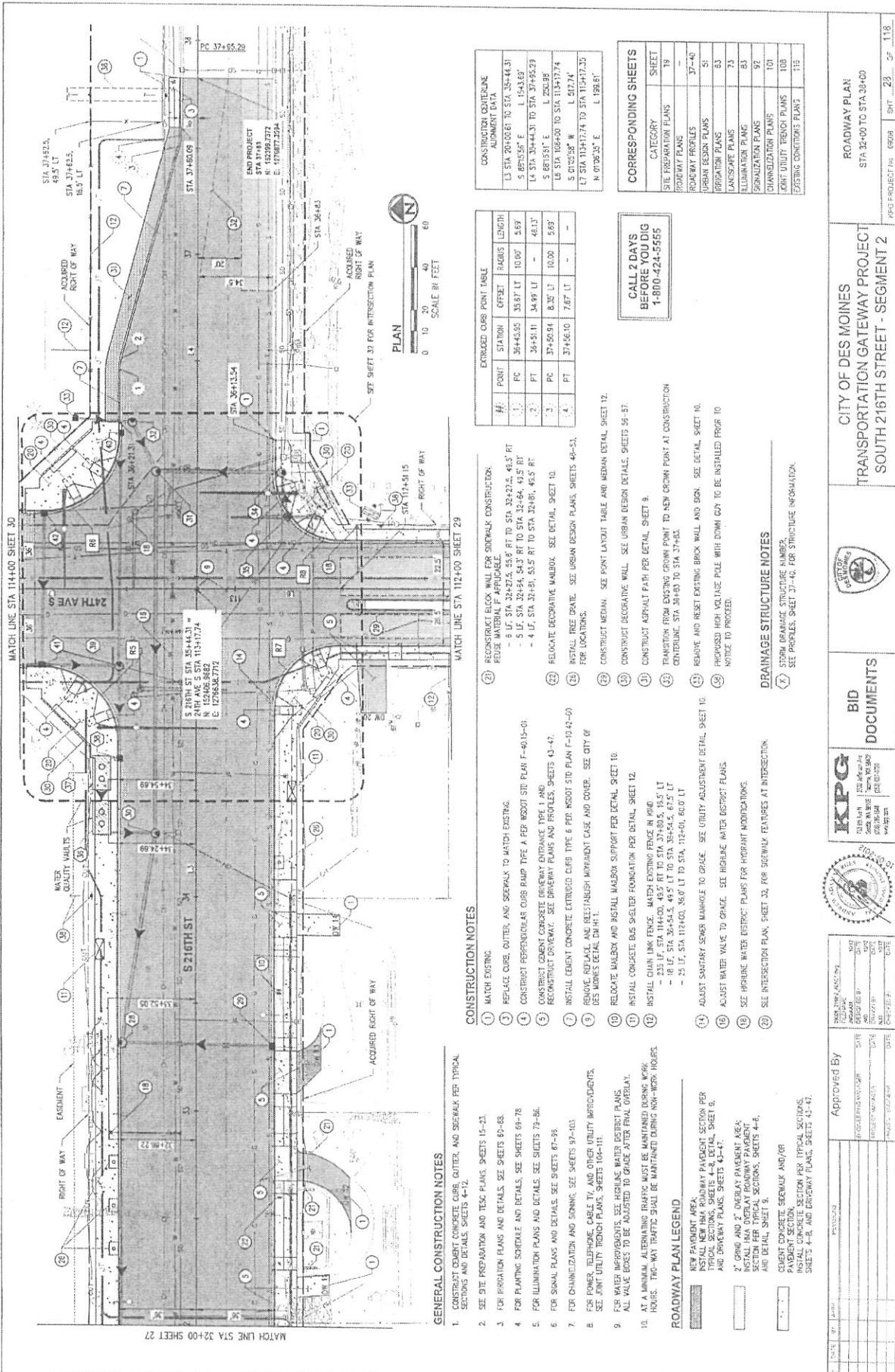
**KPG**  
 ENGINEERING, INC.  
 250 JAMES ST.  
 DES MOINES, IA 50319  
 515.281.1111  
 www.kpginc.com



**CITY OF DES MOINES**  
**TRANSPORTATION GATEWAY PROJECT**  
**SOUTH 216TH STREET - SEGMENT 2**

ROADWAY PLAN  
 STA 23+00 TO STA 27+50  
 PFG PROJECT No. 8809 | SHEET 26 OF 118





**GENERAL CONSTRUCTION NOTES**

1. CONSTRUCT DETAIL CONCRETE CURB, GUTTER, AND SIDEWALK PER TYPICAL SECTIONS AND DETAILS, SHEETS 4-12.
2. SEE SITE PREPARATION AND TEST PLAN, SHEETS 15-21.
3. FOR IRRIGATION PLANS AND DETAILS, SEE SHEETS 50-63.
4. FOR PLANTING SCHEDULE AND DETAILS, SEE SHEETS 69-78.
5. FOR ILLUMINATION PLANS AND DETAILS, SEE SHEETS 79-86.
6. FOR SIGNAL PLANS AND DETAILS, SEE SHEETS 87-95.
7. FOR CHAMBERIZATION AND SIGNING, SEE SHEETS 97-103.
8. FOR POWER, TELEPHONE, CABLE TV, AND OTHER UTILITY IMPROVEMENTS, SEE JOINT UTILITY TRENCH PLANS, SHEETS 104-111.
9. FOR WATER IMPROVEMENTS, SEE IRRIGATION WATER DISTRIB PLAN.
10. ALL VALVE EXPOSES TO BE ADJUSTED TO GRADE AFTER FINAL OVERLAY. AT A MINIMUM, ALTERNATING TRAFFIC MUST BE MAINTAINED DURING WORK HOURS. TRC-WAY TRAFFIC SHALL BE MAINTAINED DURING NON-WORK HOURS.

**ROADWAY PLAN LEGEND**

- NEW FAVORITE AREA
- INSTALL NEW HIGH ROADWAY PAVEMENT SECTION PER TYPICAL SECTIONS, SHEETS 4-8, DETAIL, SHEET 6, AND DRIVEWAY PLANS, SHEETS 43-47.
- 2" GRIND AND 2" OVERLAY PAVEMENT AREA
- INSTALL HMA OVERLAY ROADWAY PAVEMENT SECTION PER TYPICAL SECTIONS, SHEETS 4-8, AND DETAIL, SHEET 6.
- CONCRETE SIDEWALK AND/OR
- INSTALL CONCRETE SIDEWALK PER TYPICAL SECTIONS, SHEETS 4-8, AND DRIVEWAY PLANS, SHEETS 43-47.

**CONSTRUCTION NOTES**

1. MATCH EXISTING.
2. REPLACE CURB, GUTTER, AND SIDEWALK TO MATCH EXISTING.
3. CONSTRUCT PERPENDICULAR CURB RAMP TYPE A PER RESHOT SITE PLAN F-4015-01.
4. CONSTRUCT CONCRETE DRIVEWAY ENTRANCE TYPE 1 AND RECONSTRUCT DRIVEWAY. SEE DRIVEWAY PLANS AND PROFILES, SHEETS 43-47.
5. INSTALL CEMENT CONCRETE EXTENDED CURB TYPE B PER RESHOT SITE PLAN F-10-02-00.
6. REMOVE REPLACE AND REESTABLISH IMPROVEMENT CASE AND CURB. SEE CITY OF DES MOINES DETAIL 30411.
7. RELOCATE WALKWAY AND INSTALL WALKWAY SUPPORT PER DETAIL, SHEET 10.
8. INSTALL CONCRETE DGS SHELTER FOUNDATION PER DETAIL, SHEET 12.
9. INSTALL CHAIN LINK FENCE. MATCH EXISTING FENCE IN KING.
10. ADJUST SANITARY SENDER MANHOLE TO GRADE. SEE UTILITY ADJUSTMENT DETAIL, SHEET 10.
11. ADJUST WATER VALVE TO GRADE. SEE HIGHWAY WATER DISTRIB PLANS.
12. SEE IRRIGATION WATER DISTRIB PLANS FOR HYDRANT MODIFICATION.
13. SEE INTERSECTION PLAN, SHEET 30, FOR SIDEWALK FEATURES AT INTERSECTION.
14. REMOVE AND RESET EXISTING BRICK WALL AND SIGN. SEE DETAIL, SHEET 10.
15. RECONSTRUCT ASPHALT PAIR PER DETAIL, SHEET 9.
16. TRANSITION FROM EXISTING GROUND POINT TO NEW CROWN POINT AT CONSTRUCTION CENTERLINE, STA 38+43 TO STA 37+43.
17. REMOVE AND RESET EXISTING BRICK WALL AND SIGN. SEE DETAIL, SHEET 10.
18. RECONSTRUCT HIGH VOLTAGE POLE WITH DOWN GUY TO BE INSTALLED PRIOR TO NOTICE TO PROCEED.
19. RECONSTRUCT DECORATIVE WALL. SEE URBAN DESIGN DETAILS, SHEETS 59-57.
20. CONSTRUCT ASPHALT PAIR PER DETAIL, SHEET 9.
21. TRANSITION FROM EXISTING GROUND POINT TO NEW CROWN POINT AT CONSTRUCTION CENTERLINE, STA 38+43 TO STA 37+43.
22. REMOVE AND RESET EXISTING BRICK WALL AND SIGN. SEE DETAIL, SHEET 10.
23. RECONSTRUCT HIGH VOLTAGE POLE WITH DOWN GUY TO BE INSTALLED PRIOR TO NOTICE TO PROCEED.
24. RECONSTRUCT DECORATIVE WALL. SEE URBAN DESIGN DETAILS, SHEETS 59-57.
25. CONSTRUCT ASPHALT PAIR PER DETAIL, SHEET 9.
26. TRANSITION FROM EXISTING GROUND POINT TO NEW CROWN POINT AT CONSTRUCTION CENTERLINE, STA 38+43 TO STA 37+43.
27. REMOVE AND RESET EXISTING BRICK WALL AND SIGN. SEE DETAIL, SHEET 10.
28. RECONSTRUCT HIGH VOLTAGE POLE WITH DOWN GUY TO BE INSTALLED PRIOR TO NOTICE TO PROCEED.

**GENERAL CONSTRUCTION NOTES**

1. CONSTRUCT DETAIL CONCRETE CURB, GUTTER, AND SIDEWALK PER TYPICAL SECTIONS AND DETAILS, SHEETS 4-12.
2. SEE SITE PREPARATION AND TEST PLAN, SHEETS 15-21.
3. FOR IRRIGATION PLANS AND DETAILS, SEE SHEETS 50-63.
4. FOR PLANTING SCHEDULE AND DETAILS, SEE SHEETS 69-78.
5. FOR ILLUMINATION PLANS AND DETAILS, SEE SHEETS 79-86.
6. FOR SIGNAL PLANS AND DETAILS, SEE SHEETS 87-95.
7. FOR CHAMBERIZATION AND SIGNING, SEE SHEETS 97-103.
8. FOR POWER, TELEPHONE, CABLE TV, AND OTHER UTILITY IMPROVEMENTS, SEE JOINT UTILITY TRENCH PLANS, SHEETS 104-111.
9. FOR WATER IMPROVEMENTS, SEE IRRIGATION WATER DISTRIB PLAN.
10. ALL VALVE EXPOSES TO BE ADJUSTED TO GRADE AFTER FINAL OVERLAY. AT A MINIMUM, ALTERNATING TRAFFIC MUST BE MAINTAINED DURING WORK HOURS. TRC-WAY TRAFFIC SHALL BE MAINTAINED DURING NON-WORK HOURS.

**CONSTRUCTION NOTES**

1. MATCH EXISTING.
2. REPLACE CURB, GUTTER, AND SIDEWALK TO MATCH EXISTING.
3. CONSTRUCT PERPENDICULAR CURB RAMP TYPE A PER RESHOT SITE PLAN F-4015-01.
4. CONSTRUCT CONCRETE DRIVEWAY ENTRANCE TYPE 1 AND RECONSTRUCT DRIVEWAY. SEE DRIVEWAY PLANS AND PROFILES, SHEETS 43-47.
5. INSTALL CEMENT CONCRETE EXTENDED CURB TYPE B PER RESHOT SITE PLAN F-10-02-00.
6. REMOVE REPLACE AND REESTABLISH IMPROVEMENT CASE AND CURB. SEE CITY OF DES MOINES DETAIL 30411.
7. RELOCATE WALKWAY AND INSTALL WALKWAY SUPPORT PER DETAIL, SHEET 10.
8. INSTALL CONCRETE DGS SHELTER FOUNDATION PER DETAIL, SHEET 12.
9. INSTALL CHAIN LINK FENCE. MATCH EXISTING FENCE IN KING.
10. ADJUST SANITARY SENDER MANHOLE TO GRADE. SEE UTILITY ADJUSTMENT DETAIL, SHEET 10.
11. ADJUST WATER VALVE TO GRADE. SEE HIGHWAY WATER DISTRIB PLANS.
12. SEE IRRIGATION WATER DISTRIB PLANS FOR HYDRANT MODIFICATION.
13. SEE INTERSECTION PLAN, SHEET 30, FOR SIDEWALK FEATURES AT INTERSECTION.
14. REMOVE AND RESET EXISTING BRICK WALL AND SIGN. SEE DETAIL, SHEET 10.
15. RECONSTRUCT ASPHALT PAIR PER DETAIL, SHEET 9.
16. TRANSITION FROM EXISTING GROUND POINT TO NEW CROWN POINT AT CONSTRUCTION CENTERLINE, STA 38+43 TO STA 37+43.
17. REMOVE AND RESET EXISTING BRICK WALL AND SIGN. SEE DETAIL, SHEET 10.
18. RECONSTRUCT HIGH VOLTAGE POLE WITH DOWN GUY TO BE INSTALLED PRIOR TO NOTICE TO PROCEED.
19. RECONSTRUCT DECORATIVE WALL. SEE URBAN DESIGN DETAILS, SHEETS 59-57.
20. CONSTRUCT ASPHALT PAIR PER DETAIL, SHEET 9.
21. TRANSITION FROM EXISTING GROUND POINT TO NEW CROWN POINT AT CONSTRUCTION CENTERLINE, STA 38+43 TO STA 37+43.
22. REMOVE AND RESET EXISTING BRICK WALL AND SIGN. SEE DETAIL, SHEET 10.
23. RECONSTRUCT HIGH VOLTAGE POLE WITH DOWN GUY TO BE INSTALLED PRIOR TO NOTICE TO PROCEED.

**EXTENDED CURB POINT TABLE**

#	POINT	STATION	OFFSET	RADIUS	LENGTH
1	PC	37+45.55	35.87	10.00'	5.69'
2	PT	38+51.11	14.99	10.00'	4.13'
3	PC	37+50.94	8.30	10.00'	5.69'
4	PT	37+56.10	7.67	10.00'	-

**CALL 2 DAYS BEFORE YOU DIG**  
1-800-424-5555

**CORRESPONDING SHEETS**

CATEGORY	SHEET
SITE PREPARATION PLANS	19
ROADWAY PLANS	37-40
ROADWAY PROFILES	51
URBAN DESIGN PLANS	63
IRRIGATION PLANS	73
LANDSCAPE PLANS	83
ILLUMINATION PLANS	92
CHAMBERIZATION PLANS	101
JOINT UTILITY TRENCH PLANS	108
EXISTING CONDITIONS PLANS	115

Approved By: \_\_\_\_\_

Checked By: \_\_\_\_\_

Drawn By: \_\_\_\_\_

Scale: \_\_\_\_\_

DATE: \_\_\_\_\_

PROJECT NO: \_\_\_\_\_

SHEET NO: 29 OF 118

**CITY OF DES MOINES**

**TRANSPORTATION GATEWAY PROJECT**

**SOUTH 216TH STREET - SEGMENT 2**

**BID DOCUMENTS**

**KPG**

DESIGN ENGINEER

1201 EAST 15TH AVENUE, SUITE 100, DES MOINES, IA 50319

PH: 515-281-1111 FAX: 515-281-1112

WWW.KPGDESIGN.COM

**DESIGN ENGINEER**

1201 EAST 15TH AVENUE, SUITE 100, DES MOINES, IA 50319

PH: 515-281-1111 FAX: 515-281-1112

WWW.KPGDESIGN.COM





## King County

Department of Transportation  
Office of Regional Transportation Planning  
201 South Jackson, Suite 0811  
Seattle, WA 98104-3856  
[www.kingcounty.gov](http://www.kingcounty.gov)

August 18, 2011

Grant Fredricks, Director  
Planning, Building and Public Works Department  
City of Des Moines  
21630 11<sup>th</sup> Avenue South, Suite D  
Des Moines, WA 98198

Dear Mr. Fredricks:

The King County Department of Transportation (KCDOT) is pleased to support the City of Des Moines' application for the FY 2013 Washington State Transportation Improvement Board (TIB) Urban Corridor Program funding for their *Transportation Gateway Project: South 216<sup>th</sup> Street Segment 2*. State funding would allow for transit stop, bicycle and pedestrian improvements.

The Des Moines project is located in an area currently planned for intense redevelopment, including a new business park. Improved transit access will be important as transit ridership is expected to increase upon completion of the redevelopment. The scope of this project includes design, securing right-of-way, constructing King County Metro Transit's standard bus shelter footings at all stops, ADA ramps, pedestrian lighting, continuous sidewalks, bike lanes, and sustainable solar lighting in the bus shelters.

On August 15, 2011, King County Council enacted a two-year, \$20 Congestion Reduction Charge. Contingent upon securing subsequent funding sources to maintain current service levels beyond 2013, KCDOT Metro Transit Division is willing to contribute up to \$20,000 in matching funds towards design and construction of these transit facility improvements.

We hope you are successful in securing funding for this important project.

Sincerely,

  
Ron Posthuma, Assistant Director  
King County Department of Transportation

cc: Leonard Madsen, Transportation Project Manager, Des Moines Public Works Department



# AGENDA ITEM

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Settlement Agreement with MVG, LLC for the South 223<sup>rd</sup> Culvert Replacement Project

ATTACHMENTS:  
1. Settlement Agreement

FOR AGENDA OF: April 25, 2013

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: April 18, 2013

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: [Signature]

**Purpose and Recommendation**

The purpose of this report is to seek City Council approval of the Settlement and Mutual Release Agreement between the City and MVG, LLC for the South 223<sup>rd</sup> Street Culvert Replacement Project.

**Suggested Motion**

**Motion: I move to approve the Settlement Agreement and Mutual Release providing for a final payment of \$11,250 to MVG, LLC to settle MVG’s claims for the South 223<sup>rd</sup> Street Culvert Replacement Project, and authorize the City Manager to sign the Agreement substantially in the form as attached.**

**Background**

The South 223<sup>RD</sup> Street Culvert Replacement Project was a Storm Water Management project to replace the existing deteriorated 36” diameter corrugated metal pipe culvert (60’ long) with a precast 3-sided box culvert partially in-filled with streambed material. After a competitive bidding process, the contract was awarded to MVG, LLC. Construction began in June 2012 and was completed in October of 2012 with an initial contract amount of \$180,881.50. A dispute arose in August of 2012 regarding a requested change order in the amount of \$115,594.30 for issues involving shoring and extra excavation. The City

denied the request and following completion of the project the City was served with a Demand for Arbitration regarding the contract dispute.

### **Discussion**

The City was served with a Demand for Arbitration shortly after the completion of the project based on the City's denial of MVG's change order requests. The original dispute amount was \$115,594.30. After negotiating with MVG and weighing the costs of future litigation, the parties agreed to a settlement in the amount of \$11,250.

By executing the agreement, MVG will waive all claims, known or unknown relating to the project. The City still reserves any claims based on warranties, latent defects, or suits by third parties for injury or death.

### **Financial Impact**

The settlement amount is within the budget for the project. By not settling, and proceeding with litigation, the City will likely spend over the settlement amount in staff time and litigation expenses. A judgment in the favor of MVG, although unlikely, would greatly increase the costs.

### **Recommendation or Conclusion**

The legal department recommends approving the Settlement Agreement.

### **Concurrence**

Planning, Building, and Public Works concurs.

SETTLEMENT AGREEMENT  
AND  
MUTUAL RELEASE

This SETTLEMENT AGREEMENT and MUTUAL RELEASE ("Agreement") is entered into this 15th day of April, 2013. This Agreement is binding upon the City of Des Moines ("City"), and Earl Soushek, DBA "MVG, LLC" (collectively referred to as the "Parties") and shall be admissible in evidence in any legal proceeding regarding this Agreement.

1. In consideration of the release to be provided by the Parties, the City shall pay MVG, LLC eleven thousand two hundred and fifty dollars and no/100 (\$11,250.00) within one (1) day of receipt of final, required closeout documents (specifically: signed final pay estimate, signed final contract voucher, and Affidavit of Wages Paid with approved ID Number) for the South 223<sup>rd</sup> Street Culvert Replacement Project (hereinafter "Project") and the execution of this Agreement as full and final compensation [except for the retainage amount set forth in Paragraph 3 below] for all work performed by MVG, LLC, including all work performed by subcontractors and/or suppliers and materials and equipment on the Project.

2. MVG, LLC releases all claims that it may have against the City (including all of its council members, administrators, employees, agents, and other representatives) of any kind or nature, whether known or unknown in any way arising out of or relating to the Project. MVG, LLC further agrees to indemnify and hold the City harmless from any and all claims or litigation by third parties out of or relating to the Project through the effective date of this Agreement.

3. The City releases all claims that it may have against MVG, LLC (including all of its officers, employees, agents, and other representatives) of any kind or nature, whether known or unknown in any way arising out of or relating to the Project through the effective date of this Agreement except for claims for: (1) warranty work required by the Contract between the Parties or by law; (2) latent defects; and (3) claims for indemnity by the City arising from claims made by third parties for personal injury including death and/or property damage.

4. Retainage in the amount of \$8,418.76 for the Project being held by the City shall be released upon notification from the Department of Labor & Industries, Department of Revenue, and Department of Employment Security.

5. The City's payment to MVG, LLC pursuant to Paragraph 1, set forth above, includes payment for all claims that MVG, LLC subcontractors or suppliers on the Project have asserted or may assert in the future. MVG, LLC agrees to indemnify, release and hold the City harmless from any claim or litigation that MVG, LLC, subcontractors or suppliers have or may assert against MVG, LLC or the City through the effective date of this Agreement.

6. As a condition of this Agreement, MVG, LLC will voluntarily withdraw and dismiss any pending action, including the Demand for Arbitration before JAMS filed on April 1, 2013.

7. This release contains the ENTIRE AGREEMENT between the parties hereto, and the terms of this release are contractual and not a mere recital.

8. Both parties further state that they have carefully read the foregoing release and know the contents thereof, and are signing the same as a free and voluntary act. Both parties have had sufficient time to consult with an attorney if so desired.

The parties below execute this Settlement Agreement and Release, entered into on April 15, 2013.

<p><b>MVG, LLC:</b></p> <p>By: <u>Earl A. Soushek</u>  <i>(signature)</i></p> <p>Print Name: <u>Earl Soushek</u></p> <p>Its <u>Member</u>  <i>(Title)</i></p> <p>DATE: <u>04/17/2013</u></p>	<p><b>CITY OF DES MOINES:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: <u>Anthony A. Piasecki</u></p> <p>Its <u>City Manager</u>  <i>(Title)</i></p> <p>As Ratified by the Des Moines City Council in Open Public Meeting on _____, 2013.</p> <p>DATE: _____</p> <p style="text-align: right;">Approved As To Form:</p> <p style="text-align: right;">_____  City Attorney  DATE: _____</p>
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<p><b>CONTACT INFORMATION:</b></p> <p><b>MVG, LLC</b>  Earl Soushek  22630 SE 268th Street  Maple Valley, WA 98038  425-432-2444 (telephone)</p>	<p><b>CONTACT INFORMATION:</b></p> <p><b>CITY OF DES MOINES:</b>  Anthony A. Piasecki  City of Des Moines  21630 11<sup>th</sup> Avenue S., Suite A  Des Moines, WA 98198  206-870-6541 (telephone)  206-870-6540 (facsimile)</p>
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## A G E N D A I T E M

### BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

**SUBJECT:**

Interviews of Candidates for Vacant City  
Council Seat

**ATTACHMENTS:**

1. Council Candidates Applications

FOR AGENDA OF: April 25, 2013

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: April 19, 2013

CLEARANCES:

[ ] \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL:  \_\_\_\_\_

#### Purpose

The purpose of this agenda item is to provide the City Council the applications for the City Council seat that is vacant as a result of Councilmember Dan Caldwell's resignation and to outline the interview process to be held at the April 25, 2013 City Council meeting. Final selection of a candidate to fill the vacant seat is scheduled to occur at the May 2, 2013 City Council meeting

#### Background

City Councilmember Dan Caldwell resigned from his seat on April 4, 2013. City Council Rule 33 covers filling vacant Council seats and states:

**RULE 33.** If a vacancy occurs in the office of Councilmember, the Council will follow the procedures outlined in RCW 35A.13.020. In order to fill the vacancy with the most qualified person available until an election is held, the Council will widely distribute and publish a notice of the vacancy, the procedure and any application form for applying. The Council will draw up an application form which contains relevant information to answer set questions posed by the Council. The application forms will be used in conjunction with an interview of each candidate to aid the Council's selection of the new Councilmember.

The application form used in 2003, the last time a vacancy occurred, was posted along with a description of the application process on the City's website and notices about the vacancy and application process were sent and posted as follows:

Sent to:

- Seattle Times
- Highline Times/Des Moines News
- Michael Spear
- Sal Alling
- G.Huffman
- David Namura
- Mark Proulx
- Tacoma News Tribune

Posted at:

- City Hall
- Marina
- Redondo
- Libraries – Des Moines/Woodmont

While the notice was not sent to the Waterlandblog, they did publish a story on April 9<sup>th</sup> about Councilmember Caldwell's resignation and posted information from the City's website outlining the application process. The individuals to whom the notice was sent are people who have indicated they want notices (special meetings, canceled meetings, etc.) sent to them.

### **Discussion**

Mayor Kaplan proposes that Council follow the same interview procedure as was used in 2003. Each candidate will be given three minutes for an opening statement/comment. Each Councilmember will be able to ask each candidate one question and candidates will be given two minutes to answer each question. Councilmembers do not have to ask each candidate the same question. The Councilmember asking the first question of each candidate will rotate.



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

RECEIVED

Recvd. APR 11 2013

CITY OF DES MOINES  
CITY CLERK

4:00 PM  
FBW

NAME: Janel Stoneback  
ADDRESS: 316 South 216th Street, Des Moines, WA 98198  
PHONE: Home \_\_\_\_\_ Work 206-244-5900 Cell Phone: 206-478-7773  
E-MAIL: Janels69@comcast.net  
LENGTH OF RESIDENCE AT THE ABOVE ADDRESS since 1999  
REGISTERED VOTER? Yes  
EMPLOYMENT SUMMARY LAST FIVE YEARS: \_\_\_\_\_  
Self Employed-Emerald City Smoothie Buriem, Windermere Real Estate, Mick Kelly's

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

Do you currently have an ownership interest in either real property (other than your primary residence or a business) in Des Moines? no If so, please describe: \_\_\_\_\_  
N/A

Please list any Des Moines elective/appointive offices you have run/applied for previously. \_\_\_\_\_  
N/A

IN ORDER TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS **USING ADDITIONAL PAPER IF NECESSARY.**

1. What qualifications and experience do you have that have prepared you to be a Councilmember for the City of Des Moines? \_\_\_\_\_  
Strong Community involvement, Program Chair Des Moines Rotary since 2007, Highline Schools Foundation President 2012 and small business owner since 2000. I have been extremely active in Des Moines and the surrounding communities. I understand the needs of the business community to be sustainable. I am block watch captain for my neighborhood on North Hill. I am usually up to date with current events in our community. Please see attached.

2. What do you hope to accomplish if appointed? \_\_\_\_\_  
Encourage economic expansion and plan for the future. Support decisions that impact the city growth and sustainable development. To be a voice and advocate for the small business community. Listen to the needs and wants of the community. Be a voice for the citizens and the council to bring the community together. Support growth and development of the community. Insure that citizens are safe in the community. Support community services.

3. What is your vision for Des Moines? \_\_\_\_\_  
That Des Moines is a vibrant and economically thriving community. A city that supports development and new construction. That city planning will support tourism, retail and the small business community.

#### Board Positions-

Highline Schools Foundation President-2012

Highline Schools Foundation Trustee since 2007

Des Moines Rotary Program Chair since 2007

Poverty Bay Blews & Brews planning committee since 2010

Poverty Bay Wine Festival planning committee since 2010

Planning committee Brat Trat since 2010

Cove to Clover Volunteer since 2010

SHNLL-Player agent 2006-2008

Discover Burien-2006-2009

Member of Destination Des Moines

As a member of many community organizations I understand the dynamics of our community. I participate in most community activities by attending events, financially contributing or on the planning committee. I have built strong ties and relationships in the community. I have taken the time to get know my neighbors and my neighborhood. I shop local to support the small business community. I attend community forums, planning events, and random council meetings.

My experience on multiple boards in our community has given me a good understanding of how decisions for large organizations are made and thought out. I understand the diversity and needs of our community.

I love where I live and want to see the community thrive.



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

RECEIVED  
Recvd. \_\_\_\_\_  
APR 17 2013

CITY OF DES MOINES  
CITY CLERK  
1:50 PM  
PFW

NAME: Amber Scott  
ADDRESS: 22807 17th Ave. S.  
PHONE: Home 206 592-9306 Work \_\_\_\_\_ Cell Phone: 206-200-5303  
E-MAIL: Amber.ajs@gmail.com  
LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 13 yrs.  
REGISTERED VOTER? yes  
EMPLOYMENT SUMMARY LAST FIVE YEARS: parus & rec BASP, 4 yrs. (# Camp KHAs '09, '10)  
Personal nanny, Summer '11, '12. Zenith Holland May 12 - July 12,

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 ownership interest in either real property (other than your primary residence or a business) in Des Moines? No If so, please describe: \_\_\_\_\_

Please list any Des Moines elective/appointive offices you have run/applied for previously. N/A

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

1. What qualifications and experience do you have that have prepared you to be a Councilmember for the City of Des Moines? I have been on various committees within the city, I volunteer regularly at the Des Moines Farmers Market, and I love our city, I think it has endless potential.

2. What do you hope to accomplish if appointed? If appointed I would hope to bring a youthful perspective to the council and hopefully contribute different ideas.

3. What is your vision for Des Moines? I hope for Des Moines to be a city full of uniqueness and individuality, Somewhere that people will want to visit and spend time because we can offer new experiences and places you can't find elsewhere.

**AMBER SCOTT**

22807 17th Ave S  
Des Moines, WA 98198

(206)200-5303  
[amber.ajs@gmail.com](mailto:amber.ajs@gmail.com)

**PROFILE**

My name is Amber Scott. I am 19 years old. I will be twenty this summer, 2013. My goals are to become an educator and to be involved in my community to better it and keep it a wonderful place.

**EXPERIENCE****RECREATION LEADER, CITY OF DES MOINES, WA — 2008-PRESENT**

As a recreation leader I watch the kids in the Before and After School Program. I watch the kids to ensure their safety, to keep them busy and entertained, and help them with their homework. I am going to school to be an elementary school teacher so this job is good practice for that. So far, this position has been very rewarding.

**RECREATION LEADER, ST. PHILOMENA CATHOLIC SCHOOL; DES MOINES, WA — 2011-2012**

As a recreation leader I watched the children in the before school program. I helped them with homework, played games with them, and kept watch over them. This job was also good practice for my future career as a teacher.

**SALES, ZENITH HOLLAND; DES MOINES, WA — MAY 2012-JULY 2012**

At Zenith Holland Nursery I was sales on the weekends (all day Saturday and Sunday) and during the week I worked labor part time. I did transplanting, cleaning, I helped to move and organize the plants in the greenhouses, and helped fill carts with customer orders. I had to resign from my position to go back to school.

**SANTA'S HELPER, NORDSTROM; TUKWILA, WA — NOVEMBER 2010-DECEMBER 2010**

As a "Santa" Helper I talked to people in line, kept track of the photographs with Santa or rang up the customers.

**VOLUNTEER, DES MOINES FARMERS MARKET — 2007-PRESENT**

As a long term market volunteer I do anything and everything I can do at the market. I put out and take in the A-boards around town every Saturday. I help with set up and take down of the market. I also take the stall fee bags around to all of the vendors at the end of the day.

**FULL TIME NANNY — SUMMERS 2011,2012**

With all the free time in the summers I decided to nanny full time. I nannied for two families, each for one summer. As a full time nanny I took the kids to any extra-curricular activities they had, took them on "field trips" and spent all day with these children. Being there all day included making their meals and cleaning up after them.

**PART TIME NANNY — NOVEMBER 2012-PRESENT**

I work two part time jobs during the school year. I nanny in the afternoons. I do housework for an hour and then I pick the children up from school and help them with homework or play with them.

**EDUCATION**

Mount Rainier High School; Des Moines, WA- High School Diploma, 2011

Highline Community College; Des Moines, WA — Associate's of Arts in Elementary Education, 2012

Central Washington University; Des Moines, WA- Bachelor's of Arts in Elementary Education and Early Childhood Education, 2014

**SKILLS**

I am CPR and First Aid certified. I am good at organizing and time management. I am also personable and can talk with any and all people.

**REFERRALS**

Ralph Thomas- City of Des Moines, 206.870.6527

Cindy Hudson- King County, 206.240.8139

Lyn Robinson- Zenith Holland, 206.878.7002

Molly Bissett- GeneTech, 206.870.2220





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

Recvd. **RECEIVED**

**APR 17 2013**

**CITY OF DES MOINES  
CITY CLERK**

*3:05 PM  
BSW*

NAME: Jeremy David Allen Nutting  
ADDRESS: 20819 4<sup>th</sup> Ave S., Des Moines, WA 98198  
PHONE: Home 206-870-2489 Work 253-852-3366 Cell Phone: 206-947-0609  
E-MAIL: jeremy@downandoutdemolition.com  
LENGTH OF RESIDENCE AT THE ABOVE ADDRESS: 11 years  
REGISTERED VOTER? Yes  
EMPLOYMENT SUMMARY LAST FIVE YEARS: Owner & Operator of Down & Out Demolition, LLC

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 ownership interest in either real property (other than your primary residence or a business) in Des Moines? Yes If so, please describe: I own my own business, based out of Des Moines, Down & Out Demolition, LLC. I own my own home, located at 20819 4<sup>th</sup> Ave S, as well as a rental property, located at 20829 4<sup>th</sup> Ave S.

Please list any Des Moines elective/appointive offices you have run/applied for previously. N/A

IN ORDER TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS **USING ADDITIONAL PAPER IF NECESSARY.**

1. What qualifications and experience do you have that have prepared you to be a Councilmember for the City of Des Moines? I am strong, resourceful, dedicated and a leader. I own and operate a small demolition and construction company based here, out of the City of Des Moines, Down & Out Demolition, LLC. My wife is also a small business owner and operator of her own business, Yvonne Nutting, Independent Consultant, also based out of Des Moines. I have two young daughters attending school at North Hill Elementary School where I am an active PTSA member, a WatchDOGS member and my wife is on the PTSA Board. I am an active participant and Full Season Sponsor of the Des Moines Farmers Market and the Des Moines Farmers Market Chili Cook-Off each year. I am a boater and moor a boat at the Des Moines Marina. I am a Free Mason in good standing based out of Lakewood/Parkland Lodge #299 and have held the position of Chaplin and am a Member of the Master Mason's Club of Washington. But most importantly I am a resident who absolutely LOVES where I live and want to be a part of making it even better than it already is!

2. What do you hope to accomplish if appointed? I would like to lend my knowledge and expertise in restoring and updating Des Moines to a place that is even more lively, profitable and safe than it already is. I'd like to assist with zoning and development laws, regulations, codes and enforcement as well as assist with the new Online Permit Information System, from the point of view of a contractor, small business owner and multiple property owner. I would like to share my ideas and suggestions from the

view of a small business owner and work with the planning, development and advisory committees to help fill the vacancies in the homes and businesses in our city and assist with the major projects that are already underway, Pacific Ridge, Des Moines Creek Business Park, Downtown Des Moines Marina District, Artimes Hotel. I'd like to see Proposition 1 the Utility Occupation Tax Increase to fund Street Pavement Overlays pass to enable more visitors to our city as well as keep our residence safe.

3. What is your vision for Des Moines? I want to bring Waterland Back! I want to attract more stable businesses to the area and be a small, but flourishing 'destination' city. I love that we are in the process of adding retail/commercial/restaurant spaces near the harbor master's office. As a boater that moors a boat at the Des Moines Marina I think this is an excellent addition, much needed attraction and purposeful way to bring more tourism to our beautifully upgraded parking lot and dock area. I want to see a city interested in community involvement, families and our beautiful natural resources.

**Jeremy Nutting**  
 20819 4<sup>th</sup> Avenue South  
 Des Moines, Washington 98198  
 (206) 870-2489  
 Email: jeremy@downandoutdemolition.com

**WORK:****Down & Out Demolition, LLC**

Owner/Operator

January 2006-Present

- Perform Superintendent duties (manage job sites, coordinate subcontractors, delegate duties to employees, resolve/mediate problems)
- Estimate project costs and submit for bids.
- Research potential projects.
- Supervise timecards, employment, work schedules and safety practices.
- Compile, complete and approve billings.
- Manage day-to-day operations.

**Lumbermens Commercial Sales**

Commercial Outside Sales Representative

September 2003 – January 2006  
 May 1999 – September 2000

- Ability to reserve open communication and satisfaction between company and clients.
- Maintained several key accounts.
- Performed major commercial and residential/multi-family lumber material take-offs and estimated lumber material price lists.
- Motivated self and co-workers to increase profits on a day-to-day basis.
- Coordinated purchasing & selling between Lumbermens', clients, and wholesalers.

**COMMUNITY:**

- PTSA Member – since 2012
- WatchDOGS Member – since 2012
- Des Moines Farmers Market Sponsor – since 2008
- Des Moines Farmers Market Chili Cook-Off Participant – since 2010
- Master Mason's Club of Washington – since 2009
- Free Mason at Lakewood/Parkland Lodge #299 – since 2001
- Habitat for Humanity Project Builder/Participant – since 1995





195  
**CITY OF DES MOINES**  
**APPLICATION FOR COUNCIL VACANCY**  
 21630 11th Avenue South  
 Des Moines, WA 98198

**RECEIVED**  
 Recvd. \_\_\_\_\_  
**APR 18 2013**  
**CITY OF DES MOINES**  
**CITY CLERK**  
*2:20pm*  
*BBW*

NAME: Jim MELIA  
 ADDRESS: 1321 S. 263<sup>RD</sup> ST., Des Moines, WA 98198  
 PHONE: Home (253) 839-3645 Work \_\_\_\_\_ Cell Phone: (206) 949-3237  
 E-MAIL: \_\_\_\_\_

LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 38 YEARS

REGISTERED VOTER? YES

EMPLOYMENT SUMMARY LAST FIVE YEARS: (RESUME ATTACHED)

2010 - PRESENT : RETIRED  
1993-2010 : VARIOUS TRAVEL LEADERS COMPANIES AS REGIONAL  
MANAGER OF BUSINESS DEVELOPMENT.

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 ownership interest in either real property (other than your primary residence or a business) in Des Moines? NO If so, please describe: \_\_\_\_\_

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

**IN ORDER TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING ADDITIONAL PAPER IF NECESSARY.**

1. What qualifications and experience do you have that have prepared you to be a Councilmember for the City of Des Moines? ATTACHED

2. What do you hope to accomplish if appointed? ATTACHED

3. What is your vision for Des Moines? ATTACHED PLUS PRESS RELEASE



**JIM H. MELIA**

**1321 South 263<sup>rd</sup> Street**

**Des Moines, Washington 98198**

**(253) 839-3645**

[jimhmelia@gmail.com](mailto:jimhmelia@gmail.com)

**CAREER SUMMARY:**

A comprehensive career in professional consultative sales development and account management experience. Proven skills in effective territory management and field sales leadership. Delivers revenue goals through creation and execution of strategic plans and ability to manage multiple projects and deadlines. Committed to high work ethics and development of positive relationships with management, peers and customers.

**PROFESSIONAL EXPERIENCE:**

2006-2010

**RESULTS! TRAVEL (A division of Travel Leaders Group)**

**Western Regional Manager**

Responsible for providing an ongoing support system for more than four hundred franchised businesses in a nineteen state territory. My specific responsibilities included, but were not limited, to:

- Financial planning and analysis.
- Development of sales and marketing strategies.
- Customer service training and client retention.
- Personnel management and motivation.
- Implementation of effective cooperative advertising and promotional programs.
- Assurance of support for all preferred supplier contracts and agreements.
- Facilitation of networking opportunities for all of the franchisees.

1993-2006

**CARLSON WAGONLIT TRAVEL (Prior to merger with Travel Leaders Group)**

**Regional Manager, Business Development**

Responsible for providing an ongoing support system for as many as ninety-five franchised businesses in the West. In addition to the responsibilities previously described:

- Franchise profitability growth.
- Brand management in the Pacific NW.
- In-field supervision of a team of business development managers throughout the country.

1991-1993

**WORLD CENTER TRAVEL**

**Vice-President/General Manager**

Responsible for starting and operating a chain of travel agencies in the Pacific Northwest:

- Opened four agencies in eleven months.
- Increased sales to over \$7 million in the first full year.
- Coordinated sales and marketing programs.
- Negotiated all supplier and corporate account agreements.
- Managed client relations and the development of all promotional and support materials.

1987-1991

**EASTERN AIRLINES**

**District Sales Manager**

Responsible for coordinating the sales effort in the Pacific Northwest while increasing market share and market identity.

- Developed and implemented start-up and continuing market plans for Washington and Oregon.
- Increased market share, revenue generation and yield in both states even with a reduced flight schedule.
- Arranged successful sales promotions and trade shows throughout the region.

**EDUCATION:**

Bachelor of Commercial Science Degree

Seattle University

Major: Marketing

Minor: Business Administration



**1. WHAT QUALIFICATIONS AND EXPERIENCE DO YOU HAVE THAT HAVE PREPARED YOU TO BE A COUNCILMEMBER FOR THE CITY OF DES MOINES?**

When I retired from the travel industry in 2010 my number one personal goal was to be able to finally “give back.” For the past twenty years I have spent, on average, forty weeks away from home and family annually. Now I can be actively involved with a new granddaughter, my church, my high school and the community that I love.

It is very difficult to be fully committed to a cause when you are physically unable to be part of the process. Having said that, I am now a proud grandparent who is always available for my family’s needs. I have taken a leadership role in my church, serving on the Financial Committee (we just paid off the mortgage!) and assisting with the development of a new community dinner program for the homeless and the needy. Recently I was appointed my high school’s Alumni Board of Directors and I am actively involved in fund raising, communications and major event development.

This brings me to the City of Des Moines. My travels have taken me across the country to cities and communities of all sizes. I have worked with business owners to assist them to survive and thrive in these tough economic times. Every one of the areas that I worked in had its own unique personality and set of challenges. On many occasions as I sat in the airport awaiting my flight home and reviewing my week’s experiences I would think “Why can’t Des Moines do something like that?” Time did not allow me to be involved in the city until late 2011. At that time I volunteered to assist Des Moines in the area of Economic Development working for Marion Yoshino. It has been an exciting opportunity to “peek behind the curtain” of local government and planning. My time as a member of the Des Moines Marina Planning Committee was also extremely beneficial and educational.

Yes, I am very new to local government but I am highly qualified as a sales and marketing professional to play an integral role in the growth of business and retention in the City of Des Moines. It is the time for me to take another step forward on the path of “giving back.” The possibility of being a viable member of the City Council is an exciting opportunity for me and I relish having the chance to expand my role as an involved citizen of Des Moines.

## **2. WHAT DO YOU HOPE TO ACCOMPLISH IF APPOINTED?**

As the newest member of the City Council the first thing I need to accomplish is learning my role on the team. The learning curve, I expect, is pretty steep but I have always been a quick learner. I am a creative planner, excellent communicator, problem solver and team player. My fellow Council Members can certainly point me toward those areas that I need to focus on. Being part of a cohesive team responsible for the health and future of our city plays to my strengths in sales, marketing, strategic planning, customer service, tourism development and positive networking. I will be involved in all aspects of the community, meeting with all of the organizations and involved citizens as needed. Most importantly, I will **Listen, Evaluate, Share and Respond**.

## **3. WHAT IS YOUR VISION FOR DES MOINES?**

I want to play a part in the process that creates a Warm, Friendly, and Welcoming feel for all who live in, work in and visit Des Moines. Our City can certainly become more proactive in addressing the need for tourism and I believe I can assist in that process. \*\*

**\*\* Please see attached sample tourism press release.**



## WELCOME TO DES MOINES, WASHINGTON

Des Moines, *The Waterland City*, invites you to escape to our charming waterfront town nestled next to Puget Sound. Conveniently located between Seattle and Tacoma our little gem welcomes you for a day, a weekend, or as a permanent resident. Des Moines is framed by the beautiful waters of Puget Sound with a spectacular view of the Olympic Mountains to the West, Mount Rainier to the South, and the lush greenery of Saltwater State Park and Des Moines Beach Park along the waterfront.

Our family- friendly community is home to the dazzling full service Des Moines Marina, six miles of shoreline with public beaches, unique restaurants that cater to all tastes and cuisine, fishing piers and a variety of enjoyable shopping experiences at locally owned businesses, all within walking distance of the waterfront. In addition, Des Moines is also home to Highline Community College, with a population of 18,000 students, and a branch campus of Central Washington University. For the outdoors enthusiast you will find strolling opportunities on the boardwalks along the Marina and at Redondo, or hiking and bicycling on the Des Moines Trail. You can also relax on a park bench overlooking the water and take in the scenery, while eating your lunch from a neighboring restaurant, and planning your next visit to our lovely community.

We also have a deep appreciation for the history of our picturesque town as can be witnessed by the renovation being completed at Des Moines Beach Park. The beautiful buildings in the Park, a National Historic Landmark, are being restored to historical specifications. When completed it will be a memorable venue for special events, weddings, receptions and a wide variety of other celebrations. Des Moines has a multitude of diverse offerings for our visitors. There truly is something for everyone. Please come and see for yourself. The best experience has to be our magnificent sunsets behind the sweeping vistas of the Olympic Mountains.



These stunning sunsets will truly warm your heart.

Don't be a stranger. Come home to Des Moines, *The Waterland City*.



<b>PUBLIC DISCLOSURE COMMISSION</b> <b>711 CAPITOL WAY RM 206</b> <b>PO BOX 40908</b> <b>OLYMPIA WA 98504-0908</b> <b>(360) 753-1111</b> <b>TOLL FREE 1-877-601-2828</b>	PDC FORM 205 <b>F-1</b> (1/12)	<b>PERSONAL FINANCIAL AFFAIRS STATEMENT</b>	P M PDC OFFICE USE O A S R T K  R E C E I V E D
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Refer to instruction manual for detailed assistance and examples.  <b>Deadlines:</b> Incumbent elected and appointed officials -- by April 15. Candidates and others -- within two weeks of becoming a candidate or being newly appointed to a position.  <b>SEND REPORT TO PUBLIC DISCLOSURE COMMISSION</b>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">DOLLAR CODE</th> <th style="text-align: left;">AMOUNT</th> </tr> <tr> <td>A</td> <td>\$1 to \$3,999</td> </tr> <tr> <td>B</td> <td>\$4,000 to \$19,999</td> </tr> <tr> <td>C</td> <td>\$20,000 to \$39,999</td> </tr> <tr> <td>D</td> <td>\$40,000 to \$99,999</td> </tr> <tr> <td>E</td> <td>\$100,000 or more</td> </tr> </table>	DOLLAR CODE	AMOUNT	A	\$1 to \$3,999	B	\$4,000 to \$19,999	C	\$20,000 to \$39,999	D	\$40,000 to \$99,999	E	\$100,000 or more
DOLLAR CODE	AMOUNT												
A	\$1 to \$3,999												
B	\$4,000 to \$19,999												
C	\$20,000 to \$39,999												
D	\$40,000 to \$99,999												
E	\$100,000 or more												

<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Last Name <b>MELIA</b></td> <td style="width:33%;">First <b>JAMES</b></td> <td style="width:33%;">Middle Initial <b>H.</b></td> </tr> </table>	Last Name <b>MELIA</b>	First <b>JAMES</b>	Middle Initial <b>H.</b>	Names of immediate family members, including registered domestic partner. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse or registered domestic partner. See F-1 manual for details.  <b>SHERYL MELIA - SPOUSE</b>
Last Name <b>MELIA</b>	First <b>JAMES</b>	Middle Initial <b>H.</b>		

Mailing Address (Use PO Box or Work Address) * <b>1321 S. 263<sup>RD</sup> ST.</b>	
---	--

City <b>DES MOINES</b>	County <b>KING</b>	Zip + 4 <b>98198-9115</b>
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Filing Status (Check only one box.) <input type="checkbox"/> An elected or state appointed official filing annual report <input type="checkbox"/> Final report as an elected official. Term expired: _____ <input type="checkbox"/> Candidate running in an election: month _____ year _____ <input checked="" type="checkbox"/> Newly appointed to an elective office <input type="checkbox"/> Newly appointed to a state appointive office <input type="checkbox"/> Professional staff of the Governor's Office and the Legislature	Office Held or Sought Office title: <b>CITY COUNCIL</b> County, city, district or agency of the office, name and number: <b>DES MOINES</b> Position number: Term begins: <b>MAY 2013</b> ends: <b>DEC 2014</b>
---	--

<b>1</b>	<b>INCOME</b>	List each employer, or other source of income (pension, social security, legal judgment, etc.) from which you or a family member, including registered domestic partner, received \$2,000 or more during the period. Include stock options received during the reporting period that had a value of \$2,000 or more. (Report interest and dividends in Item 3.)		
Show Self (S) Spouse (SP/DP) Dependent (D)	Name and Address of Employer or Source of Compensation	Occupation or How Compensation Was Earned	Amount: (Use Code)	
S	SOCIAL SECURITY PO BOX 200, RICHMOND, CA 94802	RETIREMENT	C	
SP	TRAVEL NETWORK 25829 104 <sup>TH</sup> SE, KENT, WA 98198	TRAVEL AGENT	B	
SP	SOCIAL SECURITY PO BOX 200, RICHMOND, CA 94802	SOCIAL SECURITY	B	
S	EASTERN AIRLINES PO 151750, ALEXANDRIA, VA 22305	PENSION	B	
Check Here <input type="checkbox"/> if continued on attached sheet				

<b>2</b>	<b>REAL ESTATE</b>	List street address, assessor's parcel number, or legal description AND county for each parcel of Washington real estate with value of over \$10,000 in which you or a family member, including registered domestic partner, held a personal financial interest during the reporting period. (Show partnership, company, etc. real estate on F-1 supplement.)		
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Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser	Nature and Amount (Use Code) of Payment or Consideration Received	
Property Purchased or Interest Acquired		Creditor's Name/Address	Payment Terms	Security Given Mortgage Amount - (Use Code) Original Current
All Other Property Entirely or Partially Owned <b>1321 S. 263<sup>RD</sup> ST. DES MOINES, WA.</b>	<b>E</b>	<b>NO CREDITOR</b>		
Check here <input type="checkbox"/> if continued on attached sheet				

### 3 ASSETS / INVESTMENTS - INTEREST / DIVIDENDS

List bank and savings accounts, insurance policies, stock, bonds and other intangible property (including but not limited to stock options) held during the reporting period.

A. Name and address of each bank or financial institution in which you, a family member, including registered domestic partner, had an account over \$20,000 any time during the report period.	Type of Account or Description of Asset	Asset Value (Use Code)	Income Amount (Use Code)
ROSEING EMPLOYERS C/O PO, 97050, SEATTLE, WA 98124	SAVINGS ACCOUNT. CHECKING ACCOUNT. MONEY MARKET FUND.	B C D	A A A-
B. Name and address of each insurance company where you, a family member, including registered domestic partner, had a policy with a cash or loan value over \$20,000 during the period.	N/A		
C. Name and address of each company, association, government agency, etc. in which you, a family member, including registered domestic partner, owned or had a financial interest worth over \$2,000. Include stocks, bonds, ownership, retirement plan, IRA, notes, stock options, and other intangible property. If you, your spouse, registered domestic partner and/or dependents had decision making authority regarding individual assets/investments list each asset or investment, the value and any income amount. EXAMPLE: If you self-directed an investment account identify each stock or other asset in that account.	401K + IRA STOCK STOCK. STOCK. STOCK	E E D B C	B B A A A-
V. RANGUANO, PO 1120 VALLEY FORGE, PA. 19401 MICROSOFT, REDMOND, WA CARNIVAL CANIBES MIAMI, FL. WANT DINNER CO, AMSTERDAM, CA. STANOVU CO, SEATTLE, WA			

Check here  if continued on attached sheet.

### 4 CREDITORS

List each creditor you or a family member, including registered domestic partner, owed \$2,000 or more any time during the period. Don't include retail charge accounts, credit cards, or mortgages or real estate reported in Item 2.

Creditor's Name and Address	Terms of Payment	Security Given	AMOUNT (USE CODE)	
			Original	Present
SUBARU MORTGAGE FINANCE P.O. BOX 901096, FT. WORTH, TX 76101	5 YRS @ 2.9%	AUTO MORTG	B	B

Check here  if continued on attached sheet.

### 5 All filers answer questions A thru D below. If the answer is YES to any of these questions, the F-1 Supplement must also be completed as part of this report. If all answers are NO and you are a candidate for state or local office, an appointee to a vacant elective office, or a state executive officer filing your initial report, no F-1 Supplement is required.

Incumbent elected officials and state executive officers filing an annual financial affairs report also must answer question E. An F-1 Supplement is required of these officeholders unless all answers to questions A thru E are NO.

- A. At any time during the reporting period were you, your spouse, registered domestic partner or dependents (1) an officer, director, general partner or trustee of any corporation, company, union, association, joint venture or other entity or (2) a partner or member of any limited partnership, limited liability partnership, limited liability company or similar entity including but not limited to a professional limited liability company? NO If yes, complete Supplement, Part A.
- B. Did you, your spouse, registered domestic partner or dependents have an ownership of 10% or more in any company, corporation, partnership, joint venture or other business at any time during the reporting period? NO If yes, complete Supplement, Part A.
- C. Did you, your spouse, registered domestic partner or dependents own a business at any time during the reporting period? NO If yes, complete Supplement, Part A.
- D. Did you, your spouse, registered domestic partner or dependents prepare, promote or oppose state legislation, rules, rates or standards for compensation or deferred compensation (other than pay for a currently-held public office) at any time during the reporting period? NO If yes, complete Supplement, Part B.
- E. **Only for Persons Filing Annual Report.** Regarding the receipt of items not provided or paid for by your governmental agency during the previous calendar year: 1) Did you, your spouse, registered domestic partner or dependents (or any combination thereof) accept a gift of food or beverages costing over \$50 per occasion? \_\_\_ or 2) Did any source other than your governmental agency provide or pay in whole or in part for you, your spouse, registered domestic partner and/or dependents to travel or to attend a seminar or other training? \_\_\_ If yes to either or both questions, complete Supplement, Part C.

ALL FILERS EXCEPT CANDIDATES. Check the appropriate box.

- I hold a state elected office, am an executive state officer or professional staff. I have read and am familiar with RCW 42.52.180 regarding the use of public resources in campaigns.
- I hold a local elected office. I have read and am familiar with RCW 42.17A.555 regarding the use of public facilities in campaigns.

\*CANDIDATES: Do not use public agency addresses or telephone numbers for contact information.

CERTIFICATION: I certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.

Signature: Jim H. Melia Date: 4-11-08  
 Contact Telephone: (253) \* 839-3645  
 Email: JIMMELIA@GMAIL.COM (work) \*  
 Email: \_\_\_\_\_ (Home) Optional

REPORT NOT ACCEPTABLE WITHOUT FILER'S SIGNATURE

RECEIVED

APR 19 2013

CITY OF DES MOINES  
CITY CLERK11:20 AM  
EBCW

My application to Des Moines City Council

My name is Patricio Mendoza

My home address is 21215 14<sup>th</sup> Ave. So. Des Moines, WA.

I have lived there for the last 10 years.

My home Phone is 206-370-9326,

My work phone is 206-878-3321

My cell phone is 206-370-9326

My E-Mail address is Patricio@eccomputer.com

My occupation is owner and operator of a computer store called EC Computers located at 22311 Marine View Drive So. For the last 23 years

I am not related to anyone presently employed by the City or who is a member of a City Board.

My wife and I own and operate a family care home at 21238 14<sup>th</sup> Ave So. In Des Moines since 2002 and recently acquired an ownership interest in rental property at 1632 S. 250<sup>th</sup>

I am presently serving on the Marina and Beach Park Improvement committee.

I have not applied for nor run for any Des Moines elective/appointive office except an application for an appointment to the planning commission many years ago.

I have previously been a member of the Des Moines Kiwanis club, The Des Moines Lions club and I am currently am a member of the Des Moines Rotary Club.

I immigrated from Chile the home of my birth to the United States in 1990

I Met a beautiful lady name Rachelle and we fell in love and were married in 1995. We are raising 3 children, 2 boys and a girl.

I worked hard to become a citizen of the United States of America

One of the greatest honors of my life, was August 13, 2002, the day I became a citizen of The United States Of America.

The next honor of my life will be the day of my appointment to the City Council of The City of Des Moines!

Some items that I believe qualify me for membership on the city council are:

During the last 23 years, I have resided in the city of Des Moines, I have been very interested in how well our city in governed. I have attended many council meetings and have always wanted to help make the decisions that will help improve our city and make it a better place for all our families to live and to raise our children. I have been a small business owner and know how to deal with many different types of people and know how handle financial decisions and how to maintain a budget. I know how to make decisions fairly, based on the facts surrounding the subject. My native language is Spanish and because our city has a growing Latino population, I am able to communicate with those who have not quite mastered the English language. I believe that I can improve the City of Des Moines diversity, And can explain some of the issues that the council is dealing with.

I hope to accomplish a reputation, as being someone who listens to what each and every citizen has to say about any controversial issue that may come before the council and I will rely on my strong beliefs of right and wrong. And will not be someone who goes along to get along. When I vote on those issues I will try to uphold all the citizens interests as I see them. These are values that I believe in and are the values I grew up with and have governed the way I have lived my life and have operated my business for 22 years.

My vision for Des Moines when I am appointed to the City Council is to help insure our city remains able to provide the all services that our citizens receive now, such as good roads, beautiful parks, public safety, senior services, and a vibrant business district that will enable our citizens to purchase most of their every day needs and most of all provide a safe and wholesome environment in which to raise our children. In short to, To make living in Des Moines the fulfillment of the "American Dream".





**PUBLIC DISCLOSURE COMMISSION**  
 711 CAPITOL WAY RM 206  
 PO BOX 40908  
 OLYMPIA WA 98504-0908  
 (360) 753-1111  
 TOLL FREE 1-877-601-2828

PDC FORM 211

**F-1**  
(2/07)

**PERSONAL FINANCIAL AFFAIRS STATEMENT**

P M PDC OFFICE USE  
 O A  
 S R  
 T K

Refer to instruction manual for detailed assistance and examples.

**Deadlines:** Incumbent elected and appointed officials -- by April 15.  
 Candidates and others -- within two weeks of becoming a candidate or being newly appointed to a position.

**SEND REPORT TO PUBLIC DISCLOSURE COMMISSION**

DOLLAR CODE	AMOUNT
A	\$1 to \$2,999
B	\$3,000 to \$14,999
C	\$15,000 to \$29,999
D	\$30,000 to \$74,999
E	\$75,000 or more

R  
E  
C  
E  
I  
V  
E  
D

Last Name: MENDONZA First: PATRICIO Middle Initial: \_\_\_\_\_

Mailing Address (Use PO Box or Work Address): 22311 MARINE VIEW DR. S.

City: Des Moines County: WA Zip + 4: 98198

Names of immediate family members. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse. See F-1 manual for details.

Filing Status (Check only one box.)

An elected or state appointed official filing annual report

Final report as an elected official. Term expired: \_\_\_\_\_

Candidate running in an election: month APRIL 2013 year 2013

Newly appointed to an elective office

Newly appointed to a state appointive office

Professional staff of the Governor's Office and the Legislature

Office Held or Sought

Office title: \_\_\_\_\_

County, city, district or agency of the office, name and number: \_\_\_\_\_

Position number: \_\_\_\_\_

Term begins: \_\_\_\_\_ ends: \_\_\_\_\_

**1 INCOME** List each employer, or other source of income (pension, social security, legal judgment, etc.) from which you or a family member received \$1,500 or more during the period. (Report interest and dividends in Item 3 on reverse)

Show Self (S) Spouse (SP) Dependent (D)	Name and Address of Employer or Source of Compensation	Occupation or How Compensation Was Earned	Amount: (Use Code)
	<u>EC COMPUTER</u>	<u>2012</u>	<u>C</u>

Check Here  if continued on attached sheet

**2 REAL ESTATE** List street address, assessor's parcel number, or legal description AND county for each parcel of Washington real estate with value of over \$7,500 in which you or a family member held a personal financial interest during the reporting period. (Show partnership, company, etc. real estate on F-1 supplement.)

Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser	Nature and Amount (Use Code) of Payment or Consideration Received
Property Purchased or Interest Acquired		Creditor's Name/Address	Payment Terms
		Security Given	Mortgage Amount - (Use Code) Original Current
All Other Property Entirely or Partially Owned	<u>E</u>	<u>OC WORK LOAN</u>	<u>30 YRS</u>
<u>21215 14th Ave S.</u>	<u>E</u>	<u>Bank of AMERICA</u>	<u>30 YRS</u>
<u>21238 14th Ave S.</u>			

Check here  if continued on attached sheet

1632 S. 250th ST E DYNAS RIVA 207AS

**CONTINUE ON NEXT PAGE**

Information Continued

Name

**1 INCOME** (continued)

Show Self (S)  
Spouse (SP)  
Dependent (D)

Name and Address of Employer or Source of Compensation	Occupation or How Compensation Was Earned	Amount: (Use Code)
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**2 REAL ESTATE** (continued)

Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser		Nature and Amount (Use Code) of Payment or Consideration Received	
Property Purchased or Interest Acquired		Creditor's Name/Address	Payment Terms	Security Given	Mortgage Amount - (Use Code) Original   Current
All Other Property Entirely or Partially Owned					

**3 ASSETS / INVESTMENTS - INTEREST / DIVIDENDS** (continued)

A. Name and address of each bank or financial institution	Type of Account or Description of Asset	Asset Value (Use Code)	Income Amount (Use Code)
CHASE Bank DeMorus, EDWARD HOWS DeMorus	checking - Savings Savings	A. A.	
B. Name and address of each insurance company			
C. Name and address of each company, association, government agency			

**4 CREDITORS** (continued)

AMOUNT (USE CODE)

Creditor's Name and Address	Terms of Payment	Security Given	Original	Present

**3 ASSETS / INVESTMENTS - INTEREST / DIVIDENDS** List bank and savings accounts, insurance policies, stock, bonds and other intangible property held during the reporting period.

A. Name and address of each bank or financial institution in which you or a family member had an account over \$15,000 any time during the report period.	Type of Account or Description of Asset	Asset Value (Use Code)	Income Amount (Use Code)
CHASE	SAVING CHECKING	A.	
B. Name and address of each insurance company where you or a family member had a policy with a cash or loan value over \$15,000 during the period.			
C. Name and address of each company, association, government agency, etc. in which you or a family member owned or had a financial interest worth over \$1,500. Include stocks, bonds, ownership, retirement plan, IRA, notes, and other intangible property.	EDWARD JONES	A.	

Check here  if continued on attached sheet.

**4 CREDITORS** List each creditor you or a family member owed \$1,500 or more any time during the period. Don't include retail charge accounts, credit cards, or mortgages or real estate reported in Item 2.

Creditor's Name and Address	Terms of Payment	Security Given	AMOUNT (USE CODE)	
			Original	Present

Check here  if continued on attached sheet.

**5** All filers answer questions A thru D below. If the answer is YES to any of these questions, the F-1 Supplement must also be completed as part of this report. If all answers are NO and you are a candidate for state or local office, an appointee to a vacant elective office, or a state executive officer filing your initial report, no F-1 Supplement is required.

**Incumbent elected officials and state executive officers filing an annual financial affairs report also must answer question E. An F-1 Supplement is required of these officeholders unless all answers to questions A thru E are NO.**

- A. At any time during the reporting period were you, your spouse or dependents (1) an officer, director, general partner or trustee of any corporation, company, union, association, joint venture or other entity or (2) a partner or member of any limited partnership, limited liability partnership, limited liability company or similar entity including but not limited to a professional limited liability company?  If yes, complete Supplement, Part A.
- B. Did you, your spouse or dependents have an ownership of 10% or more in any company, corporation, partnership, joint venture or other business at any time during the reporting period?  If yes, complete Supplement, Part A.
- C. Did you, your spouse or dependents own a business at any time during the reporting period?  If yes, complete Supplement, Part A.
- D. Did you, your spouse or dependents prepare, promote or oppose state legislation, rules, rates or standards for current or deferred compensation (other than pay for a currently-held public office) at any time during the reporting period?  If yes, complete Supplement, Part B.
- E. **Only for Persons Filing Annual Report.** Regarding the receipt of items not provided or paid for by your governmental agency during the previous calendar year: 1) Did you, your spouse or dependents (or any combination thereof) accept a gift of food or beverages costing over \$50 per occasion?  or 2) Did any source other than your governmental agency provide or pay in whole or in part for you, your spouse and/or dependents to travel or to attend a seminar or other training?  If yes to either or both questions, complete Supplement, Part C.

**ALL FILERS EXCEPT CANDIDATES.** Check the appropriate box.

I hold a state elected office, am an executive state officer or professional staff. I have read and am familiar with RCW 42.52.180 regarding the use of public resources in campaigns.

I hold a local elected office. I have read and am familiar with RCW 42.17.130 regarding the use of public facilities in campaigns.

**CERTIFICATION.** I certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.

Signature: *[Signature]* Date: 4-19-13

Contact Telephone: (206) 370-9326

Email: PATRICIA@ECCOUPITERWORKS.COM

Email: \_\_\_\_\_ (Home)

**REPORT NOT ACCEPTABLE WITHOUT FILER'S SIGNATURE**





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

Recvd. **RECEIVED**

**APR 19 2013**

**CITY OF DES MOINES  
CITY CLERK** 1:30 PM PFW

NAME: David J. Litowitz  
ADDRESS: 602 S 242nd ST  
PHONE: Home 206-878-1747 Work 253-927-6116 Cell Phone: 253-988-8815  
E-MAIL: djlito@comcast.net  
LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 10 years  
REGISTERED VOTER? yes  
EMPLOYMENT SUMMARY LAST FIVE YEARS: \_\_\_\_\_  
Owner-Landmark Homes Inc.

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 ownership interest in either real property (other than your primary residence or a business) in Des Moines? yes If so, please describe: \_\_\_\_\_  
own various rental homes and also building homes in Des Moines

Please list any Des Moines elective/appointive offices you have run/applied for previously. \_\_\_\_\_  
n/a

IN ORDER TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS **USING ADDITIONAL PAPER IF NECESSARY.**

1. What qualifications and experience do you have that have prepared you to be a Councilmember for the City of Des Moines? \_\_\_\_\_  
Business owner for 32 years and doing business in the City of Des Moines for the past 30 years. I have been involved in various boards and associations both profit and non profit. I was the President of Pierce County MBA in 1998. I support Des Moines organizations and officials.

2. What do you hope to accomplish if appointed? \_\_\_\_\_  
Continue the direction of the city to attract more business to the city as well as attract people to live and visit the city. Use past experience as a business owner and working with the city to bring more efficiencies to the city and less red tape.

3. What is your vision for Des Moines? \_\_\_\_\_  
A vibrant fun community that people and businesses want to come to spend the day or life times. To see the city thrive and not become run down.





**CITY OF DES MOINES**  
**APPLICATION FOR COUNCIL VACANCY**  
21630 11th Avenue South  
Des Moines, WA 98198

Recvd. \_\_\_\_\_

**RECEIVED**

**APR 19 2013**

**CITY OF DES MOINES**  
**CITY CLERK**

*1:20 PM  
Paw*

NAME: Dave Markwell  
ADDRESS: 22332 10th Ave. S. Des Moines, WA 98198  
PHONE: Home 206-271-8100 Work same Cell Phone: same  
E-MAIL: waterlandxfit@gmail.com  
LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 7 years  
REGISTERED VOTER? yes  
EMPLOYMENT SUMMARY LAST FIVE YEARS: \_\_\_\_\_  
Realtor at John L. Scott Real Estate/Des Moines Office  
Waterland CrossFit: Owner/Coach

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 ownership interest in either real property (other than your primary residence or a business) in Des Moines? No If so, please describe: \_\_\_\_\_

Please list any Des Moines elective/appointive offices you have run/applied for previously. \_\_\_\_\_  
Des Moines City Council

**IN ORDER TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING ADDITIONAL PAPER IF NECESSARY.**

1. What qualifications and experience do you have that have prepared you to be a Councilmember for the City of Des Moines? \_\_\_\_\_

I am and have been an active and engaged citizen. I have a comprehensive understanding of the issues currently facing our city. I have an, if not unmatched, certainly uncommon passion for this community as evidenced by my many years of service to its betterment. I am a resident, business owner, and parent. As such, I understand the various perspectives of our constituency. I am TRULY a representative.

2. What do you hope to accomplish if appointed? \_\_\_\_\_

Economic development is this city's highest priority. My hope would be to contribute to the continued efforts to enhance development opportunities in our town. We have many unique and powerful resources and the utilization of these is vital to Des Moines economic viability. Leveraging these resources in ways that create a stable and solid economic foundation, yet maintain our unique and wonderful character is crucial. Helping with this is my highest goal.

3. What is your vision for Des Moines? \_\_\_\_\_

My vision is a vibrant Marina and Marina district which serves its people and the surrounding communities. My vision is a thriving commerce district by the highway which will support the services and amenities that define a high quality of life in a community. I want Des Moines to be a model on private/public/community partnership. My vision is a Des Moines that people are proud to call home and visitors feel welcome.



<b>PUBLIC DISCLOSURE COMMISSION</b> <b>711 CAPITOL WAY RM 206</b> <b>PO BOX 40908</b> <b>OLYMPIA WA 98504-0908</b> <b>(360) 753-1111</b> <b>TOLL FREE 1-877-601-2828</b>	<b>PDC FORM 219</b> <b>F-1</b> (1/12)	<b>PERSONAL FINANCIAL AFFAIRS STATEMENT</b>	PDC OFFICE USE
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Refer to instruction manual for detailed assistance and examples.  <b>Deadlines:</b> Incumbent elected and appointed officials -- by April 15. Candidates and others -- within two weeks of becoming a candidate or being newly appointed to a position.  <b>SEND REPORT TO PUBLIC DISCLOSURE COMMISSION</b>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">DOLLAR CODE</th> <th style="text-align: left;">AMOUNT</th> </tr> <tr> <td>A</td> <td>\$1 to \$3,999</td> </tr> <tr> <td>B</td> <td>\$4,000 to \$19,999</td> </tr> <tr> <td>C</td> <td>\$20,000 to \$39,999</td> </tr> <tr> <td>D</td> <td>\$40,000 to \$99,999</td> </tr> <tr> <td>E</td> <td>\$100,000 or more</td> </tr> </table>	DOLLAR CODE	AMOUNT	A	\$1 to \$3,999	B	\$4,000 to \$19,999	C	\$20,000 to \$39,999	D	\$40,000 to \$99,999	E	\$100,000 or more
DOLLAR CODE	AMOUNT												
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D	\$40,000 to \$99,999												
E	\$100,000 or more												

Last Name	First	Middle Initial	Names of immediate family members, including registered domestic partner. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse or registered domestic partner. See F-1 manual for details.
MARKWELL	DAVID	J	

Mailing Address (Use PO Box or Work Address)	Genie Marie Markwell SP
22332 10TH AVE. S.	
City	County
DES MOINES	KING
	Zip + 4
	98198

Filing Status (Check only one box.) <input type="checkbox"/> An elected or state appointed official filing annual report <input type="checkbox"/> Final report as an elected official. Term expired: _____ <input type="checkbox"/> Candidate running in an election: month _____ year _____ <input checked="" type="checkbox"/> Newly appointed to an elective office <input type="checkbox"/> Newly appointed to a state appointive office <input type="checkbox"/> Professional staff of the Governor's Office and the Legislature	Office Held or Sought Office title: CITY COUNCIL MEMBER _____ County, city, district or agency of the office, name and number: CITY OF DES MOINES Position number: _____ Term begins: <u>05-09-2013</u> ends: <u>11-11-2013</u>
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<b>1</b>	<b>INCOME</b>	List each employer, or other source of income (pension, social security, legal judgment, etc.) from which you or a family member, including registered domestic partner, received \$2,000 or more during the period. (Report interest and dividends in Item 3 on reverse)		
Show Self (S) Spouse (SP/DP) Dependent (D)	Name and Address of Employer or Source of Compensation	Occupation or How Compensation Was Earned	Amount: (Use Code)	
S	Waterland CrossFit 22236 7th Ave. S. Des Moines WA 98198	owner/coach	C	
SP	Pierview Chiropractic 22236 7th Ave. S. DES MOINES WA 98198	Chiropractic service	E	
Check Here <input type="checkbox"/> if continued on attached sheet				

<b>2</b>	<b>REAL ESTATE</b>	List street address, assessor's parcel number, or legal description AND county for each parcel of Washington real estate with value of over \$10,000 in which you or a family member, including registered domestic partner, held a personal financial interest during the reporting period. (Show partnership, company, etc. real estate on F-1 supplement.)			
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Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser	Nature and Amount (Use Code) of Payment or Consideration Received		
Property Purchased or Interest Acquired		Creditor's Name/Address	Payment Terms	Security Given	Mortgage Amount - (Use Code) Original   Current
All Other Property Entirely or Partially Owned 22332 10th Ave. S. Des Moines, WA 98198 Check here <input type="checkbox"/> if continued on attached sheet	E	Chase P.O. Box 469030 Glendale CO 80246	30 year mortgage	Earnest money	E   E

**3 ASSETS / INVESTMENTS - INTEREST / DIVIDENDS**

List bank and savings accounts, insurance policies, stock, bonds and other intangible property held during the reporting period.

A. Name and address of each bank or financial institution in which you or a family member, including registered domestic partner, had an account over \$20,000 any time during the report period.	Type of Account or Description of Asset	Asset Value (Use Code)	Income Amount (Use Code)
Chase 22290 Marine View Drive S. Des Moines WA 98198	Checking	A	0
B. Name and address of each insurance company where you or a family member, including registered domestic partner had a policy with a cash or loan value over \$20,000 during the period.			
C. Name and address of each company, association, government agency, etc. in which you or a family member, including registered domestic partner, owned or had a financial interest worth over \$2,000. Include stocks, bonds, ownership, retirement plan, IRA, notes, and other intangible property. If you, your spouse, registered domestic partner and/or dependents had decision making authority regarding individual assets/investments list each asset or investment, the value and any income amount.			

Check here  if continued on attached sheet.

**4 CREDITORS** List each creditor you or a family member, including registered domestic partner, owed \$2,000 or more any time during the period. Don't include retail charge accounts, credit cards, or mortgages or real estate reported in Item 2.

Creditor's Name and Address	Terms of Payment	Security Given	AMOUNT (USE CODE)	
	Terms of Payment	Security Given	Original	Present

Check here  if continued on attached sheet.

**5** All filers answer questions A thru D below. If the answer is YES to any of these questions, the F-1 Supplement must also be completed as part of this report. If all answers are NO and you are a candidate for state or local office, an appointee to a vacant elective office, or a state executive officer filing your initial report, no F-1 Supplement is required.

**Incumbent elected officials and state executive officers filing an annual financial affairs report also must answer question E. An F-1 Supplement is required of these officeholders unless all answers to questions A thru E are NO.**

- A. At any time during the reporting period were you, your spouse, registered domestic partner or dependents (1) an officer, director, general partner or trustee of any corporation, company, union, association, joint venture or other entity or (2) a partner or member of any limited partnership, limited liability partnership, limited liability company or similar entity including but not limited to a professional limited liability company? X If yes, complete Supplement, Part A.
- B. Did you, your spouse, registered domestic partner or dependents have an ownership of 10% or more in any company, corporation, partnership, joint venture or other business at any time during the reporting period? X If yes, complete Supplement, Part A.
- C. Did you, your spouse, registered domestic partner or dependents own a business at any time during the reporting period? X If yes, complete Supplement, Part A.
- D. Did you, your spouse, registered domestic partner or dependents prepare, promote or oppose state legislation, rules, rates or standards for current or deferred compensation (other than pay for a currently-held public office) at any time during the reporting period? \_\_\_ If yes, complete Supplement, Part B.
- E. **Only for Persons Filing Annual Report.** Regarding the receipt of items not provided or paid for by your governmental agency during the previous calendar year: 1) Did you, your spouse, registered domestic partner or dependents (or any combination thereof) accept a gift of food or beverages costing over \$50 per occasion? \_\_\_ or 2) Did any source other than your governmental agency provide or pay in whole or in part for you, your spouse, registered domestic partner and/or dependents to travel or to attend a seminar or other training? \_\_\_ If yes to either or both questions, complete Supplement, Part C.

**ALL FILERS EXCEPT CANDIDATES.** Check the appropriate box.

I hold a state elected office, am an executive state officer or professional staff. I have read and am familiar with RCW 42.52.180 regarding the use of public resources in campaigns.

I hold a local elected office. I have read and am familiar with RCW 42.17A.555 regarding the use of public facilities in campaigns.

\*CANDIDATES: Do not use public agency addresses or telephone numbers for contact information.

**CERTIFICATION:** I certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.

David Markwell 04-18-2013  
 Signature Date

Contact Telephone: 206-271-8100 \*

Email: dave@abluesandlife.com (work)\*

Email: \_\_\_\_\_ (Home) Optional

**REPORT NOT ACCEPTABLE WITHOUT FILER'S SIGNATURE**

<b>PUBLIC DISCLOSURE COMMISSION</b>  711 CAPITOL WAY RM 206 PO BOX 40908 OLYMPIA WA 98504-0908 (360) 753-1111 TOLL FREE 1-877-601-2828 EMAIL: pdc@pdc.wa.gov	PDC FORM <b>F-1</b> SUPPLEMENT (1/12)	<b>SUPPLEMENT PAGE</b> PERSONAL FINANCIAL AFFAIRS STATEMENT
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PROVIDE INFORMATION FOR YOURSELF, SPOUSE, REGISTERED DOMESTIC PARTNER, DEPENDENT CHILDREN AND OTHER DEPENDENTS IN YOUR HOUSEHOLD

Last Name Markwell	First David	Middle Initial J	DATE 04-18-2013
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- A OFFICE HELD, BUSINESS INTERESTS:** Provide the following information if, during the reporting period, you, your spouse, registered domestic partner or dependents
- (1) were an officer, director, general partner, trustee, or 10 percent or more owner of a corporation, non-profit organization, union, partnership, joint venture or other entity; and/or
  - (2) were a partner or member of a limited partnership, limited liability partnership, limited liability company or similar entity, including but not limited to a professional limited liability company.
- Legal Name: Report name used on legal documents establishing the entity.
  - Trade or Operating Name: Report name used for business purposes if different from the legal name.
  - Position or Percent of Ownership: The office, title and/or percent of ownership held.
  - Brief Description of the Business/Organization: Report the purpose, product(s), and/or the service(s) rendered.
  - Payments from Governmental Unit: If the governmental unit in which you hold or seek office made payments to the business entity concerning which you're reporting, show the purpose of each payment and the actual amount received.
  - Payments from Business Customers and Other Government Agencies: List each corporation, partnership, joint venture, sole proprietorship, union, association, business or other commercial entity and each government agency (other than the one you seek/hold office) which paid compensation of \$10,000 or more during the period to the entity. Briefly say what property, goods, services or other consideration was given or performed for the compensation.
  - Washington Real Estate: Identify real estate owned by the business entity if the qualifications referenced below are met.

**ENTITY NO. 1**

Reporting For: Self  Spouse

Registered Domestic Partner  Dependent

LEGAL NAME:

Waterland CrossFit

POSITION OR PERCENT OF OWNERSHIP

Owner

TRADE OR OPERATING NAME:

Waterland CrossFit

ADDRESS:

22308 Marine View Dr. S.

Des Moines

WA 98198

BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:

Personal training gym.

PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE:

Purpose of payments

Amount (actual dollars)

\$

PAYMENTS ENTITY RECEIVED FROM OTHER GOVERNMENT AGENCIES OF \$10,000 OR MORE:

Agency name:

Purpose of payment (amount not required)

PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS OF \$10,000 OR MORE

Customer name:

Purpose of payment (amount not required)

WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over \$20,000. List street address, assessor parcel number, or legal description and county for each parcel):

None.

Check here  if continued on attached sheet

**CONTINUE PARTS B AND C ON NEXT PAGES**





**CITY OF DES MOINES**  
**APPLICATION FOR COUNCIL VACANCY**  
21630 11th Avenue South  
Des Moines, WA 98198

Recvd.  
**RECEIVED**  
**APR 19 2013**  
**RECEIVED**  
**APR 19 2013**  
BY: \_\_\_\_\_  
CITY OF DES MOINES  
CITY CLERK  
1:30 PM  
JCS

NAME: Kenneth Taylor  
ADDRESS: 22700 30th Avenue South  
PHONE: Home \_\_\_\_\_ Work \_\_\_\_\_ Cell Phone: (206) 687-6713  
E-MAIL: kennethmdtaylor@gmail.com  
LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 17 Months  
REGISTERED VOTER? Yes  
EMPLOYMENT SUMMARY LAST FIVE YEARS: \_\_\_\_\_  
Please see attached resume

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

Do you currently have an ownership interest in either real property (other than your primary residence or a business) in Des Moines? No If so, please describe: \_\_\_\_\_  
N/A

Please list any Des Moines elective/appointive offices you have run/applied for previously. \_\_\_\_\_  
I have not run/applied for any Des Moines elective/appointive offices.

**IN ORDER TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING ADDITIONAL PAPER IF NECESSARY.**

1. What qualifications and experience do you have that have prepared you to be a Councilmember for the City of Des Moines? \_\_\_\_\_  
Please see attachment.

2. What do you hope to accomplish if appointed? \_\_\_\_\_  
Please see attachment.

3. What is your vision for Des Moines? \_\_\_\_\_  
Please see attachment.



Kenneth Taylor  
City Council Application Packet

**1. What qualifications and experience do you have that have prepared you to be a Councilmember for the City of Des Moines?**

I have served members of my community as a community organizer for several years. Having a passion for ensuring the education for future generations, I participated in several grassroots efforts to close the achievement gap. This pursuit led me to cities like Charlottesville, VA and Dallas, TX where I participated in programs such as Project Transformation that sought to educate our nation's most vital resource, our children. Working in these social and economically disadvantaged areas gave me resources essential to connect with members of my community despite of barriers. This work gave me the passion to do my best to ensure that every voice has an opportunity to be heard and represented in local government. It is with that passion that I will serve all citizens of the City of Des Moines.

While In Tennessee, I was fortunate to serve the students of the State of Tennessee as the Governor of the Tennessee Intercollegiate State Legislature (TISL). This gave me invaluable experience into the formation, application, and results of local and state policy. With my tenure with TISL I was able to grow the organization by over 30 percent. While serving the students at the state level, I was able to acquire the true meaning of the phrase, "All politics are local." I quickly found although some decisions are made outside of the local area, it is mostly impacted in your local environment. This is why I believe it is imperative that the City of Des Moines has representatives to ensure that our interest and the vitality of our city is lobbied for with regional organizations whose actions directly affect the citizens of Des Moines, their property and economic growth.

Working Washington gave me opportunity to establish, develop and maintain relationships with stakeholders in the Greater Seattle community. Working to hold the Port of Seattle accountable as a Faith Outreach Coordinator, I built upon valuable skills I received in other experiences. I established a record of not only connecting the organization I served with the community, but moving them into action. With Working Washington I was able to build lasting relationships with organizations and members of the faith, immigrant, Hispanic, and working communities. These skills will be used tirelessly as a Councilmember. Given the opportunity, I will serve as an ambassador for local government to the community. Not only to inform them about the issues concerning their community, but encourage engagement within the political process. To hold myself accountable, I will set goals and benchmarks to measure the success of our outreach. I believe a public's involvement in the processes of government is an effective way to help ensure that leadership is conscious and aware of the problems and issues of their city.

Kenneth Taylor  
City Council Application Packet

**2. What do you hope to accomplish if appointed?**

If appointed as a member of the Des Moines City Council, my goal would be to work as a team with Council to fulfill the goals that it has already outlined as priorities for its term; there are four areas where I believe I can be extremely effective and help Council accomplish identified objectives: community involvement, livability and sustainability for future generations, improving economic stability and vitality, and protecting the people and property of Des Moines.

At its inception, Council identified encouraging community involvement as a goal for its term. My proven results in community outreach and engagement will serve as a valuable asset to Council in this regard. I will work to encourage an increase in applications of citizens to serve on city committees and boards. I believe that this can be done by connecting people to their passions and issues and showing them how those things can be positively or adversely affected through the power of local government.

Council also placed a high priority on preserving livability and sustainability for future generations. As a Councilmember, I will work heavily with stakeholders to ensure that as we grow, we do so in a manner that respects our natural environment. I will work with other members of Council to ensure we have standards that protect our natural environment. We must ensure that we strike a healthy balance between placing a high demand on ensuring that we are attractive to businesses and developers and protecting our natural environment. While we must make our policies attractive to developers and businesses, we must ensure that we do so in a manner which respects the responsibility that we have to the protection of our natural environment. We must encourage those who invest in our community to respect our environment and offer incentives for developers that choose to build green buildings and structures in our city.

The second priority of Council was identified as improving economic stability and vitality. If I should be appointed, I look forward to working with Council in supporting measures that will spur population and economic growth. Council has begun the process of rezoning areas of the city and easing regulations that serve as a burden to developers. I applaud Council; however, I believe that we can be more aggressive in recruiting and sparking new interest in our city. I believe that we should approach developers and businesses that previously decided to develop outside our city and ask them to take a second look. We must let them know that we have heard their opinions, listened to their concerns and we have made changes to make our city more suitable for development.

I fervently believe that Council should assist in the vitality and sustainability for all of our small businesses. While we are expanding our tax base to increase revenue we should do all we can to make sure our city has things in place to make the area attractive to potential customers. Free Public Wi-Fi and Electric Car Stations in our downtown area, for example, will encourage traffic to many of our small businesses in the area.

Kenneth Taylor  
City Council Application Packet

Finally, Council stated that its first priority is to protect the people and property of the City of Des Moines. With the help of the council, I will seek to find ways to provide the Des Moines Police Department with the infrastructure it needs to become a fully accredited law enforcement institution. A fully accredited Police Department will give our Police Chief resources available to be one of the premier law enforcement institutions in the area. This accreditation also insures that our officers have received the best training and tools necessary to keep our citizens and our officers safe. Once that infrastructure is in place, I believe we will not have to market ourselves to other cities whose Police Departments are unable to sustain themselves. I believe our infrastructure and prestige alone will draw them to us as the solution to their public safety concerns. This will be another source of revenue for the city; it will aide in closing the gap between our expenditures and our revenue.

While learning from the leadership of the Council, I hope to bring a fresh perspective to many of the issues should I be appointed to Council. I will be able to give insight on many of the plans of the council from an intergenerational, multicultural perspective. This is essential as we continue to make Des Moines a great city for all of its citizens.

Kenneth Taylor  
City Council Application Packet

**3. What is your vision for Des Moines?**

Council defines its vision for Des Moines as, "An inviting, livable, safe waterfront community embracing change for the future while preserving our past." This closely aligns with the personal vision I have for my community.

My vision for Des Moines is one where we capitalize on our natural beauty and use it to spur population and economic growth. To be a livable community we must demonstrate excellence in education, structural hygiene, health care, culture, environment, recreation, political-economic stability and public transportation. Although many of these are not directly managed by the City of Des Moines, it is imperative that we have close working relationships, with but not limited to, Sound Transit, school districts, and other stakeholders to ensure that their programs are an enhancement to our community.

I believe our Police Department will not only be fully accredited, but will serve as a model for other agencies in our region. I believe that when faced with the choice of contracting with the county for police protection, regional cities will look to us to service their needs. My vision includes a Police Department that serves not purely as a reactionary force, but a preventative force through community engagement programs, outreach in our schools, and other innovative tools used by law enforcement to prevent crimes against our citizens.

Finally, I fully agree Des Moines must be a community that embraces change for the future, while preserving our past. We must create balanced policies that allow our local economy to strengthen and employ green initiatives while preserving the historic heritage our city is blessed to have. We must be a city that seeks to use every technological advancement and progression available to improve the efficiency of local government, the livability of the citizens of Des Moines, and the safety of our citizens. I believe a city works best when it solidifies its foundation through the principals and heritage of its culture then proceeds to build on that foundation with all of the progression and advancements the future has to offer.

I look forward to learning and working with the Des Moines City Council to make a greater City of Des Moines.

**Kenneth M. D. Taylor**

22700 30<sup>th</sup> Avenue South • Seattle, WA • (206) 687-6713 • kennethmdtaylor@gmail.com

Kenneth M. D. Taylor  
Curriculum Vitae

**Kenneth M. D. Taylor**

22700 30<sup>th</sup> Avenue South • Seattle, WA • (206) 687-6713 • kennethmdtaylor@gmail.com

**Education:**

Undergraduate:

**University of Memphis**  
 Bachelor of Arts & Sciences  
 Major: Political Science  
 Awarded: 2009

High School:

**Dyersburg High School**  
 Honors Diploma: Math & Science

**Political Experience**

**Working Washington (2011- 2013)**

Position: Faith Outreach Coordinator

- Planned and executed Islamic Outreach meeting with over twenty Islamic leaders in the Greater Seattle area
- Coordinated "Voter Parties" which resulted in over 250 ballots and over 600 attendees to inform voters about candidates
- Assisted in the development a presentation on economic disparities. The presentation included the causes and solutions to restore and promote the reemergence of the middle class

**Esteban Garces for Delegate (2011)**

Position: Deputy Field Director

- Increased turnout in turf by 5% in an off year election
- Set meetings with clergy officials and spoke to congregation on behalf of the candidate as well as prepping and escorting the candidate to religious services
- Served as a speechwriter for candidate for religious and other functions

**PA Vote 2010 (Coordinated Campaign)**

Position: Regional Field Director

- Increased voter turnout in home turf by a record 2% in the 2010 midterm election compared to 2006 midterm election
- Hosted a Presidential and Vice Presidential Mid Term Election Rally in home turf
  - Organized, developed, and executed in collaboration with the White House Advance Team
  - Rally grossed over 18,500 attendees with over 350 volunteers
  - Worked with Faith Based organizations, private and public entities
  - Assisted with development and implementation of crowd control and crowd safety
  - Assisted city, county, state, and national law enforcement units
- Managed more Wards (districts) in the city of Philadelphia than any other staffer while still managing to produce record turnout
- Managed the two Wards with the highest turnout in the 2008 presidential elections
- Managed, trained, and coached a team of 12 interns to fulfill daily campaign activities

**A Closer Look (2007- 2011)**

Position: Political Commentator

- Known for ability to break down complex legal and political issues to people of various socioeconomic, racial, and cultural backgrounds
- Frequently invited to discuss the complexity and details of the Affordable Care Act
- Frequently invited guest to speak on political issues
- Consistently requested to answer questions by viewers

**WBBP 1480AM (2008-2010)**

Position: Morning Drive Announcer

- Morning drive announcer & personality
- Comprise and execute voice-overs and commercials
- Run sound boards & assist in other areas as needed
- Develop relationships with other media outlets

**Kenneth M. D. Taylor**22700 30<sup>th</sup> Avenue South • Seattle, WA • (206) 687-6713 • kennethmdtaylor@gmail.com**Cohen for Congress (2008)**

Position: Outreach Representative &amp; Media Relations Intern

- Assisted in advising the candidate on African American affairs
- Assisted in registering and targeting new voter sects
- Assisted in coordinating and executing saturation activities

**Ford for Tennessee (2006)**

Position: Collegiate Outreach Representative &amp; Media Relations Intern

- Responsible for coordinating collegiate involvement and campaign events on College campuses in West Tennessee.
- Successfully coordinated and executed 4 campaign rallies in the West Tennessee area resulting in over 2,000 new registered voters

**Cohen for Congress (2006)**

Position: Field Representative

- Assisted in registering new voters
- Assisted in coordinating and executing saturation activities

**Administration and Operations****The Light of Glory International Church**

2008-2010

Position: Church Administrator

- Gave presentations to employees, administration, and board members on prevalent issues and new initiatives
- Managed, developed, trained all ministries including Public Relations
- Created manuals and work guidelines for employees and volunteers
- Designed and executed community events to achieve the mission of the organization

**Project Transformation**

2007-2009 (Summers)

Position: Teaching Intern

- Created and executed curriculum designed to improve literacy for children in underprivileged areas of Charlottesville, VA and Dallas, TX
- Designed and executed community events to achieve the mission of the organization
- Worked with children and parents to improve literacy and to find assistance, government funded or privately funded, for various issues that would arise in their homes

**St. Luke's United Methodist Church**

2007-2009

Position: Youth Leader Intern

- Responsible for assisting in the oversight and execution of the Children and Youth Ministry
- Organized and attended children and youth mission trips
- Responsibilities included spiritual counseling and serving as a liaison between the children of our ministry and parents when necessary

**HARK (Helping At Risk Kids)**

2008- 2009

Position: Board of Directors Member

- Assist in grant writing and execution of mission and vision directives
- Serves as a community liaison between the organization and various institutions in the community that are like minded or sympathetic to the mission of HARK
- Serves as a fundraising organizer to bring funds essential to the operation of the organization

**A New Beginning Ministries**

2000-2003

Position: Children's &amp; Youth Pastor

- Responsible for the oversight and execution of the Children's and Youth Ministry
- Youngest person to serve as Youth Pastor at the time
- Responsibilities included spiritual counseling and serving as a liaison between the children of our ministry and parents when necessary

**Kenneth M. D. Taylor**22700 30<sup>th</sup> Avenue South • Seattle, WA • (206) 687-6713 • kennethmdtaylor@gmail.com**Citizen Advisory Committee**

City of SeaTac

2013

Position: Committee Member Alternate

- Selected by the City Council of the City of SeaTac
- Seeks innovative, community-based ideas through sustainable, two-way communication within the community
- Participates in existing city, school and community meetings and events to bridge communication gaps and promote active participation and community engagement

**Volunteer Activities & Philanthropy****Year to Date Community Service Hours**

As of April 15, 2013: 50+ Hours

**East Hill Elementary School**

2012- Present

**Mount Calvary Christian Center**

2012- Present

**St. Luke's United Methodist Church**

Fall 2008- 2010

**Highland Area Renovation Commission**

Fall 2008- 2010

Board of Directors Member

**Helping At Risk Kids**

Fall 2008- Present

Board of Directors Member

**Big Brothers Big Sisters**

Spring 2004- 2011

2004 Big Brother of the Year

**Ronald McDonald House**

Fall 2003- Spring 2005

**Angel Tree**

Christmas 2003, 2004, 2005

**Happy Holidays for the Troops**

Fall 2004

**Alpha Kappa Alpha Prince Charming Pageant**

Mr. Prince Charming Fall 2005- Spring 2006

**Unity in the Community**

Chambliss Children's Shelter Spring 2005

**Community Kitchen**

Fall 2004- 2010

**Leadership****Institute for a Democratic Future**

IDF is a six-month fellowship from January through June, occurring over eleven intensive weekends.

During these weekends the program focuses on a diverse range of political topics. The program covers the nuts and bolts of campaigns and elections, geographic issues from around the state, and developing leadership skills with our fellows. The program offers a rich curriculum, networking opportunities, and will leave Fellows with lasting ties to their current class and other alumni. Fellows meet with elected officials, leading experts, business owners, lobbyists, nonprofit leaders, and people making a difference in their communities all over the state and in Washington D.C. We want our fellows to get engaged in the political process while introducing them to the people and issues that are affecting our state. Each year IDF graduates a "farm team" of progressive leaders who go out into the world and make a difference within campaigns, policy jobs, non-profits and work in their communities.

**LeaderShape**

Named by the W.K. Kellogg Foundation as an "exemplary program," the LeaderShape Institute is an intensive, energizing, six-day educational experience designed to equip young adults to become extraordinary leaders. Each session of The LeaderShape Institute is comprised of approximately 60-70 students — ages 17-25 — from diverse ethnic, religious, and cultural backgrounds. The Institute's curriculum is presented by a group of facilitators who are all highly respected in their own professions and serve as excellent role models for the students.

## Kenneth M. D. Taylor

22700 30<sup>th</sup> Avenue South • Seattle, WA • (206) 687-6713 • kennethmdtaylor@gmail.com

### **Governor (Tennessee Intercollegiate State Legislature)**

Accomplishments: Increased minority involvement in the Tennessee Intercollegiate Student Legislature by over 200%. Increased the number of legislation brought to the floor of the Tennessee General Assembly from the Tennessee Intercollegiate State Legislature. My team and I were able to increase total participation in the organization by over 120%. Served in the establishment and appointed the first Tennessee Intercollegiate Supreme Court Justices. I was also honored to receive a resolution from the Tennessee General Assembly honoring my work as Governor.

### **Lt. Governor (Tennessee Intercollegiate State Legislature)**

Accomplishments: Assisted in the restructure of the Legislative Council.

### **Speaker Pro Tempore of Senate (Tennessee Intercollegiate Student Legislature)**

Accomplishments: First African American to serve as member of the executive council.

### **Speaker Pro Tempore**

Accomplishments: Reactivation of the Legislative Council

### **Freshmen Senate Present**

Accomplishments: Opening Days Program, Freshman Survival Guide, "So Freshmen So Clean" mixer, and others.

### **Mock Trial**

Accomplishments: Best attorney in regional and state competition. Best Witness in Regional competition. Youngest person elected to ever serve as captain of Varsity Team.

### **Student Government Association Senator**

Accomplishments: Outstanding Senator Award & Member of the Projects, Social Issues, & Procedures Committees.

### **SGA Projects Committee Chairmen**

Accomplishments: Committee Chairmen of the Year, Instituted the SGA Transitional Retreat, Authored the SGA Mission Statement and Creed, & Lunch for Your Thoughts.

### **SGA Procedures Committee Chairmen**

Accomplishments: Made Presentations: "What Makes an Effective Student Government" & "Making your Organization Matter Most to the Students you Lead to Serve."

## Committees

### **Vice Chancellor of Student Development Search Committee**

Committee formed by the Chancellor of the University of Tennessee at Chattanooga to fill the vacancy of the position of Vice Chancellor for Student Development, after the resignation of Richard MacDougall.

### **Freshmen Orientation Committee**

Analyzes the successes and failures of the university's orientation program and develops a course of action accordingly.

### **University Technology Committee**

Supervises the structure of the technological workings of the campus and make decisions on how to improve the quality of the technology utilized by the students.

### **Food Services Committee**

Regulates the prices of entrees on campus and makes decisions on appeals to the meal plan.

### **Campus Life & Student Services Committee**

Evaluates, drafts, and executes policy related to campus life and housing.

## Kenneth M. D. Taylor

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### Accomplishments Defined

#### **Tennessee Intercollegiate State Legislature**

The Tennessee Intercollegiate State Legislature is the governing body for all of the institutions of higher education in the state of Tennessee. Each year in November students from all across the state of Tennessee travel to Nashville to pass legislation to present to the actual Tennessee State Legislature to present as actual legislation.

Upon his election as Speaker Pro Tempore, Kenneth was the first African American to serve as a member of the executive council. He was also the first African American to serve as Governor of the organization. Kenneth received two resolutions from the Tennessee General Assembly as Lt. Governor and Governor commending his work both for the Tennessee Intercollegiate State Legislature and the students of the State of Tennessee. More information may be obtained at < [www.tisonline.com](http://www.tisonline.com) >.

#### **Project Transformation**

Project Transformation is a summer internship program that is committed to increased literacy skills for children, vocational exploration for college students, and the volunteer efforts of area churches. College-aged adults from all backgrounds and faiths administer an 8-week Monday through Thursday day camp for rising first- through fifth- graders at host churches in Charlottesville and Waynesboro, Virginia, Dallas, TX and other sites nationwide. Part vacation bible school and part academic enrichment, Project Transformation focuses on reading skills, safe mentoring relationships and community outreach, giving children from some of the area's most vulnerable neighborhoods exposure to a variety of experiences through the communities that volunteer to serve them. More information may be obtained at < [www.projecttransformation.org](http://www.projecttransformation.org)>.

#### **Opening Days:**

The Opening Days Program is designed to give introduce incoming Freshmen Students to College Life. During the Opening Days Program freshmen students are allotted time to get to know other students in the dorm community, take bused trips to Wal-Mart, go on guided tours with their class schedules, etc. The primary purpose is to aid in the transition of high school students to college life.

#### **Freshmen Survival Guide**

The Freshman Survival Guide is a book compiled by Freshmen Senators designed to list all the *Need to Knows* and *Do's and Don'ts* of college life.

#### **Outstanding Senator Award**

This honor is bestowed upon the Senator that has distinguished him/herself as a leader among the leaders of the Student Government Association.

#### **Most Dedicated Senator Award**

This honor is bestowed upon the Senator that has distinguished him/herself as the individual that showed the most dedication to the Student Government Association throughout the academic year.

#### **Committee Chairman of the Year**

This honor is bestowed upon the Committee Chairman that works tirelessly in his/.her effort to improve the collegiate experience of the students of the University of TN at Chattanooga through his or her respective committee. This Chairman has done this by instituting programs and events that will greatly impact the college experience of all those who attend our University.

#### **SGA Transitional Retreat**

Instituted the SGA Transitional Retreat was designed to aid in the semester to semester and year to year transition of the Student Government Association. During this transition basic skills such as consensus reaching and leadership essentials are reviewed. Also, this retreat allots time for old officers to meet with new officers to discuss any rollover projects that may need to be discussed. Committee Chairmen also use this opportunity to do the same in their respective committees. During this retreat the theme for the semester or year and goals desired should be discussed and planned.

#### **Mission Statement & Creed**

Authored the Mission statement is a statement of the mission and vision of the Student Government Association of the University of TN Chattanooga. The Creed of the Student Government Association is a list of the ideals of that the SGA must attain to complete its mission.

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**Presentations****“What Makes an Effective Student Government?”**

This presentation breaks down the fundamental elements of Student Government and examines it in relation to your specific organization. This presentation is designed to challenge the minds and push the limits of the organization. This has been given to over four Student Government Organizations around the country.

**“Making Your Organization Matter Most to the Students You Lead to Serve”**

This presentation, usually given as an addendum to “What Makes an Effective Student Government”, focuses on different types of ways to market your organization to your constituents. As the Student Government Association it is important to set the bar of excellence for other organizations and be respected as the premier organization of your campus. This presentation teaches effective ways of accomplishing this.

**“Member Retention and Ministry Development”**

This presentation has been highly sought after and has been given to over 15 ministries around the country. This Presentation takes a scientific approach to member retention and Ministry development that generally is not considered when considering how to retain members and develop the ministries needed to sustain member retention. Highlights of the presentation include finding the identifying, planning of how to, and solving the root need of each member of your ministry.

**“Creating a You Plan”**

This presentation was given to the Youth Force Career Conference with the Boys and Girls Club of Seattle. This presentation challenges you to know what your specific goals are. It equips attendees with the skills and attributes needed to help them achieve those goals. It is always important for us to take the time to examine who and where we are, and to make a plan for ourselves. A YOU Plan helps you understand who you are and how you are going to be successful.

