

AGENDA

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

May 23, 2013 - 7:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC

BOARD & COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORT

Page 1 UPDATE ON THE STATUS OF THE MARINA

CONSENT CALENDAR

Page 5 Item 1: APPROVAL OF MINUTES
Motion is to approve the minutes of the May 2 and 9, 2013 Regular Council Meetings.

Page 11 Item 2: APPROVAL OF VOUCHERS
Motion is to approve for payment vouchers and transfers included in the attached list and further described as follows:
Claim checks: \$740,100.81
Total certified Wire Transfers, Voids & A/P vouchers: \$739,996.78

Page 13 Item 3: CONSTRUCTION AGREEMENT WITH PSE FOR UTILITY UNDERGROUNDING ON THE 24TH AVENUE SOUTH IMPROVEMENT PROJECT (S 216TH STREET TO S 208TH STREET)
Motion is to approve the Schedule 74 Project Construction Agreement with Puget Sound Energy for Underground Conversion on the 24th Avenue South Improvement Project (S 216th Street to S 208th Street), and further authorize the City Manager to sign the Agreement, substantially in the form as submitted.

- Page 39 Item 4: JOINT UTILITY TRENCH AGREEMENT WITH COMCAST FOR THE 24TH AVENUE SOUTH IMPROVEMENTS (S. 216TH STREET TO S. 208TH STREET)
Motion is to approve the attached joint trench Utility Agreement with Comcast for the utility undergrounding improvements of the 24th Avenue South Improvement Project (S. 216th Street to S 208th Street), and further authorize the City Manager to sign the Agreement, substantially in the form as submitted.
- Page 65 Item 5: HEALTHPOINT RIGHT-OF-WAY DEDICATION
Motion is to accept the deed of the land dedication from HealthPoint which is at the southwest corner of Pacific Highway South and South 263rd Street, and authorize the City Manager to sign the deed substantially in the form as attached.
- Page 77 Item 6: AUTHORIZATION TO SUBMIT APPLICATION FOR COMMUNITY DEVELOPMENT BLOCK GRANT FOR SOUTH 224TH STREET SIDEWALK PROJECT
Motion is to authorize the City Manager to submit an application for a Community Development Block Grant for the construction of the South 224th Street Sidewalk Project identified in the Pacific Ridge Neighborhood Improvement Plan and the City's CIP, and authorize the City Manager to sign said application.
- Page 123 Item 7: 2013 POVERTY BAY BREWS & BLUES FESTIVAL AT THE DES MOINES BEACH PARK
Motion is to adopt Draft Resolution No. 13-116, authorizing the fourth annual Poverty Bay Brews & Blues Festival on August 24, 2013, at the Des Moines Beach Park and Marina.
AND:
Motion is to authorize the City Manager to enter into an Agreement with the Rotary Club of Des Moines related to the provision of support services and amenities for the 2013 Poverty Bay Brews & Blues Festival, substantially in the form as attached.
- Page 135 Item 8: 2013 CLASSIC CAR AND WOODEN BOAT SHOW
Motion is to approve Draft Resolution 13-112 authorizing the Farmers Market to use City property and conduct the Des Moines Classic Car & Wooden Boat show on July 20, 2013.
AND:
Motion is to authorize the City Manager to sign the agreement with the Farmers Market for the Classic Car and Wooden Boat Show, specifying the responsibilities assumed by the Farmers Market and identifying the in-kind services that will be provided by the City, substantially in the form as attached.

Impacts on Marinas in the Northwest.

In 2009 there were 65,000 boats 20 to 30 feet long registered in Washington. Currently there are 60,000 boats in this size range registered, a decrease of 5,000 boats. Some of these boats were demolished, some were sold out of state but since most of the boats in this size range can be trailered, most are just being stored. Registrations for larger boats, 36 to 55 feet long have decreased from 7,000 to about 6,500 boats in the same time period. Most of these boats were sold out of state, mostly in British Columbia.

The decrease in the number of registered vessels in the state along with the decrease in the use of the vessels still in active ownership resulted in significant declines in marina revenues in the northwest. Overall, marina revenues declined by about 44% from 2006 thru 2009 before starting to rebound. The revenue decreases were not evenly distributed with the “destination” marinas hit harder than “home port” marinas.

Recent surveys of marinas in Washington show that most marinas had declines in occupancy of up to 10% thru 2010 but by 2011 most marinas were reporting no change in occupancy. The surveys also showed that smaller slips, (less than 30 ft.) had the most vacancy. Most marinas reported little or no decrease in occupancy for slips 30 feet and longer and some marinas are reporting some growth in occupancy in moorage over 40 feet. Wait lists for moorage have been following a similar pattern. In 2009 and 2010 most marinas were reporting declines of up to 20% in the number of people on their wait-lists. By 2011, most marinas were reporting no changes or small increases in their wait-lists.

Discussion

Impacts on the Des Moines Marina

The Des Moines Marina is a “home port” marina so while the Marina’s total revenues followed the same trend the decline in revenue was only about 10%. The Marina revenue decline lagged by two years. Revenue peaked in 2008 and then declined thru 2010 before starting to rebound in 2011 and 2012. Currently the total revenues are still slightly below the 2008 peak.

The Marina’s occupancy rates followed the state wide pattern. Occupancy decreased thru 2010 but is rebounding slowly now. Almost all of the decreases in occupancy were in the 20 & 24 foot moorages with some declines in the 28 foot moorages. The 32 thru 50 foot slips remained full with small waiting lists thru out the entire length of the recession and recovery.

One of the most far-reaching impacts associated with the decline in boat sales has been the increase in age of the average boater. In 1998 the largest group of boaters by ages was the 50-54 age range. In 2011 the largest group was the 60-64 age range. This shift shows that fewer young people are choosing to become boaters.

Marina Financial Performance

Total Marina revenues bottomed out in 2010 and have grown about 2.3% per year since then. Moorage revenues have also started to grow again, although slowly at about 2% per year.

Excluding fuel purchased for resale, Marina expenses have been relatively stable for the last three years although they are growing at a slightly faster rate than revenues. After purchases of fuel for resale, the next largest expense is payroll at about \$880,000 followed by debt service at \$758,000. The transfer to the general fund is currently about \$620,000 and “all other expenses” which include utilities at about \$150,000 per year, the DNR lease at \$107,000 per year and in 2012, outside consultants at about \$100,000 totaled about \$830,000 in 2012.

The combined effect of the recession on revenues plus some³ significant increases in expenses have resulted in operating losses in 2011 and 2012.

Marina Capital Projects

The replacement of the bulkhead in the center of the Marina and the major renovation of the north end of the Marina was completed in 2011 and the changes have been well received. The Marina staff is still actively planning for future capital improvements. This year the staff will continue working on the preliminary design for several large projects including reconfiguring D, E & F Docks, removing and replacing the timber breakwater and renovating the Public Fishing Pier and Public Restroom. The plan is to complete the preliminary design, complete the SEPA/Shoreline process and obtain the Federal and State permits. At this time the Marina fund does not have the capacity to take on any further debt so these project do not have firm start dates. The staff will continue working on some small projects such as adding more security cameras to the Marina and replacing the boarding floats at Redondo.

Summary

- Like the economy in general, the recreational boating industry is improving, slowly.
- New and used boat sales are increasing slowly, but younger buyers are not there, creating some demographic challenges.
- Demand for the Marina's longer slips, (32 thru 50 foot) remained fairly constant throughout the recessions and the recovery to-date, but the waiting lists are shorter.
- Vacancy rates in the Marina's small slips increased as a result of the recession and the continuing decline in fishing opportunities.
- Marina revenues declined as a result of the recession, but not as much as the industry average.
- Marina expenses continued to increase throughout the recession which has resulted in operating losses.
- The Marina staff is continuing to work on capital project planning but no major projects are planned for the immediate future.

MINUTES

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

May 2, 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 Mayor Kaplan.

ROLL CALL

Council present: Mayor Kaplan; Mayor Pro Tem Pina; Councilmembers Melissa Musser, Jeanette Burrage, Bob Sheckler, and Carmen Scott.

Staff present: City Manager Tony Piasecki; City Attorney Pat Bosmans; City Clerk Bonnie Wilkins.

COMMENTS FROM THE PUBLIC

There were no comments from the public.

BOARD & COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Councilmember Scott:

- Museum of History and Industry
 - Seattle Southside's Annual Tourism Networking Report
 - Official destination marketing organization for Tukwila, Sea Tac, Kent and Des Moines
 - 2012 Impact Report: \$625million spent in region

Councilmember Sheckler:

- Met with Congressmen Adam Smith
 - Federal EB5 Issue
 - Fully committed in helping to expedite the process

Councilmember Burrage:

No report

Mayor Pro Tem Pina:

- April 30, Finance & Economic Development Committee Meeting
 - Reviewed the Economic Development activity in the Business Park & Pacific Ridge
 - Artemis Hotel, EB5 Issue
 - Proposed Pacific Ridge Zoning revisions, moving forward
 - Started discussion on potential parking and sign code changes
 - Nuisance Properties Code
 - Received a request to consider potential rezoning of some property at the south end of the City.

Councilmember Musser:

- April 28, Des Moines Hosted their first Half Marathon, Snakezilla Clove to Clover
 - Recognized Mount Rainier Senior, Cameron Steadman, who won

PRESIDING OFFICER'S REPORT

- Seattle Southside Annual Meeting
 - City of Des Moines had the largest number of contingents at the meeting
 - Appreciative of Council's support for Tourist Promotion
 -

ADMINISTRATION REPORTS

No report

CONSENT CALENDAR

Item 1: DEPARTMENT OF NATURAL RESOURCES TIDELANDS LEASE – AMENDMENT I

Motion is to approve Aquatic Lands Agreement Amendment I (to Lease No. 20-A09080) with the Department of Natural Resources, correcting surveyor's errors and extending the lease termination date; and to authorize the City Manager to execute Amendment I substantially in the form as attached.

Direction/Action

Motion made by Councilmember Sheckler to approve the consent agenda; seconded by Mayor Pro Tem Pina.

Councilmember Scott mentioned that on page 34 of the item, Elliot Bay was listed instead of Des Moines Marina; will be noted as a Scrivener's Error in final draft.
The motion passed 6-0.

OLD BUSINESS

1. APPOINTMENT OF NEW COUNCILMEMBER

Direction/Action

Motion made by Councilmember Sheckler to nominate Jeremy Nutting to fill the temporary Council position; seconded by Councilmember Musser.
Motion passed 6-0

City Attorney Pat Bosmans swore in Jeremy Nutting.

ADJOURNMENT

Motion made by Councilmember Sheckler to adjourn; seconded by Councilmember Musser.
The motion passed 7-0

The meeting was adjourned at 7:15 p.m.

NEXT MEETING DATE

May 9, 2013 Regular City Council Meeting

Respectfully submitted,

Bonnie Wilkins
City Clerk

MINUTES

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

May 9, 2013 - 7:00 p.m.

CALL TO ORDER

Mayor Pro Tem Pina called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Scott.

ROLL CALL

Council present: Mayor Pro Tem Pina; Councilmembers Jeremy Nutting, Melissa Musser, Jeanette Burrage, Bob Sheckler, and Carmen Scott.

Mayor Kaplan was absent.

Councilmember Musser moved to excuse Mayor Kaplan; seconded by Councilmember Scott. The motion passed 6-0

Staff present: City Manager Tony Piasecki; City Attorney Pat Bosmans; Assistant City Manager Lorri Ericson; Park & Recreation Director Patrice Thorell; Acting Director of Community Development Denise Lathrop; City Clerk Bonnie Wilkins.

COMMENTS FROM THE PUBLIC

There were no comments from the public.

BOARD & COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Councilmember Scott:

- Pioneer Cemetery, located on S 200th Street & 18th Avenue, Open House Memorial Day Weekend

Councilmember Sheckler:

- Demolition to start at the Artemis Hotel on Wednesday, May 15, 2013

Councilmember Sheckler asks Council if they would be agreeable to switch New Business Item #1 with Old Business Item #1; no objections with Council.

Councilmember Burrage:

- Report on Affordable Housing
- Realtor's Briefing
 - Tuesday Luncheon –
 - Numbers on overall economy; people have less equity in their homes than they owe on their mortgages; 46% for Des Moines

Councilmember Musser:

- National Teacher Appreciation Week

Councilmember Nutting:

- No Report

PRESIDING OFFICER'S REPORT

- May 8, Sound Cities Association Public Issues Committee
 - Emergency Vote for Market Fairness Act (a bill that will cause internet sites to charge sales tax and bring some fairness back in the marketplace for brick and mortar stores); the bill passed
- May 20, Elected and Business Rally in Olympia to support a Transportation Funding Package
- Sound Cities Association is encouraging King County Metro to do some long range planning
 - Transportation going forward
 - City strategic plans are considered in the planning
 - Comprehensible approach to regional tolling; comprehensible plan
- May 9, Public Safety & Transportation Committee Meeting
 - Follow- up on Short Plat Frontage Improvements (sidewalks, etc)
 - Reviewed Transportation Improvement Plan (TIP)
 - Street access at 272nd and Pacific Highway; area of concern
 - Reviewed CIP Projects
- May 9, visit with Huntington Park residents
 - Artemis Hotel
 - Closure of QFC

ADMINISTRATION REPORTS

- City Manager Piasecki updated Council on improvements made at the curve at Marine View Drive and S 240th Street, which addresses some of the concerns brought to Council from the Zenith Neighborhood residents
 - Installation of a 30 MPH flashing light
 - Vegetation has been trimmed back allowing for better sight distance

PLANNING, BUILDING AND PUBLIC WORKS DEPARTMENT REORGANIZATION

Lorri Ericson briefed Council on the proposed reorganization of the Planning, Building and Public Works Department.

CONSENT CALENDAR

Item 1: APPROVAL OF MINUTES

Motion is to approve the minutes of the April 25, 2013 Regular Council Meeting and the April 25th and May 2nd Special City Council meetings.

Item 2: APPROVAL OF VOUCHERS

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

Claim checks: \$995,714.91

Payroll fund transfers: \$425,010.02

Total certified Wire Transfers, Voids, A/P & Payroll vouchers: \$1,420,724.93

Item 3: ACCEPTANCE OF EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) AWARD #2012-DJ-BX-0526

Motion is to accept the \$10,436 award from the Edward Byrne Memorial Justice Grant award #2012-DJ-BX-0526 under the terms and conditions listed within the JAG Grant and Interagency Agreement and to authorize the City Manager to sign the Interagency Agreement with the City of Seattle substantially in the form as attached.

Item 4: NATIONAL POLICE WEEK

Motion is to approve the Proclamation commemorating law enforcement officers, past and present by recognizing the week of May 12, 2013 as National Police Week and May 15, 2013 as Peace Officers' Memorial Day.

Direction/Action

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

The motion passed 6-0

Council broke at 7:21 p.m. for an Executive Session.

EXECUTIVE SESSION

The purpose of the Executive Session was discuss labor negotiations per Title 42.30.140(4)(a) RCW. In attendance were Mayor Pro Tem Matt Pina; Councilmembers Jeremy Nutting, Melissa Musser, Jeanette Burrage, Bob Sheckler, Carmen Scott; City Manager Tony Piasecki; Assistant City Manager Lorri Ericson.

The Executive Session adjourned at 7:34 p.m. No formal action was taken.

NEW BUSINESS

1. COMMUNITY TRANSFORMATION GRANT (CTG-2)
Staff Presentation: Park & Recreation Director Patrice Thorell
& Acting Community Development Director
Denise Lathrop

Direction/Action

Motion made by Councilmember Musser to approve the Draft Agreement between the City of Des Moines and Seattle Children's Hospital to accept \$47,720 Community Transformation Grant funds to develop physical activity standards and implement a pilot project for at City-operated before and after school programs and to authorize the City Manager to sign the Agreement substantially in the form as attached; seconded by Councilmember Sheckler.
The motion passed 6-0

Councilmember Sheckler left the meeting at 7:50 p.m.

OLD BUSINESS

1. PORT OF SEATTLE PART 150 NOISE AND LAND USE COMPATIBILITY
STUDY BRIEFING
Staff Presentation: Stan Shepherd, Manager of Noise Programs,
Seattle-Tacoma International Airport
Stan Shepherd gave a brief power point presentation on the Part 150 Noise program.

NEXT MEETING DATE

May 23, 2013 Regular City Council Meeting

ADJOURNMENT

Motion made by Councilmember Musser to adjourn; seconded by Councilmember Burrage.
The motion passed 5-0

The meeting was adjourned at 8:02 p.m.

Respectfully submitted,
Bonnie Wilkins
City Clerk

CITY OF DES MOINES
Voucher Certification Approval
23-May-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 May 23, 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.

| Claims Vouchers: | Numbers | | | Amounts | |
|--|---------|---|--------|------------|-------------------|
| Total A/P Checks/Vouchers | 135911 | - | 136064 | 154 | 740,100.81 |
| Electronic Wire Transfers | | | | | 0.00 |
| Subtotal for this Council Packet | | | | | 740,100.81 |
| Voided Claim Checks this check run: | | | | | 0.00 |
| Voided Claim Checks from previous check runs | 135777 | | | 1 | (104.03) |
| Total Claims/Wire Transfers/Voids | | | | 155 | 739,996.78 |
| Total certified Wire Transfers, Voids, A/P vouchers for May 23, 2013 | | | | | 739,996.78 |

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Construction Agreement with PSE for Utility Undergrounding on the 24th Avenue South Improvement Project (S. 216th Street to S. 208th Street)

AGENDA OF: May 23, 2013

DEPT. OF ORIGIN: Planning, Building & Public Works

DATE SUBMITTED: May 14, 2013

ATTACHMENTS:

- 1. Puget Sound Energy Project Construction Agreement

CLEARANCES:

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

APPROVED BY CITY MANAGER FOR SUBMITTAL: AS

Purpose and Recommendation:

The purpose of this item is for approval of the construction agreement (refer to Attachment 1), with Puget Sound Energy (PSE) for the undergrounding of the electrical distribution system within the project limits of the 24th Avenue South Improvement Project between South 216th Street and S. 208th Street, consistent with Council Direction provided on December 21, 2009. The following motion will appear on the consent calendar:

Suggested Motion

“I move to approve the Schedule 74 Project Construction Agreement with Puget Sound Energy for Underground Conversion on the 24th Avenue South Improvement Project (S. 216th Street to S. 208th Street), and further authorize the City Manager to sign the Agreement, substantially in the form as submitted.”

Background

The 24th Avenue South Improvement Project has been adopted as part of the Capital Improvement Program for the City of Des Moines. It is one of three arterial segments referred collectively as the Transportation Gateway Project. The project design is complete, permits have been approved, and construction funding is secured via an Agreement with the Port of Seattle and the Federal Highway

Administration via the Washington State Department of Transportation. The City is about ready to advertise the project for construction bids.

Staff conducted a utility coordination effort as part of the improvement project. All utilities within the project limits have been involved in the process. Overhead utilities, including PSE distribution lines (not high voltage transmission lines), Comcast, and Century Link, are being undergrounded.

The Des Moines Municipal Code contains the following section regarding undergrounding:

12.48.110 Improvement of streets, utility undergrounding.

The city council, when ordering the improvement of a street, whether financed by a local improvement district or city funds, shall determine whether the relocation of electrical and communication systems underground is required, and if so, the manner of payment therefore. [Ord. 1012 § 11, 1993.]

The undergrounding and funding of the 24th Avenue South Improvement Project has been discussed several times during Capital Improvement Program (CIP) budget discussions at a Council since 2009. At the October 22, 2009 Council meeting, staff provided a briefing to the Council on the preliminary design and design report, which included undergrounding of overhead utilities for the Gateway Project. At the November 12, 2009 Council meeting, the Council approved a supplement to the consultant agreement for Final Design, which included provisions for utility undergrounding.

At the December 21, 2009 Council meeting, the Council confirmed its policy direction regarding the undergrounding component of the project. The Council also directed staff to make the necessary arrangements to have all of the existing overhead utilities undergrounded, and authorized Puget Sound Energy (PSE) to proceed with the design of undergrounding the distribution system in accordance with the Schedule 74 Underground Conversion Project Design Agreement.

The PSE undergrounding design has been completed and has been incorporated into the City's project plans and specifications.

Discussion

The recently completed segment of South 216th Street between Marine View Drive and 11th Avenue South provides a good illustration of what an improved project can look like when the overhead utilities are undergrounded. Conversely, the 16th Avenue South Project provides an example of what an improvement looks like when overhead utilities are not undergrounded. There are many advantages and disadvantages to relocating utilities underground during roadway projects.

During the design phase of the project, the City met with utility purveyors to inform them of the City's plans, and to request their input and participation on the project. PSE has agreed to participate in the joint utility trench to be shared with the City, Century Link, and Comcast. The use of a joint utility trench reduces the costs for all of the parties. The undergrounding of PSE's facilities have been incorporated into the City's project plans and specifications.

Under the terms of the Construction Agreement, PSE is responsible for 60% of the total undergrounding costs, and the City is responsible for remaining 40%. The majority of the City's share of the costs are covered in the construction of the joint trench.

The 24th Avenue South Improvements were included in this year's CIP with a planned construction phase to begin in the fall of 2013. Accordingly, stall plans to advertise the project for construction bids in the Summer of 2013.

Project Status

The Tables below summarizes the recent actions that have or will come before the Council on future consent calendars. The action before the Council with this agenda item is italicized.

Agreement or Contract

| Agency / Utility | Council Authorization |
|---|---------------------------------|
| PSE Design Agreement | December 21, 2009 |
| <i>PSE Construction Agreement</i> | <i>Pending for May 23, 2013</i> |
| Century Link Construction Agreement | Pending |
| Comcast Construction Agreement | Pending for May 23, 2013 |
| Highline Water District Inter Local Agreement | Pending for May 23, 2013 |
| | |

Alternatives

There are no available alternatives that would not significantly impact the project schedule and budget. If the Council were to decide to reverse its previous direction, and not require the utilities to be undergrounded, additional right-of-way will need to be acquired by the City in order to accommodate the aerial relocation as there is currently insufficient right-of-way to accommodate this together with the proposed improvements.

Financial Impact

The costs associated with the undergrounding of utilities have been included within the project CIP budget.

Recommendation or Conclusion

Staff recommends that Council approve the Construction Agreement.

Concurrence

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

SCHEDULE 74 UNDERGROUND CONVERSION

Project Construction Agreement

Project Name: City of Des Moines – Transportation Gateway Project (24th Ave South)

Project Number: 101061089

THIS Agreement, dated as of this ____ day of _____, 20__, is made by and between the CITY OF Des Moines, a Municipal Corporation (the "Government Entity"), and PUGET SOUND ENERGY, Inc., a Washington Corporation (the "Company").

RECITALS

A. The Company is a public service company engaged in the sale and distribution of electric energy, and pursuant to its franchise or other rights from the Government Entity, currently locates its electric distribution facilities within the jurisdictional boundaries of the Government Entity.

B. The Government Entity has determined that it is necessary to replace the existing overhead electric distribution system within the area specified in the Project Plan (as defined below) (the "Conversion Area") with a comparable underground electric distribution system, all as more specifically described in the Project Plan (the "Conversion Project").

C. The Government Entity and the Company have previously entered into a Project Design Agreement dated as of November 30, 2009 (the "Design Agreement"), pursuant to which the parties completed certain engineering design, cost assessment, operating rights planning and other preliminary work relating to the Conversion Project and, in connection with that effort, developed the Project Plan.

D. The Government Entity and the Company wish to execute this written contract in accordance with Schedule 74 of the Company's Electric Tariff G ("Schedule 74") to govern the completion of the Conversion Project, which both parties intend shall qualify as an underground conversion under the terms of Schedule 74.

AGREEMENT

The Government Entity and the Company therefore agree as follows:

1. Definitions.

(a) Unless specifically defined otherwise herein, all terms defined in Schedule 74 shall have the same meanings when used in this Agreement, including, without limitation, the following:

- i) Cost of Conversion;
- ii) Public Thoroughfare;
- iii) Temporary Service;
- iv) Trenching and Restoration;
- v) Underground Distribution System; and
- vi) Underground Service Lines.

(b) "Company-Initiated Upgrade" shall mean any feature of the Underground Distribution System which is required by the Company and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For purposes of the foregoing, a "comparable" system shall include, unless the Parties otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less)

of such diameter and number as may be specified and agreed upon in the Project Plan necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced.

- (c) "Estimated Reimbursable Private Conversion Costs" shall mean the Company's good faith estimate of the Reimbursable Private Conversion Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (d) "Estimated Reimbursable Temporary Service Costs" shall mean the Company's good faith estimate of the Reimbursable Temporary Service Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (e) "Estimated Reimbursable Upgrade Costs" shall mean the Company's good faith estimate of the Reimbursable Upgrade Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (f) "Estimated Shared Company Costs" shall mean the Company's good faith estimate of the Shared Company Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (g) "Estimated Shared Government Costs" shall mean the Government Entity's good faith estimate of the Shared Government Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (h) "Government-Requested Upgrade" shall mean any feature of the Underground Distribution System which is requested by the Government Entity and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For purposes of the foregoing, any empty ducts installed at the request of the Government Entity shall be a Government-Requested Upgrade.
- (i) "Party" shall mean either the Company, the Government Entity, or both.
- (j) "Private Property Conversion" shall mean that portion, if any, of the Conversion Project for which the existing overhead electric distribution system is located, as of the date determined in accordance with Schedule 74, (i) outside of the Public Thoroughfare, or (ii) pursuant to rights not derived from a franchise previously granted by the Government Entity or pursuant to rights not otherwise previously granted by the Government Entity.
- (k) "Project Plan" shall mean the project plan developed by the Parties under the Design Agreement and attached hereto as Exhibit A, as the same may be changed and amended from time to time in accordance with Section 6, below. The Project Plan includes, among other things, (i) a detailed description of the Work that is required to be performed by each Party and any third party, (ii) the applicable requirements and specifications for the Work, (iii) a description of the Operating Rights that are required to be obtained by each Party for the Conversion Project (and the requirements and specifications with respect thereto), (iv) an itemization and summary of the Estimated Shared Company Costs, Estimated Shared Government Costs, Estimated Reimbursable Private Conversion Costs (if any), Estimated Reimbursable Temporary Service Costs (if any) and Estimated Reimbursable Upgrade Costs (if any), and (v) the Work Schedule.
- (l) "Operating Rights" shall mean sufficient space and legal rights for the construction, operation, repair, and maintenance of the Underground Distribution System.
- (m) "Reimbursable Private Conversion Costs" shall mean (i) all Costs of Conversion, if any, incurred by the Company which are attributable to a Private Property Conversion, less (ii) the distribution pole replacement costs (if any) that would be avoided by the Company on account of such Private Property Conversion, as determined consistent with the applicable Company distribution facilities

replacement program, plus (iii) just compensation as provided by law for the Company's interests in real property on which such existing overhead distribution system was located prior to conversion; provided that the portion of the Reimbursable Private Conversion Costs attributable to the Costs of Conversion under subparagraph (i) of this paragraph shall not exceed the Estimated Reimbursable Private Conversion Costs without the prior written authorization of the Government Entity.

- (n) "Reimbursable Temporary Service Costs" shall mean all costs incurred by the Company which are attributable to (i) any facilities installed as part of the Conversion Project to provide Temporary Service, as provided for in Schedule 74, and (ii) the removal of any facilities installed to provide Temporary Service (less salvage value of removed equipment); provided that the Reimbursable Temporary Service Costs shall not exceed the Estimated Reimbursable Temporary Service Costs without the prior written authorization of the Government Entity.
- (o) "Reimbursable Upgrade Costs" shall mean all Costs of Conversion incurred by the Company which are attributable to any Government-Requested Upgrade; provided that the Reimbursable Upgrade Costs shall not exceed the Estimated Reimbursable Upgrade Costs without the prior written authorization of the Government Entity.
- (p) "Shared Company Costs" shall mean all Costs of Conversion (other than Reimbursable Upgrade Costs, Reimbursable Private Conversion Costs and Reimbursable Temporary Service Costs) incurred by the Company in connection with the Conversion Project; provided, however, that the Shared Company Costs shall not exceed the Estimated Shared Company Costs without the prior written authorization of the Government Entity. For the avoidance of doubt, the "Shared Company Costs" shall, as and to the extent specified in the Design Agreement, include the actual, reasonable costs to the Company for the "Design Work" performed by the Company under the Design Agreement.
- (q) "Shared Government Costs" shall mean all Costs of Conversion incurred by the Government Entity in connection with (i) any duct and vault installation Work which the Parties have specified in the Project Plan is to be performed by the Government Entity as part of the Government Work, and (ii) the acquisition of any Operating Rights which the Parties have, by mutual agreement, specified in the Project Plan are to be obtained by the Government Entity for the Conversion Project, but only to the extent attributable to that portion of such Operating Rights which is necessary to accommodate the facilities of the Company; provided, however, that the Shared Government Costs shall not exceed the Estimated Shared Government Costs without the prior written authorization of the Company.
- (r) "Total Shared Costs" shall mean the sum of the Shared Company Costs and the Shared Government Costs. For the avoidance of doubt, the Total Shared Costs shall not include, without limitation, (i) costs to the Government Entity for Trenching and Restoration, or (ii) costs associated with any joint use of trenches by other utilities as permitted under Section 3(b).
- (s) "Work" shall mean all work to be performed in connection with the Conversion Project, as more specifically described in the Project Plan, including, without limitation, the Company Work (as defined in Section 2(a), below) and the Government Work (as defined in Section 3(a), below).
- (t) "Work Schedule" shall mean the schedule specified in the Project Plan which sets forth the milestones for completing the Work, as the same may be changed and amended from time to time in accordance with Section 6, below.

2. Obligations of the Company.

- (a) Subject to the terms and conditions of this Agreement, the Company shall do the following as specified in, and in accordance with the design and construction specifications and other requirements set forth in, the Project Plan (the "Company Work"):

- i) furnish and install an Underground Distribution System within the Conversion Area (excluding any duct and vault installation or other Work which the Parties have specified in the Project Plan is to be performed by the Government Entity);
 - ii) provide a Company inspector on-site at the times specified in the Work Schedule to inspect the performance of any duct and vault installation Work which the Parties have specified in the Project Plan is to be performed by the Government Entity; and
 - iii) upon connection of those persons or entities to be served by the Underground Distribution System and removal of facilities of any other utilities that are connected to the poles of the overhead system, remove the existing overhead system (including associated wires and Company-owned poles) of 15,000 volts or less within the Conversion Area except for Temporary Services.
 - (b) Upon request of the Government Entity, the Company shall provide periodic reports of the progress of the Company Work identifying (i) the Company Work completed to date, (ii) the Company Work yet to be completed, and (iii) an estimate regarding whether the Conversion Project is on target with respect to the Estimated Shared Company Costs, the Estimated Reimbursable Private Conversion Costs (if any), the Estimated Reimbursable Temporary Service Costs (if any), the Estimated Reimbursable Upgrade Costs (if any) and the Work Schedule.
 - (c) Except as otherwise provided in the Company's Electric Tariff G, the Company shall own, operate and maintain all electrical facilities installed pursuant to this Agreement including, but not limited to, the Underground Distribution System and Underground Service Lines.
 - (d) Subject to the terms and conditions of this Agreement, the Company shall perform all Company Work in accordance with the Project Plan, the Work Schedule and this Agreement.
3. Obligations of the Government Entity.
- (a) Subject to the terms and conditions of this Agreement, the Government Entity shall do the following as specified in, and in accordance with the design and construction specifications and other requirements set forth in, the Project Plan (the "Government Work"):
 - i) provide the Trenching and Restoration;
 - ii) perform the surveying for alignment and grades for ducts and vaults; and
 - iii) perform any duct and vault installation and other Work which the Parties have specified in the Project Plan is to be performed by the Government Entity.
 - (b) Other utilities may be permitted by the Government Entity to use the trenches provided by the Government Entity for the installation of their facilities so long as such facilities or the installation thereof do not interfere (as determined pursuant to the Company's electrical standards) with the Underground Distribution System or the installation or maintenance thereof. Any such use of the trenches by other utilities shall be done subject to and in accordance with the joint trench design specifications and installation drawings set forth or otherwise identified in the Project Plan, and the Government Entity shall be responsible for the coordination of the design and installation of the facilities of the other utilities to ensure compliance with such specifications and drawings.
 - (c) Upon request of the Company, the Government Entity shall provide periodic reports of the progress of the Government Work identifying (i) the Government Work completed to date, (ii) the Government Work yet to be completed, and (iii) an estimate regarding whether the Conversion Project is on target with respect to the Estimated Shared Government Costs and the Work Schedule.
 - (d) The Government Entity shall be responsible for coordinating all work to be performed in connection with the street improvement program within the Conversion Area.

- (e) Subject to the terms and conditions of this Agreement, the Government Entity shall perform all Government Work in accordance with the Project Plan, the Work Schedule and this Agreement.

4. Work Schedule.

- (a) The Government Entity and the Company have agreed upon the Work Schedule as set forth in the Project Plan. Changes to the Work Schedule shall be made only in accordance with Section 6, below.
- (b) Promptly following the execution of this Agreement, and upon completion by the Government Entity of any necessary preliminary work, the Government Entity shall hold a pre-construction meeting involving all participants in the Conversion Project to review project design, coordination requirements, work sequencing and related pre-mobilization requirements. Following the pre-construction meeting, the Government Entity shall give the Company written notice to proceed with the Work at least ten (10) business days prior to the commencement date specified in the Work Schedule.
- (c) Subject to the terms and conditions of this Agreement, each Party shall perform the Work assigned to it under this Agreement in accordance with the Work Schedule. So long as the Company performs the Company Work in accordance with the Work Schedule, the Company shall not be liable to the Government Entity (or its agents, servants, employees, contractors, subcontractors, or representatives) for any claims, actions, damages, or liability asserted or arising out of delays in the Work Schedule.

5. Location of Facilities.

All facilities of the Company installed within the Conversion Area pursuant to this Agreement shall be located, and all related Operating Rights shall be obtained, in the manner set forth in the applicable provisions of Schedule 74, as specified by the Parties in the Project Plan.

6. Changes.

- (a) Either Party may, at any time, by written notice thereof to the other Party, request changes in the Work within the general scope of this Agreement (a "Request for Change"), including, but not limited to: (i) changes in, substitutions for, additions to or deletions of any Work; (ii) changes in the specifications, drawings and other requirements in the Project Plan, (iii) changes in the Work Schedule, and (iv) changes in the location, alignment, dimensions or design of items included in the Work. No Request for Change shall be effective and binding upon the Parties unless signed by an authorized representative of each Party.
- (b) If any change included in an approved Request for Change would cause a change in the cost of, or the time required for, the performance of any part of the Work, an equitable adjustment shall be made in the Estimated Shared Company Costs, the Estimated Shared Government Costs, the Estimated Reimbursable Private Conversion Costs (if any), the Estimated Reimbursable Temporary Service Costs (if any), the Estimated Reimbursable Upgrade Costs (if any) and/or the Work Schedule to reflect such change. The Parties shall negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If the Parties are unable to agree upon the terms of the equitable adjustment, either Party may submit the matter for resolution pursuant to the dispute resolution provisions in Section 10, below.
- (c) The Work Schedule, the Estimated Shared Company Costs, the Estimated Shared Government Costs, the Estimated Reimbursable Private Conversion Costs, the Estimated Reimbursable Temporary Service Costs and/or the Estimated Reimbursable Upgrade Costs shall be further equitably adjusted from time to time to reflect any change in the costs or time required to perform the Work to the extent such change is caused by: (i) any Force Majeure Event under Section 11, below, (ii) the discovery of any condition within the Conversion Area which affects the scope, cost,

schedule or other aspect of the Work and was not known by or disclosed to the affected Party prior to the date of this Agreement, or (iii) any change or inaccuracy in any assumptions regarding the scope, cost, schedule or other aspect of the Work which are expressly identified by the Parties in the Project Plan. Upon the request of either Party, the Parties will negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If, at any time thereafter, the Parties are unable to agree upon the terms of the equitable adjustment, either Party may submit the matter for resolution pursuant to the dispute resolution provisions in Section 10, below.

- (d) Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, each Party shall, if requested by the other Party, proceed with the Work in accordance with any approved Request for Change. Any request to proceed hereunder must be accompanied by a written statement setting forth the requesting Party's reasons for rejecting the proposed equitable adjustment of the other Party.

7. Compensation and Payment.

- (a) Subject to and in accordance with the terms and conditions of this Agreement (including, without limitation, the payment procedures set forth in this Section 7), payment in connection with the Conversion Project and this Agreement shall be as follows:
- i) The Total Shared Costs shall be allocated to the Parties in the following percentages: (A) sixty percent (60%) to the Company, and (B) forty percent (40%) to the Government Entity.
 - ii) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Private Conversion Costs, if any.
 - iii) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Upgrade Costs, if any.
 - iv) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Temporary Service Costs, if any.
 - v) The Government Entity shall pay one hundred percent (100%) of the costs it incurs to perform that portion of the Government Work specified in Section 3(a)(i) and (ii) (i.e., Trenching and Restoration and surveying).
 - vi) The Company shall pay one hundred percent (100%) of the costs it incurs to design, provide and construct any Company-Initiated Upgrade.
 - vii) The Company shall pay one hundred percent (100%) of the costs it incurs to obtain Operating Rights outside the Public Thoroughfare.
- (b) Based on the allocation of responsibilities set forth in Section 7(a), above, the Parties shall determine the net amount payable by the Government Entity or the Company, as applicable, to the other Party under this Agreement (the "Net Amount"). The Net Amount shall be determined by using the amount of the Total Shared Costs allocated to the Government Entity under Section 7(a)(i), and adjusting such amount as follows:
- i) Subtracting (as a credit to the Government Entity) the amount of the Shared Government Costs.
 - ii) Adding (as a credit to the Company) the amount of all Reimbursable Private Conversion Costs, Reimbursable Upgrade Costs and Reimbursable Temporary Service Costs.
 - iii) Subtracting (as a credit to the Government Entity) any payments previously made to the Company by the Government Entity under the Design Agreement which, under the terms of the Design Agreement, are to be credited to the Government Entity under this Agreement.

The Net Amount, as so calculated, (A) will be an amount payable to the Company if it is a positive number, and (B) shall be an amount payable to the Government Entity if it is a negative number.

- (c) Within sixty (60) business days of completion of the Conversion Project, the Government Entity shall provide the Company with an itemization of the Shared Government Costs (the "Government Itemization"), together with such documentation and information as the Company may reasonably request to verify the Government Itemization. The Government Itemization shall, at a minimum, break down the Shared Government Costs by the following categories, as applicable: (i) property and related costs incurred and/or paid by the Government Entity, including any costs of obtaining Operating Rights, and (ii) construction costs incurred and/or paid by the Government Entity, including and listing separately inspection, labor, materials and equipment, overhead and all costs charged by any agent, contractor or subcontractor of the Government Entity.
- (d) Within thirty (30) business days after the Company's receipt of the Government Itemization and requested documentation and information, the Company shall provide the Government Entity a written statement (the "Company Statement") showing (i) an itemization of the Shared Company Costs, (ii) the Parties' relative share of the Total Shared Costs based on the Company's itemization of the Shared Company Costs and the Government Entity's itemization of the Shared Government Costs set forth in the Government Itemization, (iii) any Reimbursable Private Conversion Costs, (iv) any Reimbursable Upgrade Costs, (v) any Reimbursable Temporary Service Costs, (vi) any credits to the Government Entity for payments previously made to the Company by the Government Entity under the Design Agreement which, under the terms of the Design Agreement, are to be credited to the Government Entity under this Agreement, and (vii) the Net Amount, as determined in accordance with Section 7(b), above, together with such documentation and information as the Government Entity may reasonably request to verify the Company Statement. The itemization of the Shared Company Costs included in the Company Statement shall, at a minimum, break down the Shared Company Costs by the following categories, as applicable: (i) design and engineering costs, and (ii) construction costs, including and listing separately inspection, labor, materials and equipment, overhead and all costs charged by any agent, contractor or subcontractor of the Company.
- (e) Within thirty (30) business days after the Government Entity's receipt of the Company Statement and requested documentation and information, the Net Amount shall be paid by the owing Party to the other Party, as specified in the Company Statement.

8. Indemnification.

- (a) The Government Entity releases and shall defend, indemnify and hold the Company harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by or arising out of any negligent act or omission or willful misconduct of the Government Entity in its performance under this Agreement. During the performance of such activities the Government Entity's employees or contractors shall at all times remain employees or contractors, respectively, of the Government Entity.
- (b) The Company releases and shall defend, indemnify and hold the Government Entity harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by or arising out of any negligent act or omission or willful misconduct of the Company in its performance under this Agreement. During the performance of such activities the Company's employees or contractors shall at all times remain employees or contractors, respectively, of the Company.
- (c) Solely for purposes of enforcing the indemnification obligations of a Party under this Section 8, each Party expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, and agrees that the obligation to indemnify, defend and hold harmless provided for in this Section 8 extends to any such claim brought against the indemnified Party by or on behalf of any employee of the indemnifying Party. The foregoing waiver shall not in any way preclude the indemnifying Party from raising such immunity as a defense against any claim brought against the indemnifying Party by any of its employees.

9. Conversion of Service to Customers within Conversion Area.

- (a) Upon commencement of the Work, the Government Entity shall notify all persons and entities within the Conversion Area that service lines to such customers must be converted from overhead to underground service within the applicable statutory period following written notice from the Government Entity that service from underground facilities are available in accordance with RCW 35.96.050. Upon the request of any customer, other than a single family residential customer, within the Conversion Area, the Company shall remove the overhead system and connect such persons' and entities' Underground Service Lines to the Underground Distribution System.
- (b) The Parties acknowledge that single family residences within the Conversion Area must (i) provide a service trench and conduit, in accordance with the Company's specifications, from the underground meter base to the point of service provided during the conversion, and (ii) pay for the secondary service conductors as defined in Schedule 85 of the Company's Electric Tariff G. The Government Entity shall exercise its authority to order disconnection and removal of overhead facilities with respect to owners failing to convert service lines from overhead to underground within the timelines provided in RCW 35.96.050.

10. Dispute Resolution.

- (a) Any dispute, disagreement or claim arising out of or concerning this Agreement must first be presented to and considered by the Parties. A Party who wishes dispute resolution shall notify the other Party in writing as to the nature of the dispute. Each Party shall appoint a representative who shall be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute. Any dispute that is not resolved within ten (10) business days of the date the disagreement was first raised by written notice shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event the senior management are unable to resolve the dispute within twenty (20) business days (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute through other legal means consistent with the terms of this Agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.
- (b) Any claim or dispute arising hereunder which relates to any Request for Change or any equitable adjustment under Section 6, above, or the compensation payable by or to either Party under Section 7, above, and which is not resolved by senior management within the time permitted under Section 10(a), above, shall be resolved by arbitration in Seattle, Washington, under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The decision(s) of the arbitrator(s) shall be final, conclusive and binding upon the Parties. All other disputes shall be resolved by litigation in any court or governmental agency, as applicable, having jurisdiction over the Parties and the dispute.
- (c) In connection with any arbitration under this Section 10, costs of the arbitrator(s), hearing rooms and other common costs shall be divided equally among the Parties. Each Party shall bear the cost and expense of preparing and presenting its own case (including, but not limited to, its own attorneys' fees); provided, that, in any arbitration, the arbitrator(s) may require, as part of his or her decision, reimbursement of all or a portion of the prevailing Party's costs and expenses (including, but not limited to, reasonable attorneys' fees) by the other Party.
- (d) Unless otherwise agreed by the Parties in writing, the Parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute.

11. Uncontrollable Forces.

In the event that either Party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a Party, its contractors or a third party; or any failure or delay in the performance by the other Party, or a third party who is not an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with the Work or this Agreement. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Agreement or procure a substitute for such obligation. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

12. Insurance.

- (a) PSE shall, and shall require each of its contractors to, secure and maintain in force throughout the duration of the Conversion Project (or, if sooner, until termination of this Agreement) comprehensive general liability insurances, with a minimum coverage of \$1,000,000 per occurrence and \$1,000,000 aggregate for personal injury; and \$1,000,000 per occurrence/aggregate for property damages, and professional liability insurance in the amount of \$1,000,000.
- (b) The Government Entity shall ensure that each of its contractors performing any Government Work secures and maintains in force throughout the duration of the Conversion Project (or, if sooner, until termination of this Agreement) insurance policies having the same coverage, amounts and limits as specified Section 12(a), above.
- (c) In lieu of the insurance requirements set forth in Section 12(a), above, the Company may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the Government Entity's request, the Company shall provide the Government Entity with reasonable written evidence that the Company is maintaining such self-insurance.

13. Other.

- (a) Agreement Subject To Tariff. This Agreement is subject to the General Rules and Provisions set forth in Tariff Schedule 80 of the Company's electrical Tariff G and to Schedule 74 of such Tariff as approved by the Washington Utilities and Transportation Commission and in effect as of the date of this Agreement.
- (b) Termination. The Government Entity reserves the right to terminate the Conversion Project and this Agreement upon written notice to the Company. In the event that the Government Entity terminates the Conversion Project and this Agreement, the Government Entity shall reimburse the Company for all costs reasonably incurred by the Company in connection with the Work performed prior to the effective date of termination. In such event, the costs reimbursable to the Company (i) shall not be reduced by any Shared Government Costs or other costs incurred by the Government Entity, and (ii) shall be paid within thirty (30) days after the receipt of the Company's invoice therefor. Sections 1, 5, 7, 8, 9, 10, 11 and 13 shall survive any termination of the Conversion Project and/or this Agreement.
- (c) Facilities Greater Than 15,000 Volts. Nothing in this Agreement shall in any way affect the rights or obligations of the Company under any previous agreements pertaining to the existing or future facilities of greater than 15,000 Volts within the Conversion Area.

- (d) Compliance With Law. The Parties shall, in performing the Work under this Agreement, comply with all applicable federal, state, and local laws, ordinances, and regulations.
- (e) No Discrimination. The Company, with regard to the Work performed by the Company under this Agreement, shall comply with all applicable laws relating to discrimination on the basis race, color, national origin, religion, creed, age, sex, or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.
- (f) Independent Contractor. The Company and the Government Entity agree that the Company is an independent contractor with respect to the Work and this Agreement. The Company is acting to preserve and protect its facilities and is not acting for the Government Entity in performing the Work. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the Parties. Neither the Company nor any employee of the Company shall be entitled to any benefits accorded employees of the Government Entity by virtue of the Work or this Agreement. The Government Entity shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Company, or any employee of the Company.
- (g) Nonwaiver of Rights or Remedies. No failure or delay of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any other right under this Agreement, and no course of dealing or performance with respect thereto, shall, except to the extent provided in this Agreement, be construed as a waiver or, or choice of, or relinquishment of any right under any provision of this Agreement or any right at law or equity not otherwise provided for herein. The express waiver by either Party of any right or remedy under this Agreement or at law or equity in a particular instance or circumstance shall not constitute a waiver thereof in any other instance or circumstance.
- (h) No Third Party Beneficiaries. There are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, their respective successors, assigns and legal representatives.
- (i) Governmental Authority. This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental regulatory authorities and courts having jurisdiction over this Agreement, the Parties or either of them. All laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental regulatory authorities and courts that are required to be incorporated into agreements of this character are by this reference incorporated in this Agreement.
- (j) No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligations or liability upon either Party. Further, neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.
- (k) Severability. In the event that any provision of this Agreement or the application of any such provision shall be held invalid as to either Party or any circumstance by any court having jurisdiction, such provision shall remain in force and effect to the maximum extent provided by law, and all other provisions of this Agreement and their application shall not be affected thereby but shall remain in force and effect unless a court or arbitrator holds they are not severable from the invalid provisions.

- (l) Notice. Any notice under this Agreement shall be in writing and shall be faxed (with a copy followed by mail or hand delivery), delivered in person, or mailed, properly addressed and stamped with the required postage, to the intended recipient as follows:

If to the Government Entity:

City of Des Moines
 21650 11th Ave South
 Des Moines, WA 98198-6317
 Attn: Dan Brewer
 Fax: 206-870-6596

If to the Company:

Puget Sound Energy, Inc.
 6905 South 228th Street
 Kent, WA 98032
 Attn: Doug Corbin
 Fax: 253-395-6882

Any Party may change its address specified in this Section 13(l) by giving the other Party notice of such change in accordance with this Section 13(l).

- (m) Applicable Law. This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.
- (n) Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and all other agreements and understandings of the Parties, whether written or oral, with respect to the subject matter of this Agreement are hereby superseded in their entireties; provided, however, that except as expressly set forth in this Agreement, nothing herein is intended to or shall alter, amend or supersede the Design Agreement and the same shall remain in full force and effect in accordance with its terms.
- (o) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the Parties, including but not limited to, any entity to which the rights or obligations of a Party are assigned, delegated, or transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

Government Entity:

Company:

CITY OF DES MOINES

PUGET SOUND ENERGY, INC.

BY _____

BY _____

ITS _____

ITS Municipal Liaison Manager

Date Signed _____

Date Signed _____

Approved as to form:



Exhibit “A” Project Plan Schedule 74 Underground Conversion

City of Des Moines Transportation Gateway Project (24th Avenue South)

PSE Project Number: 101061089

May 8, 2013

Pursuant to Puget Sound Energy (“PSE”) Rate Schedule 74 and as described in this Project Plan, PSE will convert its existing overhead electrical distribution system of 15,000 volts or less to an equivalent Underground Distribution System. This Project Plan describes work to be performed by PSE and the City of Des Moines (the “City”) for the conversion of certain PSE electrical distribution system facilities as described herein (the “Conversion Project”). Construction of this Conversion Project is contingent upon and shall not commence prior to both written acceptance of this Project Plan and written execution of a Schedule 74 Construction Agreement by the City and PSE.

This Project Plan includes and consists of:

- Detailed description of the Construction Work to be performed
- Construction Drawings, Standards, Specifications and Requirements for the Construction Work (attached)
- Operating Rights to be obtained for the Conversion Project (attached)
- Construction Work Schedule
- Construction Costs Estimate Summary (attached)

Revisions to this Project Plan must be mutually approved by the City and PSE.

Scope of Work

This Conversion Project will replace PSE’s existing overhead electrical distribution system with an Underground Distribution System within the following area (the “Conversion Area”): 24th Avenue South generally located between S. 208th Street and S. 216th Street. The Conversion Project is approximately 3,802 feet in length, including laterals and road crossings.

The Conversion Project includes modification or replacement of all existing services lines within the Conversion Area to connect to the Underground Distribution System and removal of PSE’s existing overhead electric distribution facilities (including PSE distribution poles and pole mounted street lights) from the Conversion Area.

Fluidized Thermal Backfill (FTB, a form of controlled density fill) is required in trenches containing four or more PSE six inch ducts. FTB will be used in place of standard backfill as shown in the Construction Drawings in accordance with applicable PSE Standards.

PSE initiated upgrades included in this project consist of: None anticipated.

City requested upgrades included in this project consist of: 1) The Primary cut-over of 9 commercial customers outside of normal core working hours. The anticipate outages will take place on two separate outages. 2) PSE labor costs to research and comply with the Buy America provisions administered by the Federal Highways Administration (FHWA).

Outage number one will consist of: Prologis, Datasite Business Archives, and Rontra Freight located at 21086 24th Avenue South SeaTac Washington 98198.

Outage number two will consist of: Prologis, Group Health Coop, Europa Sports Products Inc., Jet Stream Freight, Nippon Express USA Inc., and Datasite Business Archives located at 21024 24th Avenue South SeaTac Washington 98198.

Datasite Business Archives, Kintetsu World Express, and King Wai Trading located at 21086 24th Avenue South SeaTac Washington 98198.

Shirley Stalgis; 21332 24th Ave South property has a backup generator for a disabled person. Temporary power must be coordinated by the City of Des Moines General contractor and the resident, Keith Morgavi, (206) 878-2765. PSE / Potelco will assist in coordination with the City's contractor. Any additional work to provide temp power to 21332 24th Ave South will be subject to a change order at 100% City Cost.

The following portions of PSE's existing facilities to be converted are located outside of Public Thoroughfare: None.

In conjunction with this Conversion Project, PSE will remove its existing street lighting system from the Conversion Area, in coordination with the City of Des Moines, and is anticipated when the City's street lighting system is complete and operational. Provision of a replacement street lighting system within the Conversion Area is not included in this Project Plan. Replacement street lighting service can be provided by separate arrangement in accordance with applicable PSE Tariff Schedules.

Responsibilities of Parties

City Responsibilities

- a) Provide written notice to customers within the Conversion Area in advance of Conversion Project Construction Work start. The notice will include contact information for both the City and PSE, the expected Conversion Project schedule, anticipation of service interruptions and work required to be performed by customers.
- b) Coordinate other utility conversion, removal and relocation from PSE's poles.
- c) Provide all surveying for equipment placement, locations, and establish all grade elevations for the Underground Distribution System within the Conversion Area.

- d) Provide all necessary excavation, bedding, backfill, off-site disposal, site restoration and coordination for installation of the Underground Distribution System. This includes trenching, backfill, and restoration for cut-over and transfer of existing underground system and service lines from the existing overhead distribution system to the new Underground Distribution System.
- e) Coordinate private property trenching, excavation and restoration activity with private property owners affected by this Conversion Project.
- f) Provide flagging and traffic control as required for all work performed by the City.
- g) Install and proof all ducts and vaults for the Underground Distribution System (excluding work in ducts or vaults containing energized cables or equipment – see PSE Responsibilities) in accordance with PSE standards and specifications using ducts and vaults provided by PSE. “Proofing” as used herein is defined as verification using a mandrel that the duct and vault system is free and clear of damage, installed to the proper grade and at the proper location and contains a pulling line.
- h) Provide PSE at least ten (10) business days notice prior to the start of trenching activity to allow for delivery of PSE materials to the job site and scheduling of PSE’s on-site Inspector. Provide at least two (3) business days notice for scheduled delivery of vaults from the manufacturer.
- i) Provide secure staging and storage area(s) for duct and vault materials provided by PSE. The City shall be responsible for the security and condition of these materials until they are installed and accepted by PSE or returned to PSE’s custody.
- j) Provide labor and equipment for the off-loading of PSE duct and vault materials delivered to the job site.
- k) Promptly following notice from PSE that the Underground Distribution System has been energized, provide notice to customers within the Conversion Area informing them of their obligation and responsibility to convert their overhead service lines to underground service lines as provided by state law or to modify existing underground service lines for connection to the Underground Distribution System. Affected service lines are listed in the Service Lines section of this Project Plan.
- l) Facilitate weekly (or as otherwise agreed by the City and PSE) construction coordination meetings to include all relevant parties participating in the conversion including PSE and it’s contractor(s), the City and it’s contractor(s), and other utilities.
- m) Provide any necessary operating rights for the installation of PSE’s facilities in accordance with PSE’s Schedule 74 Section 3 and as mutually agreed by the PSE and the City. Operating rights are further addressed in the Operating Rights section of this Project Plan.
- n) Modify, reroute or replace service lines to City owned facilities to connect to the Underground Distribution System.
- o) Following notification from PSE that Construction Work is complete; provide to PSE any Shared Government Costs as provided for in the Construction Agreement.

Puget Sound Energy Responsibilities

Provide all duct and vault materials, cables, electrical equipment and components necessary for installation of the Underground Distribution System including certification of materials of origin for products with steel that must meet the Buy America provisions administered by the Federal Highways Administration. FHWA. Any additional cost related to meeting this requirement will be covered by change order at 100% City cost.

- a) Following notice from the City, deliver or cause to be delivered all duct and vault materials to the designated staging/storage area(s). Acknowledge delivered quantities and condition of duct and vault materials by signing shipping manifests.
- b) Following notice from the City, provide inspection services needed for overseeing the proper installation of ducts and vaults by the City.
- c) Accept delivery of the completed duct and vault system once the new system has been proofed (as described above) by the City. PSE will provide a mandrel to the City to be used in proofing of the duct and vault system.
- d) Provide PSE electrical workers to complete duct installation and proofing when such work is performed at or in any energized vault containing energized cables or equipment.
- e) Install (except for ducts and vaults installed by the City) and energize the Underground Distribution System. Provide written notice to the City when the Underground Distribution System is energized.
- f) Perform cut-over and transfer of existing Underground Distribution System and existing underground service lines from the overhead distribution system to the new Underground Distribution System where applicable (see City Responsibility item "d" concerning trenching responsibility). PSE will notify the City for excavation and the affected customers at least two (2) business days prior to installation, transfer, and connection of underground service lines. Affected service lines are listed in the Service Lines section of this Project Plan.
- g) Install and connect replacement underground service lines to single family residences and connect modified and replacement non-residential underground service lines provided by customers within the Conversion Area pursuant to PSE Tariff Schedule 85. Affected service lines are listed in the Service Lines section of this Project Plan.
- h) Remove the existing overhead electric distribution system including, conductors, equipment, down guys, anchors and poles after all service lines to customers within the Conversion Area are connected to the Underground Distribution System and all other utilities have been removed from PSE's poles. Holes left following removal of poles will be filled with crushed rock and compacted in accordance with applicable City standards or specifications.
- i) Provide flagging and traffic control as required for all work performed by PSE (except as may otherwise be reasonably provided by the City during installation of ducts and vaults in conjunction with City performed trenching, excavation, back-fill and restoration).
- j) Attend weekly (or as otherwise agreed by the City and PSE) construction coordination meetings facilitated by the City and its contractor during periods of Conversion Project construction.
- k) Agrees to conform to FHWA guidelines regarding Buy America.

Operating Rights

The Underground Distribution System will be located within Public Thoroughfare except as described in the Operating Rights Attachment. The Construction Work will not be released by PSE for construction until i) all operating rights necessary for the installation of PSE's facilities have been obtained and have been verified by PSE, or ii) the City otherwise signs an agreement releasing PSE from any and all financial obligations associated with the location or relocation of PSE facilities resulting from commencement of construction prior to acquisition of all identified necessary operating rights.

Construction Work Schedule

The work will be performed in accordance with the following Work Schedule, unless this schedule is revised by mutual agreement of the City and PSE or circumstances beyond the reasonable control of the City and/or PSE preclude such performance.

Installation of ducts and vaults: Late Summer/Fall 2013 through Winter/spring 2014.

Installation and energization of the Underground Distribution System: Winter/Spring 2014.

Removal of overhead facilities: Begin ten (10) days after all services have been converted and the removal of other utilities from PSE poles. The removal of the existing street lighting system shall be coordinated with The City of Des Moines.

Installation and removal of Temporary Service: None required.

Work Schedule Restrictions: Subject to permit requirements.

Construction Cost Estimate

The estimated costs to perform the Construction Work and the allocation of costs between the parties are presented in the attached Construction Costs Estimate Summary. These estimated costs are valid for ninety (90) days from the date shown on the attached Construction Costs Estimate Summary. If this Project Plan and the Construction Agreement are not fully executed within ninety (90) days from the date shown on the attached Construction Costs Estimate Summary the estimated costs shall be subject to revision.

The previously executed Design Agreement has been fulfilled with the submission of the attached Construction Plans and Construction Agreement. The construction costs provided include costs associated with construction starting with a pre-construction meeting called by the City and attended by the City's contractor. Time spent on this project at the request of the City between the date of this Project Plan and the pre-construction meeting will be compensated by Change Order.

Estimated Inspection and Service Provider Outside Services costs are based on 2013 contract rates. Costs for work performed by PSE after January 31, 2014 shall be subject to revision to reflect contract rates which become effective after this date. Further, in the event performance of the Construction Work does not proceed substantially as provided in this Project Plan, PSE's estimated construction costs shall be subject to revision.

Changes in Construction Work scope, performance and/or schedule can result in actual Construction Costs which significantly differ from estimated costs shown in the Construction Cost Estimate Summary. Such changes shall promptly be brought to the attention of PSE and the City when anticipated or known to occur and shall be documented in a Change Order mutually agreed by the City and PSE.

Project Assumptions

The project design, construction plans and cost estimates are based on and reflect the following assumptions. Construction conditions that are not consistent with these assumptions may result in a request for change or an equitable adjustment to project compensation under Section 6 of the Construction Agreement.

Cost Assumptions

1. The Construction Work will be performed in accordance with the Construction Drawings and Construction Work Schedule.
2. PSE's Project Manager will accept or reject (with written justification) the duct and vault installation work performed by the City within five (5) business days notice of completion from the City. In the event PSE rejects any of the ducts or vaults (with reasonable written justification); the City will perform the necessary remedial work. The City will then re-notify PSE and PSE shall have five (5) business days to accept or reject the remedial work.
3. All PSE cables can be pulled through the ducts and vaults system to be used for the Conversion Project utilizing normal cable pulling equipment and methods.
4. A City Street Use permit is the only permit necessary for PSE to perform its work for this Conversion Project and will be issued within two (2) weeks of PSE submitting a complete

permit application (including any supporting documentation reasonably required by the City). There will be no charge for the permit or inspection fees.

5. The estimated daily productivity rate for PSE duct and vault installation is based on the City's contractor opening a minimum of 60 feet of trench per working day. The daily productivity rate is used to estimate the number of days a PSE Inspector will be required during installation of ducts & vaults. The Inspector will be scheduled in full day increments and in one continuous effort. Changes to a continuous schedule require a minimum of (3) three days advance notice and must be mutually agreed between the City and PSE.
6. Included in the project pricing is attendance by the PSE Project Manager at scheduled weekly construction meetings while the duct and vaults are actively being installed and when the PSE line crew is on site. Additional meetings that may be required while PSE facilities are not being installed will be compensated on a Change Order basis.
7. Traffic control provided by PSE assumes the use of two flaggers, basic signage and simple channelization. Additional traffic control measures are not included.
8. Work to be performed by PSE does not include installation and/or removal of Temporary Service facilities at the request of others during construction.
9. All cut-over and transfer work will be completed during regular working hours. Exception is the businesses served by the Prologis facility noted in the scope of work. Where underground service connections currently exist and PSE coordination is required to avoid business disruptions.
10. If new guy anchors are required they shall be installed prior to installation of new ducts in the same area.
11. When Fluidized Thermal Backfill (FTB) is used, associated cost will be allocated 100% to PSE when required for a Company Initiated Upgrade and otherwise 100% to the City.
12. Installation of protective bollards may be necessary at some locations and may not be included in the project design. In the event unplanned bollards are required they shall be installed in accordance with City requirements.

Schedule

1. There will be a total of two (2) PSE crew mobilizations as follows: i) one mobilization of an underground line crew for installation of underground conductors and equipment; and ii) one mobilization of an overhead line crew for removal of the existing overhead facilities. Once mobilized PSE crews will have continuous productive work until all PSE Construction Work is complete.
2. All PSE Construction Work will be performed during regular working hours from 8:00 am to 5:00 pm excluding holidays. In the event that lane closures are necessary for performance of work, PSE shall be limited to working between the hours of (same as regular working hours). PSE and the City will mutually agree to weekly work schedules for the Construction Work. PSE shall be allowed to perform PSE work as scheduled without changes or interruptions caused by other construction activities.
13. Work requiring scheduled interruption of electric service (cut-overs and transfers) will be performed during the working hours specified in Schedule Assumption #2 above, and will be scheduled with at least two (2) business days notice. Exception are the businesses served by

the ProLogis facility as noted in the Scope of Work. These cut-overs and transfers will be coordinated to avoid business disruptions, and may take place outside the regular business hours listed above. PSE will notify customers of scheduled service interruptions.

Additional Considerations

Service Lines

Service lines within the Conversion Area must be modified or replaced to provide underground service from the Underground Distribution System as described and listed in the PSE Construction Drawings. Performance of the work and associated costs shall be governed by PSE Tariff Schedule 85.

The individual Addresses to be converted are:

Maria Isabel Gomez; 21228 24th Ave South

Zoe O. Carlson; 21236 24th Ave South

AHHS LLC; 21326 24th Ave South

Shirley Stalgis; 21332 24th Ave South (property has a backup generator for a disabled person and resident, Keith Morgavi, (206) 878-2765

Jose Martinez; 21214 24th Ave South

PSE – NKING; 21221 24th Ave South

Jane A. Jones; 21222 24th Ave South

Artemio A. Diego; 20830 24th Ave South

Esteban Valdez Ruiz; 20818 24th Ave South

Cut-overs and Transfers

PSE customers within the Conversion Area will experience interruption of electric service during performance of the Construction Work when transferring system and customer loads from the overhead distribution system to the Underground Distribution System. PSE will notify customers at least two (2) business days in advance of expected service interruptions. Customers may request that cut-over and transfer work affecting their service be performed outside the regular working hours listed above subject to the customer's written agreement to reimburse PSE for the additional cost (at overtime rates) to perform such work outside the regular working hours.

New Service

Connection of new or increased load for City facilities (such as new traffic signals) under terms of PSE Tariff Schedule 85 will be addressed on a separate work order and work sketch. Additional costs may apply and will be quoted separately.

PSE Design & Construction Standards

This Conversion Project has been designed and will be constructed in accordance with PSE design and construction standards in effect as of the date of this Project Plan. PSE standards

applicable to Construction Work to be performed by the City have been provided to the City in PSE's "Electric Distribution Trench/Duct/Vault Construction Standards, 2011". All relevant PSE standard described above are attached to this Project Plan by this reference.

Temporary Support (Holding) of PSE Poles

Whenever any pole(s) are required to be temporarily supported (held) due to excavation in proximity to such poles, the City will coordinate with PSE to provide such support. The need to temporarily support such poles shall be determined by PSE, and if required, such support shall be provided by PSE. As used herein, "temporary support" means supporting one or more poles for a continuous working period of ten hours or less.

Acceptance of Project Plan

The City and PSE mutually agree to and accept this Project Plan as of the date indicated below:

For the City:

For PSE:

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____



Date: 5/7/2013

Project Title: 24th Ave conversion 24th Ave from 208th to 216th

Project Description: Convert the existing overhead distribution to underground 24th Ave conversion 24th Ave from 208th to 216th

Rate Schedule: 74

Project Manager / Phone #: Dennis Booth 253-606-4787

Project Engineer / Phone #: Dennis Booth 253-606-4787

Municipal Liaison Mgr / Phone #: Doug Corbin 253-395-6867

Project #: 101061089

Revision #:

Revision Date:

Construction Costs Estimate Summary^{1,2,5}

| Company | Shared Costs ³ Estimate | 100% Government Entity Reimbursable Costs | | | | | | Construction Costs Totals ^{4,5} Estimate |
|--|---------------------------------------|---|--------------------------------|-----------------------------------|---|--|-------------------------------|---|
| | | Private Conversion Estimate | Gov Req Upgrade Estimate | Temporary Services Estimate | Prior Conv/Reloc Within 5 Years Estimate | Total 100% GE Reimbursable Costs Estimate | 100% PSE Costs Estimate | |
| Labor | \$ 1,500 | \$ - | \$ 2,000 | \$ - | \$ - | \$ 2,000 | \$ - | \$ 3,500 |
| Materials | \$ 204,700 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 204,700 |
| Equipment | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Inspection | \$ 51,800 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 51,800 |
| Service Provider Outside Services | \$ 210,600 | \$ - | \$ 2,800 | \$ - | \$ - | \$ 2,800 | \$ - | \$ 213,400 |
| Operating Rights | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Overhead | \$ 72,100 | \$ - | \$ 800 | \$ - | \$ - | \$ 800 | \$ - | \$ 72,900 |
| Government Entity⁵ | | | | | | | | |
| Labor | \$ 85,400 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 85,400 |
| Operating Rights | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Construction Costs Totals^{4,5} | \$ 626,100 | \$ - | \$ 5,600 | \$ - | \$ - | \$ 5,600 | \$ - | \$ 631,700 |

Projected allocation of Estimated Construction Costs at Completion of Construction Work

| | | | | | | | | |
|-------------------|------------|------|------|------|----------|------|------|------------|
| Company | \$ 375,700 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 375,700 |
| Government Entity | \$ 250,400 | \$ - | \$ - | \$ - | \$ 5,600 | \$ - | \$ - | \$ 256,000 |

Notes:

¹ Estimate prepared in accordance with Sections 6 & 11 of Schedule 74 Design Agreement and Section 7 of Schedule 74 Construction Agreement

² All amounts shown in this estimate are rounded up to the next \$100

³ Shared Costs are allocated 40% to the Government Entity and 60% to the Company if the Conversion Project is completed

⁴ Total Costs excludes Government Entity costs of trenching, restoration, and surveying

⁵ This estimate presentation may not include eligible estimated Government Entity costs and may be incomplete

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Joint Utility Trench Agreement with Comcast for the 24th Avenue South Improvements (S. 216th Street to S. 208th Street)

AGENDA OF: May 23, 2013

DEPT. OF ORIGIN: Planning, Building & Public Works

DATE SUBMITTED: May 14, 2003

ATTACHMENTS:

- 1. Joint Trench Agreement with Comcast

CLEARANCES:

- Legal PB
- Finance TR
- 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 for approval of a joint utility trench agreement with Comcast (refer to Attachment 1), to document and establish roles and responsibilities for the utility undergrounding improvements on the 24th Avenue South Improvement project between South 216th Street and South 208th Street, consistent with Council Direction provided on December 21, 2009. The following motion will appear on the consent calendar:

Suggested Motion

“I move to approve the attached joint trench Utility Agreement with Comcast for the utility undergrounding improvements of the 24th Avenue South Improvement Project (S. 216th Street to S. 208th Street), and further authorize the City Manager to sign the Agreement, substantially in the form as submitted.”

Background

The 24th Avenue South Improvement Project has been adopted as part of the Capital Improvement Plan for the City of Des Moines. It is one of three arterial segments referred collectively as the Transportation Gateway Project. The project design is complete, permits have been approved, and construction funding is secured via an Agreement with the Port of Seattle and the Federal Highway Administration via the Washington State Department of Transportation. The City is about ready to advertise the project for construction bids.

Staff conducted a utility coordination effort as part of the improvement project. All utilities within the project limits have been involved in the process. Overhead utilities, including PSE, Comcast, and Century Link, are being undergrounded.

The Des Moines Municipal Code contains the following section regarding undergrounding:

12.48.110 Improvement of streets, utility undergrounding.

The city council, when ordering the improvement of a street, whether financed by a local improvement district or city funds, shall determine whether the relocation of electrical and communication systems underground is required, and if so, the manner of payment therefore. [Ord. 1012 § 11, 1993.]

The undergrounding and funding of the 24th Avenue South Project has been discussed several times during Capital Improvement Program (CIP) budget discussions at a Council since 2009. At the October 22, 2009 Council meeting, staff provided a briefing to the Council on the preliminary design and design report, which included undergrounding of overhead utilities for the Gateway Project. At the November 12, 2009 Council meeting, the Council approved a supplement to the consultant agreement for Final Design, which included provisions for utility undergrounding.

At the December 21, 2009 Council meeting, the Council confirmed its policy direction regarding the undergrounding component of the project. The Council also directed staff to make the necessary arrangements to have all of the existing overhead utilities undergrounded, and authorized Puget Sound Energy (PSE) to proceed with the design of undergrounding the distribution system in accordance with the Schedule 74 Underground Conversion Project Design Agreement.

The PSE undergrounding design has been completed and has been incorporated into the City's project plans and specifications.

Discussion

During the design phase of the project, the City met with utility purveyors to inform them of the City's plans, and to request their input and participation on the project. Comcast has agreed to participate in the joint utility trench to be shared with the City, Century Link, and Puget Sound Energy. The use of a joint utility trench reduces the costs for all of the parties. The undergrounding of Comcast facilities have been incorporated into the City's project plans and specifications.

Under this Agreement (refer to Attachment 1), the City's contractor will install Comcast provided vaults and conduit within the joint utility trench area. Comcast will be responsible for installing any of their conduits and vaults located outside of the joint utility trench area, and for providing and installing their own wiring within the system, and making all wiring connections. The Agreement requires Comcast to abide by the City's construction schedule.

The agreement has provisions for Comcast's timely delivery of materials to the project, as well as their timely wiring and connection of the new system, and removal of the existing aerial system. The Agreement requires Comcast to meet the City's schedule for completing the work. It also requires Comcast to pay for any delays they cause should they fail to deliver material on schedule, or delay the contractor in any way. It also requires Comcast to pay for any changes they request or changes that are required as a result of errors in Comcast's design.

Comcast has agreed to participate in their costs for the utility undergrounding improvements along 24th Avenue South, for an estimated amount of \$136,187. The final amount will depend on the actual quantities installed and the contract unit bid prices. The purpose of these funds is to pay for Comcast's fair share of the cost of the utility trench excavation, conduit and vault installation, trench bedding and backfill, and trench restoration.

The 24th Avenue South Project is included in this year's CIP with a planned construction phase to begin in the fall of 2013. Accordingly, staff plans to advertise the project for construction bids in the summer of 2013.

Project Status

The Tables below summarizes the recent actions that have or will come before the Council on future consent calendars. The action before the Council with this agenda item is italicized.

Agreement or Contract

| Agency / Utility | Council Authorization |
|---|---------------------------------|
| PSE Design Agreement | December 21, 2009 |
| PSE Construction Agreement | Pending for May 23, 2013 |
| Century Link Construction Agreement | Pending |
| <i>Comcast Construction Agreement</i> | <i>Pending for May 23, 2013</i> |
| Highline Water District Inter Local Agreement | Pending for May 23, 2013 |
| | |
| | |

Alternatives

There are no available alternatives that would not significantly impact the project schedule and budget. If the Council were to decide to reverse its previous direction, and not require the utilities to be undergrounded, additional right-of-way will need to be acquired by the City in order to accommodate the aerial relocation as there is currently insufficient right-of-way to accommodate this together with the proposed improvements.

Financial Impact

The costs associated with the undergrounding of utilities have been included within the project CIP budget.

Recommendation or Conclusion

Staff recommends that Council approve the Construction Agreement.

Concurrence

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

JOINT UTILITY TRENCH AGREEMENT

Between the City of Des Moines and Comcast

For the 24th Avenue South Improvements

S. 216th Street to S. 208th Street

THIS Agreement is entered into between the City of Des Moines, a Washington municipal corporation ("City"), and Comcast of Washington IV, Inc., a Washington corporation ("Comcast"). This Agreement may refer to Comcast or to City as a Party ("Party") or Parties ("Parties") to this Agreement.

RECITALS

WHEREAS, the City is undertaking a capital improvement project known as the 24th Avenue South Improvement Project (hereinafter referred to as the "Project"); and

WHEREAS, Comcast owns and operates certain utilities located in the 24th Avenue right-of-way and within and adjacent to the project limits of the Project and that Comcast has a franchise agreement with the City to operate in said right-of-way; and

WHEREAS, pursuant to the franchise agreement adopted by Ordinance 1327, (effective date of August 30, 2003), the right-of-way improvements require Comcast to underground its facilities that are currently located above ground; and

WHEREAS, relocation requires trenching within the right-of-way and the parties recognize the efficiencies of entering into an agreement whereby one trench will be dug for all of the parties to relocate their facilities; and

WHEREAS, integrating Comcast's work into the City's Project would be more expedient, less expensive, and less disruptive to the public than undertaking both the City's and Comcast's projects separately; and

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

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

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

WHEREAS, Comcast has taken appropriate action to approve Comcast's entry into this Agreement;

NOW THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, or attached and incorporated and made part hereof, the Parties agree as follows:

AGREEMENT

1. SCOPE OF WORK.

The City will advertise for construction bids and enter into a contract for the construction of a trench which shall include power and/or communication facilities for the City, Comcast, Century Link, and PSE. This trench will generally be constructed along the west side of 24th Avenue South between approximately S. 216th Street and approximately S. 208th Street.

2. TERM AND TERMINATION.

This Agreement shall commence on May 31, 2013 and shall continue for a period of 24 (twenty four) months, unless earlier terminated pursuant to this Agreement.

In the event that either party defaults in the performance of its obligations herein, notice shall be given by the other party of its intent to terminate the Agreement for cause, to be effective thirty (30) days thereafter, unless that cause is cured within thirty (30) days after such notice.

3. CONTRACTOR REQUIREMENTS.

The independent contractor hired by the City to perform this work shall be referred to as “the contractor” in this Agreement. The contractor, pursuant to a contract with the City, shall excavate the trench, install City, PSE, Century Link, and Comcast facilities, install the bedding material, backfill and compact the trench, and perform any restoration required by the City, all to be performed in a good and workmanlike manner consistent with industry standards. The City represents that any such contract shall further require of contractor that the work be conducted in conformity with (i) the applicable procedures and requirements of the parties as described herein; (ii) all applicable laws, ordinances and regulations, and; (iii) all applicable terms and provisions of the National Electric Safety Code, including but not limited to those pertaining to protection and separation of conductors buried in earth.

4. RESPONSIBILITIES OF THE PARTIES.

A. Comcast

1. Comcast shall provide to the City, and assume full responsibility for, engineering drawings, specifications, construction standards, and quantities in accordance with acceptable industry standards and City Franchise. The drawings shall show in detail the location and elevation of the conduits, trench, and vaults, and shall include a general traffic control plan for activities not associated with installation of facilities within the contractor controlled joint utility trench area.

2. Comcast shall obtain a permit from the City for the underground relocation of Comcast's facilities.
3. Comcast shall be responsible for supplying all materials necessary for the construction of its new conduit and vault system within the joint utility trench area. Comcast will deliver all of these materials to the job site for installation by the City's contractor. Comcast will arrange with the City's contractor any required material storage and/or security until the materials are installed.
4. Comcast acknowledges and agrees that the project is federally by the FHWA and is subject to 23 CFR635.410 and Comcast will certify that materials provided to our contractor for installation and materials provided and installed by Comcast Crews that contain steel, will conform to the Buy America provisions including providing the City with a certification of materials origin (COM) delivered to the site, except for those items exempted as described in Exhibit B.
5. Comcast shall provide inspection services needed for overseeing the proper installation of its new conduit and vault system within the joint utility trench area. Any problems identified during the installation shall be immediately reported to the City. Comcast shall cooperate in providing timely inspections so that progress of the work is not delayed.
6. Final Inspection and Acceptance. When Comcast's new conduit and vault system within the joint utility trench area is completed by the City's contractor, the City will provide Comcast written notice of its completion and request Final Inspection and Acceptance from Comcast. Within seven (7) calendar days of the City's notice, Comcast will complete a Final Inspection of the new system. Comcast shall give notice of Final Acceptance to the City within three (3) working days of completing the Final Inspection. In the event that Comcast determines that the work has not been completed per design, Comcast shall specify in writing what work remains to be done or what corrections need to be made, also within three (3) working days of completing Final Inspection. The City will notify Comcast when such identified items are completed, where upon Comcast shall again commence Final Inspection under the process set forth herein. Comcast shall not begin work on the conduit and vault system inside or outside of the joint utility trench area, until the Notice of Final Acceptance has been provided to the City. Comcast shall be responsible for any delay costs incurred by the City in the event Comcast fails to meet the Final Inspection and Acceptance schedule.
7. Schedule for Comcast Relocation Work. Following Comcast's Final Acceptance of the new conduit and vault system within the joint utility trench area, Comcast will have twenty-two (22) working days to initiate placement of its facilities and request activation of its Power Supplies by PSE. Upon activation of Power Supplies by PSE, a second twenty-two (22) working day period will commence during which COMCAST will complete placement of facilities, make necessary cut-overs, and remove overhead facilities.

8. Comcast shall provide and install all other conduits, vaults, equipment, and other materials necessary to complete the Comcast conduit and vault system located outside of the joint utility trench area.
9. Comcast will provide all cables and labor to install cables in the new conduit and vault system, labor to splice cable, and labor to perform service cutover from the existing system to the newly constructed system.
10. Comcast will perform cut-over and transfer of existing Comcast customers as Franchise requires.
11. Comcast will notify the City in writing when Comcast's installation is complete and the system has been activated.
12. Comcast will remove its existing aerial cables, equipment, and poles in conflict with the City's project.
13. Comcast will be responsible for providing all traffic control associated with the pulling of cables and associated equipment, and the removal of Comcast's existing facilities. Traffic control and other permits needed for pulling cables and installing other associated equipment will be obtained from the City by Comcast.
14. Comcast will pay its proportionate share of the joint utility trench costs as described in Section 5 of this Agreement.
15. All rights, title, and interest in Comcast facilities and associated equipment shall at all times remain with Comcast. Parties hereto acknowledge and agree that Comcast shall in no event be required to remove their respective, affected aerial facilities prior to completion of the underground facilities in accordance with this Agreement, and so long as said installation is completed in conformity with this Agreement.
16. Comcast shall maintain continued coordination with the City regarding the installation of Comcast's facilities. This coordination shall include but not be limited to the following:
 - a. Comcast representatives shall attend the pre-construction meeting.
 - b. Comcast representatives shall attend weekly construction meetings.
 - c. Comcast representatives shall provide timing of when and where its materials will be delivered to the job site.
 - d. Comcast shall provide a project schedule, including time and duration of work, for Comcast work to install facilities not associated with the joint utility trench area.
 - e. Comcast shall coordinate with other utility companies included in the joint utility trench. This may include the stacking of conduits with another utility, and locating conduits below or around other vaults.

B. CITY

1. The City shall prepare drawings and specifications for excavation of the joint utility trench. The City will advertise for bids, evaluate bids, award a contract, and monitor Contractor's activities.
2. The City's contract shall provide for all necessary excavation, bedding, backfill, off-site disposal, and site restoration for the joint utility trench project, along with the coordination of other utilities participating in the joint utility trench project. The City shall be reimbursed by Comcast for Comcast's proportionate share of the joint utility trench costs as described in Section 5 of this Agreement.
3. The City's contractor shall install Comcast provided vault and conduit materials necessary for the supporting structure within the joint utility trench area. Upon completion of the new conduit and vault system within the joint utility area, the City's contractor will proof the duct and leave a pull-rope in place. The City shall be reimbursed by Comcast for the costs of installing the Comcast provided materials as described in Section 5 of this Agreement.
4. The City's contractor shall provide all flagging and traffic control for the joint utility trench excavation and backfilling activity. The City shall be reimbursed by Comcast for Comcast's proportionate share of flagging and traffic control costs associated with the joint utility trench construction as described in Section 5 of this Agreement.
5. The City shall document quantities as its contractor proceeds with excavation, installation, and backfill and will provide detailed invoices to Comcast for work undertaken in connection with this Agreement.
6. The City shall maintain continued coordination with Comcast regarding the installation of Comcast's facilities. This coordination shall include but not be limited to the following:
 - a. The City's representatives shall attend the pre-construction meeting.
 - b. The City's representatives shall attend weekly construction meetings.
 - c. The City shall provide Comcast a copy of the Contractor's proposed work schedule showing date, location, and extent of work to be performed. This schedule shall be subject to change at any time.
 - d. Comcast shall be given ten (10) days notice that City's Contractor is beginning construction.
7. After completion of the project, the City shall provide Comcast "as-built" drawings. Upon receipt of the as-built drawings, Comcast shall have ten (10) calendar days review and comment on the as-built drawings and to accept or reject the as-built drawings. If Comcast does not provide comments on the as-built drawings within the ten (10) day period set forth above, the as-built drawings shall be deemed accepted by Comcast.

5. COST ALLOCATION.

Joint Utility Trench Agreement
Between City of Des Moines and Comcast
24th Avenue South Improvement Project
(S. 216th Street to S. 208th Street)
May 15, 2013

Exhibit A, attached to this Agreement, is an estimate of Comcast's proportionate share of the joint utility trench costs. The costs shown on Exhibit A are an estimate only. The final breakdown of costs will be based on the actual quantities of work performed by the City's Contractor times the contract unit costs for each work item.

A. Joint Utility Trench Costs.

Comcast agrees to pay the City a portion of the joint utility trench costs, including trench, bedding, and backfill, commensurate with its proportionate share of trench usage as shown in Exhibit A attached hereto and incorporated by this reference. Trench costs will be finalized after completion of construction and Comcast agrees to pay the City for actual construction costs.

B. Conduit and Vault Installation.

Comcast agrees to pay for the excavation, site preparation, and installation for their conduit and vaults that are outside the joint utility trench area separately and in addition to any joint utility trench costs, survey costs, and traffic control costs discussed herein. These additional costs shall be preliminarily determined from the bid price accepted by the City. The cost to excavate for and install Comcast's vaults will be finalized after completion of construction, and Comcast agrees to pay the City for actual construction costs.

C. Street Crossings.

Comcast agrees to pay the City for the installation costs for the City's contractor to install Comcast's conduits in street crossings. These costs are in addition to the joint utility trench costs outlined in Section 5.A.

D. Survey.

Comcast agrees to pay the reasonable costs for the City's surveyor to provide vault locations and elevations and any other survey data that may be required to locate and place Comcast facilities.

E. Traffic Control.

Comcast agrees to pay the City a portion of the traffic control costs associated with the construction of the joint utility trench, commensurate with its proportionate share of trench usage as shown in Exhibit A attached hereto and incorporated by this reference.

F. Administration Costs.

Comcast agrees to reimburse the City for Comcast's prorated share of the City's project administration and management costs. Comcast's prorated share of these costs is anticipated to be \$10,000.

G. Additional Expenses.

Comcast agrees to pay their proportionate share of any additional expenses incurred due to Comcast's approved change requests, in providing the trench due to any over-excavation required or any other unforeseen conditions attributable to Comcast facilities, including any additional trench width or depth attributable to errors in Comcast's design or conflicts not accounted for in Comcast's design, and to dewatering for ground water. Any changes to Comcast's portion of work perceived as necessary by the City's contractor must be approved by Comcast in advance. Comcast will not pay for any share of additional expenses incurred due solely to approved change requests from other joint utility trench users and/or the City.

H. Claims by Contractor.

Comcast agrees to pay the entire cost of any claims made by the City's contractor that are proximately caused by Comcast. These claims may include delays caused by Comcast installing their facilities, delays caused by Comcast providing and delivering their materials, or any other conflicts, claims, liens or lawsuits between the City's contractor and Comcast. These claims must be verifiable or substantiated claims and be subject to binding arbitration.

I. Invoice.

Comcast agrees to pay the City within thirty (30) days of being invoiced by the City for amounts that the City has been invoiced by the contractor for work that has been completed by the contractor and approved by Comcast and which Comcast has agreed to pay under this Agreement.

J. Defective or Unauthorized Work.

Per the terms of the Contract between the City and its contractor, Comcast reserves the right to withhold payment from the City for any defective or unauthorized work performed by the contractor. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Agreement, and extra work and materials furnished without Comcast's approval. If for any reason it is necessary to satisfactorily complete any portion of the work, Comcast may complete the work using its own means.

K. Final Payment/Waiver of Claims.

The making of final payment by the parties shall constitute a waiver of claims by the contractor, except those previously and properly made and identified by the contractor as unsettled at the time request for final payment is made.

L. Withdrawal from Agreement.

Should Comcast elect not to participate in the joint utility trench, it will be the responsibility of Comcast to relocate its facilities for the project within thirty (30) days of the City's contractor's completion of the joint utility trench. Comcast's new facilities must be located in the public right-of-way and construction of these facilities can in no way delay the City's

contractor. Comcast shall be held liable for any delay to the City's project due to Comcast's utility work. The City cannot accept delays in the schedule due to Comcast electing not to participate in the joint utility trench.

6. CHANGES.

After the City executes a contract with the Contractor, Comcast shall submit any changes requested to be performed by the City's contractor to the City. The City shall submit this to the contractor; obtain a price from the contractor to perform the work, and notify Comcast of this price. Prices supplied by the contractor for Comcast change orders shall be in conformance with the 25% limit in subsection 1-04.6 of the WSDOT Standard Specifications. Comcast shall have 24 hours from receiving the price from the City within which to respond. If Comcast chooses not to accept the contractor's price then this work shall only be performed by Comcast according to a mutually agreed upon schedule with the City's contractor so as not to cause delay to the contractor.

7. INDEMNIFICATION; LIENS; ENCUMBRANCES AND LIABILITY.

Each party shall defend, indemnify and hold the other party, its officers, officials, employees and agents harmless from any and all claims, injuries, damages, losses or suits including all legal costs and attorney fees, to the extent they arise from or in connection with: (a) fault, willful misconduct, or negligence of the indemnifying party, its officers, employees, agents, subcontractors and/or representatives; (b) any product liability claims relating to any material supplied by the indemnifying party under this Agreement; (c) failure of the indemnifying party, its officers, employees, agents, subcontractors and/or representatives to comply with any term of this Agreement, City Cable Franchise or any applicable local, state, or federal law; (d) claims under workers' compensation or similar employee benefit acts by the indemnifying party or its employees, agents, subcontractors, or subcontractors' employees or agents.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the parties, its officials, employees and agents, a party's liability hereunder shall be only to the extent of the party's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

No party, directly or indirectly, shall create or impose any lien on the property of another, or on the rights or title relating thereto, or any interest therein, or in this Agreement. Each party shall promptly, at its own expense, take such action as may be necessary to duly discharge any lien created by it on the property of another.

Except as expressly provided herein, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any

court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this Agreement or any valid and applicable law, rule or regulation.

8. INSURANCE.

The contract between the City and the Contractor shall require that the Contractor procure and maintain for the duration of the project insurance of the types and in the amounts described below against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work by the Contractor, its agents, representatives, employees, subconsultants or subcontractors.

A. Automobile Liability

Insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage; and

B. Commercial General Liability

Insurance written on an occurrence basis with limits no less than \$1,000,000 single limit per occurrence and \$2,000,000 general aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations/broad form property damage; explosion, collapse and underground (XCU); and employer's liability or Stop Gap coverage under workers' compensation insurance.

C. Excess Liability

Insurance with limits not less than \$1,000,000 per occurrence and aggregate.

Any payment of deductible or self-insured retention shall be the sole responsibility of the City's contractor. The Parties, their officials, employees, agents and volunteers shall be designated as additional insureds on the insurance policy, as respects work performed by or on behalf of the Parties under this Agreement and a copy of the endorsement, or its equivalent, designating the Parties as additional insured shall be attached to the Certificate of Insurance, copies of which shall be provided to the Parties prior to commencement of construction by the City's contractor. The contractor's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

9. FRANCHISE AGREEMENT.

The City and Comcast agree that as to future projects, by entering into this Agreement, neither party has waived any rights it may have under the existing franchise agreements between the City and Comcast, and the City and Comcast expressly herein reserve such rights. Notwithstanding anything in this Agreement to the contrary, Comcast's participation in the joint

utility trench activity contemplated in this Agreement, and its very participation in this Agreement, shall in no event be construed as acceptance, affirmation, or ratification of the City's construction of Comcast's obligation to underground and enter into a writing pursuant to the franchise agreement, and parties understand and agree that the terms and conditions of this Agreement shall not be considered as a basis for future undergrounding projects that may be franchise required.

10. MISCELLANEOUS.

A. Compliance with Laws

The parties shall comply with all applicable federal, state and local laws, rules and regulations throughout every aspect in the performance of this Agreement.

B. Nonwaiver of Breach

The failure of a party to insist upon strict performance of any of the terms and rights contained herein, or to exercise any option herein conferred in one or more instances, shall not be constructed to be a waiver or relinquishment of those terms and rights and they shall remain in full force and effect.

C. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of Washington. If any dispute arises between the parties or between any party and the contractor under any of the provisions of this Agreement, resolution of that dispute shall be available only through the jurisdiction, venue and rules of the King County Superior Court, King County, Washington.

D. Attorney's Fees

To the extent not inconsistent with RCW 39.04.240, in any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall be responsible for payment of its own legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit; however, nothing in this subsection shall limit a party's right to indemnification under Section 7 of this Agreement.

E. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of this Agreement, unless otherwise notified. Any written notice shall become effective upon delivery, but in any event three (3) calendar days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated on this Agreement.

F. Modification

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each affected party.

G. Severability

If any one or more sections, sub-sections, or sentences of this Agreement are held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this Agreement and the remainder shall remain in full force and effect.

H. Relationship

It is understood and agreed that no agency, employment, joint venture, co-employer or partnership is created by this Agreement. No party hereto shall have the power or authority to act for another in any manner to create obligations or debts which would be binding upon another, and be responsible for any obligation or expense whatsoever of another.

I. Force Majeure

Parties shall not be deemed to be in breach of this Agreement if unable to perform their respective obligations hereunder as a result of the occurrence of an event of "force majeure," which shall include, but not be limited to, acts of God, acts of the government of the United States or of any state or political subdivision thereof, strikes, civil riots or disturbances, fire, floods, explosions, earthquakes, wind, storms, hurricanes, lightning or other similar catastrophes or other causes beyond the parties' reasonable control. The scope of events of force majeure shall not extend to payment of money owed hereunder.

J. Disclosure

Both parties agree that, to the extent allowable under RCW Chapter 42.17 [public disclosure act], all information with respect to this Agreement will be kept confidential and will be used for internal company purposes only. Neither party shall, without the prior written consent of the other party: (a) issue any press release or make any other public announcement regarding this Agreement or any relation between the City and Comcast; or (b) use the name, trademarks, or other proprietary identifying symbol of the other party or its affiliates. Such consent by Comcast may be given only by the Executive Vice President of Corporate Communications or his or her designee. Any purported consent by any other person, including any Comcast sales or customer service representative, is void and of no effect.

K. Assignment

Neither party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, either may assign all or part of this Agreement immediately, without the prior written consent of the other party (a) to any entity that

controls, is controlled by, or is in common control with a party or (b) to any successor in interest to a party or (c) if necessary to satisfy the rules, regulations and/or orders of any federal, state or local governmental agency or body.

L. Entire Agreement

The written provisions and terms of this Agreement, together with any attached Exhibits, supersede all prior verbal statements by any representative of the City, and those statements shall not be construed as forming a part of or altering in any manner this Agreement. This Agreement and any attached Exhibits contain the entire Agreement between the parties. Should any language in any Exhibit to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties below have executed this Agreement.

Comcast of Washington IV, Inc.

City of Des Moines

Print Name: _____
Title: _____

Print Name: _____
Title: _____

DATE: _____

DATE: _____

APPROVED AS TO FORM:

Des Moines City Attorney

NOTICES TO BE SENT TO:

NOTICES TO BE SENT TO:

Comcast

City of Des Moines

Comcast
Attn: Jerry Steele
4020 Auburn Way N
Auburn, WA 98002
(253) 288-7533(Office)
(206) 571-8893 (Cell)
(253) 288-7500 (Fax)

City of Des Moines
Attn: Dan Brewer
21650 11th Avenue South
Des Moines, WA 98198
(206) 870-6581 (Office)
(253) 221-9783 (Cell)
(206) 870-6596 (Fax)

With a copy to: Comcast Cable Communications, LLC
1500 Market Street
Philadelphia, PA 19102

Attention: General Counsel

Exhibit A

**JOINT UTILITY TRENCH AGREEMENT
Between the City of Des Moines and Comcast
For the 24th Avenue South Improvement Project
S. 216th Street to S. 208th Street**

City of Des Moines Public Works
 Transportation Gateway Project - 24th Avenue S
 S 216th St to S 208th St
 May 2013

Joint Utility Trench Construction Cost Estimate Breakout - COMCAST

| No. | Sect. No. | Item | Quantity | Unit | Unit Cost | Total Cost | JUT as a Percent of Project Total | Comcast Percent of Trench Usage | Comcast Responsibility Percentage | Comcast Quantities | Unit | Unit Cost | Comcast Cost |
|--|-----------|---|----------|------|---------------|------------------|-----------------------------------|---------------------------------|-----------------------------------|--------------------|------|---------------|------------------|
| Bid Schedule A: Public Roadway Improvements | | | | | | | | | | | | | |
| 2 | 1-04 | Contractor's Trailer and Site | 1 | LS | \$ 40,000.00 | \$ 40,000.00 | 20.00% | 24.00% | 4.80% | 0.0480 | LS | \$ 40,000.00 | \$ 1,920 |
| 3 | 1-05 | Roadway Surveying | 1 | LS | \$ 40,000.00 | \$ 40,000.00 | 20.00% | 24.00% | 4.80% | 0.0480 | LS | \$ 40,000.00 | \$ 1,920 |
| 5 | 1-05 | Resolution of Utility Conflicts | 1 | FA | \$ 15,000.00 | \$ 15,000.00 | 20.00% | 24.00% | 4.80% | 0.0480 | LS | \$ 15,000.00 | \$ 720 |
| 6 | 1-07 | SPCC Plan | 1 | LS | \$ 1,000.00 | \$ 1,000.00 | 20.00% | 24.00% | 4.80% | 0.0480 | LS | \$ 1,000.00 | \$ 48 |
| 8 | 1-08 | Type B Progress Schedule (Minimum Bid \$5,000) | 1 | LS | \$ 5,000.00 | \$ 5,000.00 | 20.00% | 24.00% | 4.80% | 0.0480 | LS | \$ 5,000.00 | \$ 240 |
| 9 | 1-09 | Mobilization | 1 | LS | \$ 340,000.00 | \$ 340,000.00 | 20.00% | 24.00% | 4.80% | 0.0480 | LS | \$ 340,000.00 | \$ 16,320 |
| 10 | 1-10 | Pedestrian Control and Protection | 1 | LS | \$ 5,000.00 | \$ 5,000.00 | 20.00% | 24.00% | 4.80% | 0.0480 | LS | \$ 5,000.00 | \$ 240 |
| 11 | 1-10 | Project Temporary Traffic Control | 1 | LS | \$ 215,000.00 | \$ 215,000.00 | 20.00% | 24.00% | 4.80% | 0.0480 | LS | \$ 215,000.00 | \$ 10,320 |
| 45 | 8-01 | ESC Lead | 200 | DAY | \$ 100.00 | \$ 20,000.00 | 20.00% | 24.00% | 4.80% | 0.0480 | LS | \$ 100.00 | \$ 960 |
| 46 | 8-01 | Erosion / Water Pollution Control | 1 | LS | \$ 25,000.00 | \$ 25,000.00 | 20.00% | 24.00% | 4.80% | 0.0480 | LS | \$ 25,000.00 | \$ 1,200 |
| 47 | 8-01 | Stormwater Pollution Prevention Plan (SWPPP) | 1 | LS | \$ 5,000.00 | \$ 5,000.00 | 20.00% | 24.00% | 4.80% | 0.0480 | LS | \$ 5,000.00 | \$ 240 |
| 48 | 8-01 | Temporary Detention/Retention SWPPP Control Facilities | 1 | LS | \$ 40,000.00 | \$ 40,000.00 | 20.00% | 24.00% | 4.80% | 0.0480 | LS | \$ 40,000.00 | \$ 1,920 |
| 49 | 8-01 | Silt Fence | 3,600 | LF | \$ 5.00 | \$ 18,000.00 | 20.00% | 24.00% | 4.80% | 172.8000 | LS | \$ 5.00 | \$ 864 |
| 50 | 8-01 | Inlet Protection | 57 | EA | \$ 75.00 | \$ 4,275.00 | 20.00% | 24.00% | 4.80% | 2,7360 | LS | \$ 75.00 | \$ 205 |
| 99 | 8-26 | HMA For Trench Patching Class 12" PG 64-22, for Aerial Utility Conversion | 36 | TON | \$ 100.00 | \$ 3,600.00 | 20.00% | 24.00% | 4.80% | 1,7280 | EA | \$ 100.00 | \$ 173 |
| 100 | 8-26 | Franchise Utility Excavation, Inc. Haul | 2,882 | CY | \$ 45.00 | \$ 129,690.00 | 20.00% | 24.00% | 4.80% | 138,3360 | TON | \$ 45.00 | \$ 6,225 |
| 101 | 8-26 | Franchise Utility Trench Bedding, Sand | 1,016 | CY | \$ 25.00 | \$ 25,400.00 | 100.00% | 24.00% | 24.00% | 24,332 | TON | \$ 25.00 | \$ 6,096 |
| 102 | 8-26 | Franchise Utility Trench Backfill, Fluidized Thermal Backfill | 143 | CY | \$ 100.00 | \$ 14,300.00 | 100.00% | 24.00% | 24.00% | 34,32 | TON | \$ 100.00 | \$ 3,432 |
| 103 | 8-26 | Franchise Utility Trench and Structure Backfill, Crushed Surfacing Top Course | 2,577 | TON | \$ 25.00 | \$ 64,425.00 | 100.00% | 24.00% | 24.00% | 618,48 | CY | \$ 25.00 | \$ 15,462 |
| 104 | 8-26 | Shoring or Extra Excavation Class B for Aerial Utility Conversion | 1 | LS | \$ 40,000.00 | \$ 40,000.00 | 100.00% | 24.00% | 24.00% | 0,24 | CY | \$ 40,000.00 | \$ 9,600 |
| | | | | | | Subtotal: | | | | | | | \$ 78,105 |
| COMCAST'S ESTIMATED SHARE OF SCHEDULE A COST: \$ 78,105 | | | | | | | | | | | | | |

| Bid Schedule C: COMCAST UNDERGROUNDING | | | | | | | | | | | | | |
|---|------|--|--------|----|--------------|---|--|--|--|--|--|--|------------------|
| 1 | 1-04 | Minor Change | 1 | FA | \$ 15,000.00 | \$ 15,000.00 | | | | | | | |
| 2 | 8-26 | Install Franchise Utility Conduit, 4-Inch | 10,631 | LF | \$ 3.00 | \$ 31,893.00 | | | | | | | |
| 3 | 8-26 | Install Franchise Utility Structure - Handhole 21.75'x33.25'x24" | 7 | EA | \$ 450.00 | \$ 3,150.00 | | | | | | | |
| 4 | 8-26 | Install Franchise Utility Structure - Vault 34.75'x52.25'x36" | 5 | EA | \$ 600.00 | \$ 3,000.00 | | | | | | | |
| | | | | | | Subtotal | | | | | | | \$ 53,043 |
| | | | | | | Sales Tax (9.5%) | | | | | | | \$ 5,039 |
| | | | | | | SCHEDULE C - TOTAL ESTIMATED CONSTRUCTION COST | | | | | | | \$ 58,082 |

TOTAL ESTIMATED CONSTRUCTION COST RESPONSIBILITY FOR COMCAST: \$ 136,187

Exhibit B

**JOINT UTILITY TRENCH AGREEMENT
Between the City of Des Moines and Comcast
For the 24th Avenue South Improvement Project
S. 216th Street to S. 208th Street**

SUBJECT: Clarification of Manufactured Products under Buy America

On December 21, 2012 the FHWA sent out a memo to clarify their position with regard to application of Buy America requirements to manufactured products.

The FHWA memo reads in part as stated in italics below, clarifying statements are added in bold:

The FHWA deems a product to be manufactured predominantly of steel and iron if the product consists of at least 90% steel or iron content when it is delivered to the job site for installation. To clarify; the 90% is a percentage of the total monetary value of the manufactured product. To determine the 90% value, divide the raw steel or iron cost by the total manufactured product cost (without taxes, shipping, handling or other fees applied), and if the percentage is equal to or greater than 90% of the final manufactured product cost then Buy America applies.

For purposes of applying Buy America and determining whether a product is a steel or iron manufactured product, the job site includes the sites where any precast concrete products are manufactured. To clarify; in the specific case of “precast concrete products” the casting yard is considered part of the “job site” for Buy America purposes, and therefore the iron or steel materials delivered to precast yard are subject to Buy America. (rebar, grates, etcetera)

The memo lists several typical “*miscellaneous steel or iron components,*” that are exempted from Buy America. The list is not intended to be all-encompassing, but rather reinforces a concept that the myriad minor iron and steel subcomponents used to assemble products are not subject to Buy America. This exemption applies to manufactured items as well as on site fabrication.

The miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the above components (or manufactured products that are not predominantly steel or iron) are not subject to Buy America coverage. Examples include, but are not limited to, cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts (this does not mean high strength bolts), nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, door hinges, and etcetera.

Typical examples;

- Steel electrical conduit installed at the site,
 - 90% rule applies
 - BA criteria applies
- VMS sign
 - 90% rule applies
 - BA would typically not apply
- VMS steel supporting structure
 - Specifically called out in the bulleted list (12/21/12 Memorandum #HIPA-30)
 - BA criteria applies
- Electrical cabinets,
 - Exempted as “*miscellaneous steel or iron components,*”

- BA typically would not apply
- Off the shelf or special order catch basins,
 - This qualifies as “*precast concrete products*,”
 - “*the job site includes the sites where any precast concrete products are manufactured*,”
 - Materials are subject to BA criteria
- Standard nuts, bolts, fasteners for mounting signs
 - Exempted as “*miscellaneous steel or iron components*,”
 - BA typically would not apply
- High strength bolts/anchor bolts,
 - BA criteria applies
- Bridge Expansion Joint,
 - Nuts, bolts fasteners
 - Exempted as “*miscellaneous steel or iron components*,”
 - BA typically would not apply
 - 90% rule applies as it is delivered to the site
 - BA may or may not apply
- Walls, regardless of type
 - Nuts, bolts fasteners
 - Exempted as “*miscellaneous steel or iron components*,”
 - BA typically would not apply
 - MSE straps or equivalent
 - BA criteria applies
 - Precast elements
 - See “*precast concrete products*” criteria
 - Materials are subject to BA
 - Assembled on site
 - Materials as they are delivered to the jobsite,
 - BA criteria applies
- Computers for ITS and Signal Installation
 - 90% rule applies as it is delivered to the site
 - BA typically would not apply
- Street Furniture
 - 90% rule applies
 - BA criteria would typically apply
- Pumps and Motors
 - BA criteria applies
- Steel Beams in Building Construction
 - BA criteria applies
- Bicycle Purchases
 - 90% rule applies
 - BA criteria typically would not apply

The 90% rule applies to items that are manufactured offsite and delivered to the jobsite as a unit (except in the case of precast concrete where the point of manufacture is considered the jobsite.) Walls that are assembled on site are not considered a manufactured item and therefore are not subject to the 90% rule as a unit. The individual materials must meet buy America when they are delivered to the job site.

This FHWA memo does not require any change to current specification language concerning Buy America. This memo does not impact the requirement for materials permanently incorporated beyond the exemption of the noted minor items.

You may apply this clarification of the Buy America requirements to your current contracts. Consistent determinations of the application of Buy America are critical to our ability to enforce this requirement statewide. Therefore, if you have unusual items that do not lend themselves to the criteria, contact your Local Programs Engineer for a determination.

Also enclosed are the updates to Construction Manual Chapter 9-4 Specific Requirements for Each Material, which will address the Buy America documentation requirements for material acceptance.

January 2013 Construction Manual Revision

9-1.2E Certification of Materials Origin

The “Buy America” provision (23 CFR 635.410, 23 USC 313) incorporated into the contract by General Special Provision, applies to all products containing steel or iron permanently incorporated into the project. The Contractor may choose to utilize minor quantities of foreign steel or iron, as described in the General Special Provision. Minor amounts of foreign steel and iron may be used in the project provided the cost of the foreign material used does not exceed one-tenth of one percent of the total contract cost or \$2,500.00, whichever is greater. Included in this amount are state supplied materials, Proprietary items and Contractor provided materials.

The “Buy America” applies to products that are manufactured predominately of steel and iron if the product consists of at least 90% steel or iron content when it is delivered to the jobsite for installation. The 90% is a percentage of the total monetary value of the manufactured product. To determine the 90% value, divide the raw steel or iron costs by the total manufactured product costs (without taxes, shipping, handling, or other fees applied), and if the percentage is equal to or greater than 90% of the final manufactured product costs then the “Buy America” provision applies.

Determining whether a product is steel or iron manufactured product, the jobsite includes the sites where any precast concrete products are manufactured. For example; the specific case of “precast concrete products” the casting yard/facility is considered part of the jobsite”, therefore the iron and steel materials delivered to the precast yard/facility are subject to the “Buy America” provision.

The Contractor shall provide the completed and signed Certificate of Materials Origin (CMO) to the Project Engineer prior to such items being incorporated into the permanent work.

Fabricated Items

- WSDOT Fabrications Inspection Offices will review the supporting documentation, i.e., Mill Certificates and CMOs prior to inspecting and Stamping/Tagging the fabricated material. The Fabricator/plant is required to supply the Fabrications Inspector the DOT Form 350-109EF completed and signed with each item prior to inspection.
- The project field inspector is required to document in either, the IDR, the QPL Contractor Product Information Page or the FNR prior to placement that the fabricated material is identified with a “D” – Domestic or “F” – Foreign per Section 9-1.5. Fabricated items bearing an “F” or not bearing any Stamp when delivered to the job site requires that the Project Engineer office obtain the DOT Form 350-109EF from the Contractor and retain this form in the project records.

Non-Fabricated Items

- The Project Office is required to obtain, and place in the materials file, a completed Certification of Materials Origin for any materials containing iron or steel. This certification may be supplied using DOT Form 350-109EF or another form containing all the same information as required by DOT Form 350-109EF.

Examples of products that are subject to “Buy America” provision include, but are not limited to the following:

- Steel or iron products used in pavements, bridges, tunnels or other structures, which include, but are not limited to the following: fabricated structural steel, reinforcing steel, piling, high strength bolts, anchor bolts, dowel bars, permanently incorporated sheet piling, bridge bearing, cable wire/strand, pre-stressing/post-tensioning wire, motor/machinery brakes and other equipment for moveable structures;
- Guardrail, guardrail posts, end sections, terminals, cable guardrail;
- Steel fencing material (fabric), fence post;
- Steel or iron pipe, conduit, grates, manhole covers, risers;
- Mast arms, poles, standards, trusses, or supporting structural members for signs, luminaires, or traffic control systems; and
- Steel or iron components of precast concrete products, such as reinforcing steel, wire mesh and pre-stressing or post-tensioning strands or cables.

The miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the above products (or manufactured products that are not predominantly steel or iron) are not subject to the “Buy America” provision. Examples include, but are not limited to the following:

- Materials listed under 9-1.3C – Low Risk Materials
- Anchor Ferrules
- Architecture miscellaneous items – doors, hinges, fixtures, faucets, shelves, etc.
- Bollard and Components
- Non-High Strength Bolts, Washers, and Nuts
- Clamps
- Dobie/Mortar Blocks
- Construction Aides – lifting hooks and inserts
- Electrical Miscellaneous Fittings
- Erosion Control Miscellaneous Hardware
- Fence Miscellaneous Hardware
- Gate Hardware (except for fabric and poles)
- Gabion Miscellaneous Hardware (except for twisted and welded fabric)
- Irrigation System Components and Hardware (except for steel or iron pipes and conduit)
- Pipe Sleeves
- Precast Concrete Traffic Barrier Pins
- Rebar chair and Spacers
- Screws
- Shims
- Slope Protection Miscellaneous Hardware
- Utility Inserts
- Welding Rods and Welding Wire
- Weld Splices for Precast Concrete Girders

Date of Interim Change (01/24/2013)

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: HealthPoint Right-of-Way Dedication

FOR AGENDA OF: May 23, 2013

ATTACHMENTS:

1. Statutory Warranty Deed with Exhibits A, A-1, and A-1.1
2. Real Estate Excise Tax Affidavits, HealthPoint (Grantor)

DEPT. OF ORIGIN: PBPW

DATE SUBMITTED: May 7, 2013

CLEARANCES:

- Legal PB
 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 HealthPoint 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 HealthPoint which is at the southwest corner of Pacific Highway South and South 263rd 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.

Discussion

HealthPoint is required to improve portions of South 263rd Street adjacent to their property with improvements including, but not limited to, paving and installation of driveways, and curb, gutter, and sidewalk. During the civil plan review process it was found that in order to construct the sidewalk

radius at the southwest corner of South 263rd Street and Pacific Highway South that additional right-of-way would be needed. The additional right-of-way shown in Exhibit A and A-1 (Attachment 1) to be obtained through the Statutory Warranty Deed allows HealthPoint 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.

After Recording, Return to:

CITY OF DES MOINES
 ATTN: CITY ATTORNEY
 21630 11th Avenue South, Suite C
 Des Moines, WA 98198

STATUTORY WARRANTY DEED

Grantor: HealthPoint, a Washington Non-Profit Corporation
Grantee: City of Des Moines, a municipal corporation of the State of Washington
Abbr. Legal: Ptn. Sec. 28, T22N, R4E, WM, in King County, WA
Tax Parcel: 282204-9191

THE GRANTOR, HealthPoint, a Washington Non-Profit Corporation, for and in consideration of sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, hereby conveys and warrants to the City of Des Moines, a municipal corporation of the State of Washington, its successors and assigns, under the imminent threat of the Grantee's exercise of its rights of Eminent Domain per Chapter 8.12 RCW, for the use of the public, the real property described and attached hereto as Exhibit A and illustrated and attached hereto as Exhibit A-1, situated in the City of Des Moines, in King County, Washington.

Also, the Grantor requests the Assessor and Treasurer of said County to set over to the remainder of Tax Parcel No. 282204-9191, the lien of all unpaid taxes, if any, affecting the real estate herein conveyed, as provided by RCW 84.60.070.

DATED this 15th day of April 2013.

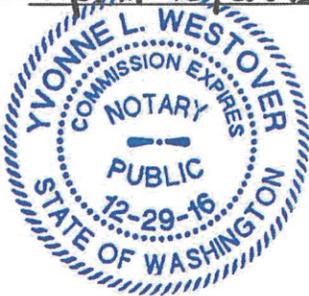
GRANTOR:

Debra L. Wilkinson
HealthPoint, a Washington Non-Profit Corporation
By: Its COO

STATE OF WASHINGTON)
) ss
COUNTY OF King)

I certify that I know or have satisfactory evidence that Debra L. Wilkinson is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the COO of HealthPoint, a Washington Non-Profit Corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated April 15, 2013



Yvonne Westover
Notary Public in and for the State of WA
Residing at 955 Powell Ave SW, Renton, WA
My appointment expires 12/29/16 98057

ACCEPTED BY:
CITY OF DES MOINES
A Municipal Corporation

City Manager

Date:

By direction of the Des Moines City Council taken in open public meeting on _____, 2013.

APPROVED as to form only:

City Manager

Date:

EXHIBIT A
PARCEL NUMBER 282204-9191
RIGHT-of-WAY ACQUISITION

THAT PORTION OF THE HEREINAFTER DESCRIBED PARCEL "A", MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT A, CITY OF DES MOINES BOUNDARY LINE ADJUSTMENT NO. LLA 97-066 AS RECORDED UNDER RECORDING NUMBER 9711249013, RECORDS OF KING COUNTY, WASHINGTON, LYING NORTHEASTERLY OF THE ARC OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 25.00 FEET, AND WHICH IS TANGENT TO THE NORTH AND EAST LINES OF SAID LOT A.

PARCEL "A"

LOT A, CITY OF DES MOINES BOUNDARY LINE ADJUSTMENT NO. LLA 97-066 AS RECORDED UNDER RECORDING NUMBER 9711249013, RECORDS OF KING COUNTY, WASHINGTON.

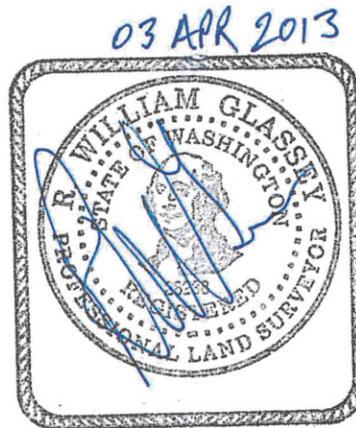
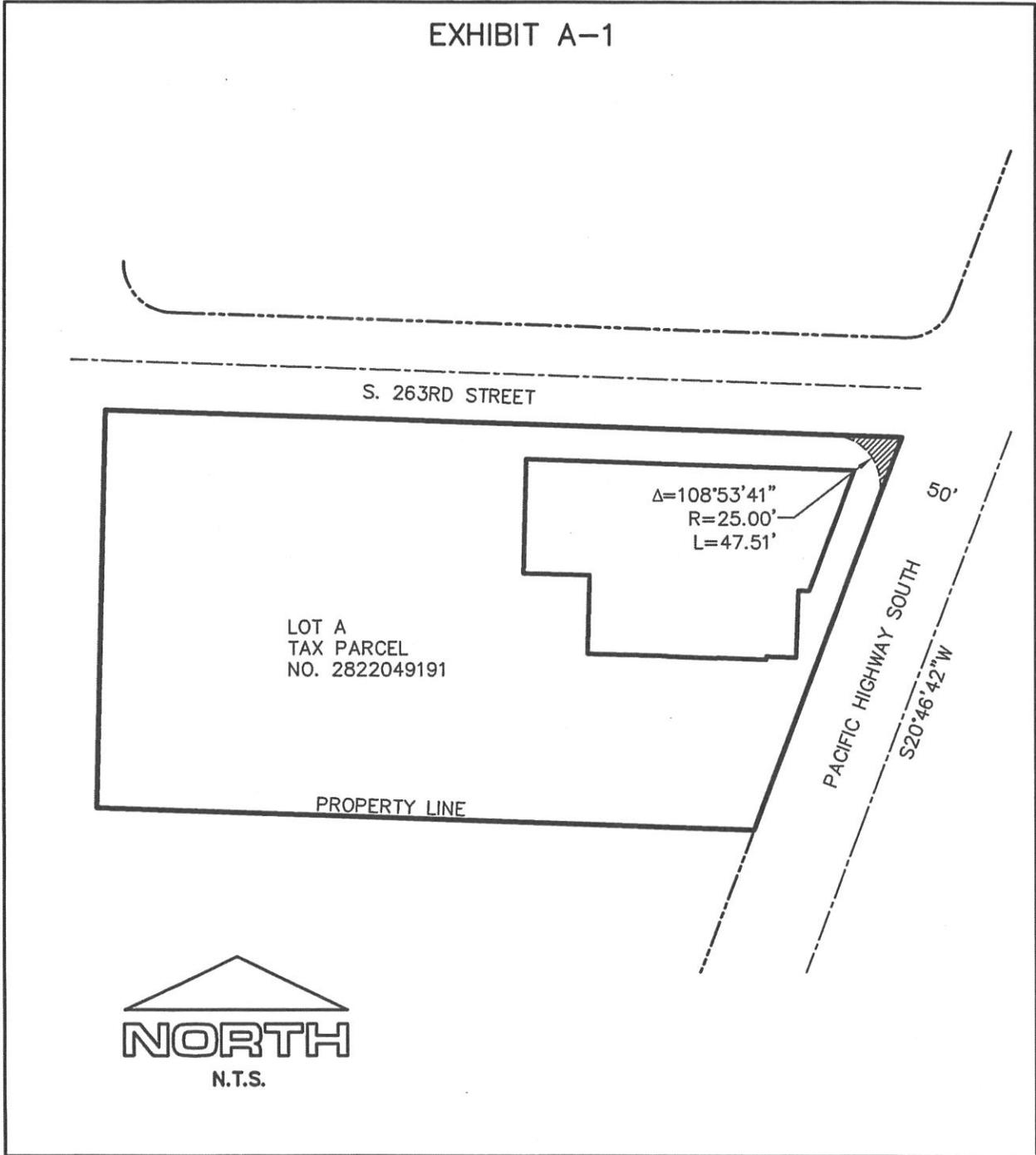


EXHIBIT A-1



 **PLS, Inc.**
Professional Land Surveyors

355 NW Gilman Boulevard, #201
Issaquah, Washington 98027
(425) 313-9378 (fax) 313-9379

TAX PARCEL NO.
2822049191
EXHIBIT MAP
RIGHT-OF-WAY ACQUISITION

EXHIBIT A-1.1
EXCEPTIONS TO WARRANTIES UNDER
STATUTORY WARRANTY DEED

Reference is made to Chicago Title Insurance Company ALTA Second Commitment No. 1354163, dated February 25, 2013 (Commitment). Grantee assumes the title to the real property subject to the matters listed in the Commitment, which matters are exceptions to the Grantor's warranties under this Statutory Warranty Deed.



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 (HealthPoint) and Buyer/Grantee (City of Des Moines) with contact information.

Form section 3: Property tax correspondence and parcel account information.

Form section 4: Street address (26401 Pacific Hwy S) and location (Des Moines).

Form section 5: Land Use Code (65 - Professional services) and exemption questions.

Form section 6: Designation questions (forest land, current use, special valuation).

Form section 7 (left): Continuation and compliance notices.

Form section 7 (right): Tax calculation table showing Gross Selling Price, Exemption, and Total Due (\$10.00).

Form section 8: Signature lines for Grantor's Agent (Debra L. Wilkinson) and 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)).



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

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Check box if partial sale of property

If multiple owners, list percentage of ownership next to name.

Form sections 1 and 2: Seller/Grantor (HealthPoint) and Buyer/Grantee (City of Des Moines) information including names, addresses, and phone numbers.

Form section 3: Property tax correspondence and parcel account information. Includes checkboxes for correspondence and a table for parcel numbers and assessed values.

Form sections 5 and 6: Land use codes and exemption questions. Includes a table for exemption questions with YES/NO columns and a signature line for the owner(s).

Form section 7: Personal property included in selling price. Includes a table for listing property and a calculation table for Gross Selling Price, taxes, and fees, totaling \$10.00.

Form section 8: Certification of truth and correctness. Includes signature lines for Grantor (Debra L. Wilkinson) and Grantee, with dates and cities of signing.

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)).



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 1-3: Seller/Grantor and Buyer/Grantee information, correspondence address, and parcel account numbers.

Section 4: Street address of property, location in Des Moines, and legal description.

Section 5: Land Use Code(s) and exemption questions.

Section 6: Designation questions for forest land, current use, and special valuation.

Continuance and compliance notices for forest land and historic property.

Signature lines for Deputy Assessor and Owner(s).

Section 7: Personal property included in selling price.

Exemption information including WAC number and reason for exemption.

Document type, date, and detailed tax calculation table.

Section 8: Certification of truth and correctness, and signatures of agents.

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution...



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

This form is your receipt when stamped by cashier.

PLEASE TYPE OR PRINT

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 1-3: Seller/Grantor and Buyer/Grantee information, including names, addresses, and tax correspondence details.

Form section 4: Street address of property (26401 Pacific Hwy S), location (Des Moines), and legal description.

Form section 5: Land Use Code (65 - Professional services) and exemption questions.

Form section 6: Designation questions (forest land, current use, special valuation) and notice of continuance instructions.

Form section 6 (continued): Notice of compliance (historic property) and owner signature line.

Form section 6 (continued): Deputy Assessor and Date fields.

Form section 7: List all personal property included in selling price.

Form section 7 (continued): Exemption information (WAC No. 458-61A-205) and reason for exemption.

Form section 7 (continued): Type of Document (Statutory warranty deed) and Date of Document.

Form section 7 (continued): Tax calculation table showing Gross Selling Price, Excise Tax (0.0050), and Total Due (\$10.00).

Form section 8: Certification of truth and correctness, signatures of Grantor's Agent (Debra L. Wilkinson) and Grantee's Agent, and signing date (5/6/13 Renton WA).

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)).

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Authorization to Submit Application for Community Development Block Grant for South 224th Street Sidewalk Project

FOR AGENDA OF: May 23, 2013

DEPT. OF ORIGIN: Planning, Building & Public Works

ATTACHMENTS:

1. Blank CDBG Application
2. Pre-Application Projects Summary
3. Pacific Ridge Neighborhood Improvement Plan Project Map and List
4. Project Budget Worksheet
5. South 224th Street design concept

DATE SUBMITTED: May 13, 2013

CLEARANCES:

- Legal VB
- Finance pl
- 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 [Signature]

Purpose and Recommendation

The purpose of this item is to seek Council authorization to submit a Community Development Block Grant (CDBG) application (refer to Attachment 1) for the construction of the South 224th Street Sidewalk Project. The following motion will appear on the consent calendar.

Suggested Motion

Motion: “I move to authorize the City Manager to submit an application for a Community Development Block Grant for the construction of the South 224th Street Sidewalk Project identified in the Pacific Ridge Neighborhood Improvement Plan and the City’s CIP, and authorize the City Manager to sign said application”

Background

On March 8, 2013, the King County Department of Community and Human Services Community Services Division announced request for project proposals to be submitted for consideration to the King County Community Development Block Grant (CDBG) Consortium. Request for Proposal

(RFP) applications are available for non-profit organizations and public agencies to request funds for the following types of projects:

- community facilities: acquisition, construction or rehabilitation
- public improvements: acquisition, construction or rehabilitation
- other: minor housing repair, economic development, employment services through a Community Based Development Organization (CBDO) and other activities consistent with the objectives of the King County Consortium Housing and Community Development Plan and federal CDBG regulations at 24 CFR Part 570.

King County annually receives Community Development Block Grant (CDBG) Funds from the United States Department of Housing and Urban Development. The primary objective of the CDBG Program as set forth by Congress is “the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.” Federal regulations define persons who are low- and moderate-income as households earning under 80% of the area median income, as determined by HUD, adjusted by household size.

An estimated \$1.9 million in capital funds will be available for the King County CDBG Consortium in 2014. Funds will be divided between two CDBG Consortium sub-regions as follows: North/East Sub-Region (approximately \$788,000) and the South Sub-Region (approximately \$1,134,000). The City of Des Moines is part of the South Sub-region. Attachment 2 is a summary of the pre-applications that were submitted for these funds. The requested funds for the south sub-region totaled \$3,212,940.

King County administers CDBG funds on behalf of the King County CDBG Consortium. The Consortium is established under Interlocal Cooperation Agreements between the County and 34 cities and towns. A Joint Recommendations Committee (JRC) comprised of officials representing local government members of the Consortium is appointed annually by the Suburban Cities Association to advise the County Executive on CDBG funding and policy decisions.

An application (see Attachment 1 for reference) submitted by Des Moines must be signed by the Mayor or City Manager and authorized by City Council. A copy of City Council minutes authorizing submittal of the City’s application must be submitted with the application.

If the Council authorizes the submittal of this application for CDBG funds, staff will proceed in finalizing the application for the South 224th Street Sidewalk Project.

Discussion

South 224th Street Sidewalk Project

The need for pedestrian facilities along South 224th Street was identified in the City’s 2001 Pacific Ridge Neighborhood Improvement Plan as Project 2-S (refer to Attachment 3), and the project has a priority of 16 out of 94 on the City’s 2013 – 2032 Transportation Improvement Project list. Attachment 4 is an updated draft Project Budget worksheet that would be submitted this fall for the 2014 – 2019 Transportation CIP. The South 224th Street Sidewalk project calls for the installation of curb, gutter, and sidewalk on both sides of South 224th Street from Pacific Highway South to 30th Avenue South, (refer to Attachment 5) for a preliminary design concept.

The sidewalk improvements would extend the existing sidewalk on the south side of South 224th Street Staff up to 30th Avenue South and install sidewalk on the north side of 224th Avenue South from Pacific Highway South to 30th Avenue South. The preliminary project cost estimate is approximately \$570,000. The City plans to request \$270,000 from CDBG and provide a local match of \$300,000. This total cost of \$570,000 does not include the existing sidewalk on the south side of 224th Street which would be relocated to the ultimate location with the Artemis Hotel Project and match up with the proposed sidewalk improvements. Staff plans to seek help from a consultant to perform the survey, design, and construction inspection aspects of the project. If awarded, staff would be notified in November and design would begin in January 2014, with construction to occur in the summer of 2014.

Alternatives

The Council could choose not to authorize the proposed CDBG application which would result in the City not having enough local funds to build the improvements.

Financial Impact

If authorized and if awarded, the City would be allocating approximately \$300,000 of existing Pacific Ridge Impact Fee Funds that have been collected on previous developments within the Pacific Ridge South Sub-area.

Recommendation or Conclusion

Staff recommends authorization of the Community Development Block Grant Applications.

Concurrence

Legal and Finance concur.

PART I. APPLICATION TITLE PAGE

2014 CDBG Capital Application : _____

1. Applicant Agency Name _____

2. Title of Proposed Project _____

3. Project Site Street Address _____

Tax Parcel #: _____

(Zip Code Required)

(For Mapping Purposes)

Congressional District: _____

3.1 Provide boundaries of service delivery area in narrative form (describing natural boundaries, site street names, roads, etc).and provide a map outlining the area that will be served.

Insert text here. Provide map as an attachment labeled "Attachment 2 - Service Delivery Area".

4. Proposed Use of CDBG Funds (Summarize in one or two sentences how CDBG funds will be used.)

Insert text here

5. 2014 King County CDBG Funds Requested: _____

\$ _____

Matching funds (private): _____

\$ _____

Other Grant, State Federal Fund Sources (detailed in Application) _____

\$ _____

Total Project Cost: _____

\$ _____

6. Can your project be funded at a reduced level if necessary? ____ yes ____ no.

If yes, what is the minimum amount of CDBG funding needed to still have the project go forward?

\$ _____

What would be changed to address the reduction of funds?

Insert text here

TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE INFORMATION INCLUDED IN THIS APPLICATION HAS BEEN CAREFULLY EXAMINED. APPLICANT UNDERSTANDS AND AGREES TO COMPLY WITH THE POLICIES, RULES AND REGULATIONS REFERENCED IN THE APPLICATION IF FUNDING IS AWARDED. IT IS FURTHER UNDERSTOOD THAT INFORMATION PRESENTED IN THIS APPLICATION WILL BECOME A PART OF ANY SUBSEQUENT FUNDING CONTRACT.

Applicant Contact Information

X _____
Authorized Signature of Applicant

Print or Type Contact Name and Title

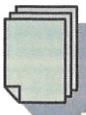
Print or type Name and Title

E-mail Address

E-mail Address:

Phone and Fax #

ATTENTION: Applications submitted by cities or towns must be signed, not stamped, by your Mayor or City Manager and authorized by your City Council. Applications submitted by nonprofit organizations or special districts must be signed by an authorized representative and authorized by your board.



A copy of City Council or board minutes authorizing submittal of your application must be submitted with the application. **Labeled Attachment No.1**

If more than one application is submitted, the City Council or board minutes authorizing the applications must indicate priority order of proposal request.

The following page is for HCD Application Tracking Purposes Only, go on to the next page.

Application Modifications: (HCD Use Only)

Application Page(s)

| Updated | Issue | Date |
|---------|-------|------|
| | | |
| | | |
| | | |

HUD Matrix Code: _____

Amount of Funding Request: \$ _____

Eligibility Citation: 570. _____

National Objective Citation: 208. _____

Consolidated Plan Strategy #: _____

North/East Sub-Region So. Sub-Region

Reviewed and confirmed eligibility:

HCD CD Planner: _____

HCD Coordinator: _____

HCD Program Manager: _____

A. AGENCY CONTACT SHEET AND ORGANIZATION INFORMATION

Grant Writer Contact Name: _____
 Agency Name/Title: _____
 E-Mail: _____
 Phone and Fax #: _____
 Web Site Address: _____

General (Offices) Agency Name: _____
 Mailing Address: _____
 City/State/Zip: _____
 Phone and Fax #: _____
 Web Site Address: _____

Executive Director Name/Title: _____
 E-Mail: _____
 Phone and Fax #: _____

Financial Staff Name/Title: _____
 E-Mail: _____
 Phone and Fax #: _____

Fiscal Information Applicant's Federal Taxpayer ID No. 91- _____
 Applicant's Federal DUNS Number: _____ CAGE Number _____
 King County Vendor # _____

B. AGENCY SERVICE INFORMATION

B.1. What services does your agency provide? Describe the need or problem your program is designed to meet. What is the problem/need you are addressing? Quantify this need, using local or regional data that confirm or describe the problem or need. How much of the need are you currently serving?

Insert text here

B.2. How do you determine eligibility (income screening, location of residence, eligibility in other government programs? Are you familiar with current CDBG income screening requirements? [PART III, VI and VII applicants will need to provide a copy of the tool used during the client intake process as an attachment per instructions.]

Insert text here

B.3. Describe the process your agency uses to a) assess community needs, b) obtain input from clients on service delivery and c) ensure the services are delivered by culturally competent staff in a culturally competent manner. How often is this completed?

Insert text here

B.4 Agency Service Profile.

Using the table below, indicate the total number of individuals, including family members, served by your agency during 2011 and 2012 according to the applicable income category.

| Yearly Income Categories | 30% Median Very Low-Income | 50% Median Low Income | 80% Median Moderate Income | Total number of individuals served |
|--------------------------|----------------------------|-----------------------|----------------------------|------------------------------------|
| For year 2011 | | | | |
| For year 2012 | | | | |

C. AGENCY PROGRAM EXPERIENCE

C.1. Describe the length of time the agency has operated, date of incorporation, the purpose of the agency, and the type of corporation. Describe the type of services provided, the agency's capabilities, the number and characteristics of clients served, and required licenses to operate (if applicable).

Insert text here

C.2. Briefly describe the agency's existing staff positions and qualifications, its capacity to carry out this activity, and state whether the agency has a personnel policy manual with an affirmative action plan and grievance procedure.

Insert text here

D. AGENCY BACKGROUND INFORMATION

D.1. Provide Agency's current adopted Mission Statement or Vision Statement:

Insert text here

D.2. Agency Financial Management Profile

Audit: - OMB A-133 Provide a copy of the most recent A-133 Audit. **Label as Attachment 4**

D.2.1 Did your agency receive a cumulatively amount of \$500,000 or more in federal funds in 2012?
 Yes No (If yes, please provide a copy of the Schedule of Expenditures of Federal Awards (SEFA). **Label it Attachment 4A**

D.2.2 Does your agency anticipate receiving a cumulative total of \$500,000 or more in federal funds in 2013?
 Yes No

Insert text here

Audit(s) - Miscellaneous Financial Report(s)

D.2.3. If an audit is not available, then a financial statement(s) that include General Ledger and Balance Sheet detail for the most recent one year period is required. **Label as Attachment 4.**

D.3. Organization Chart - Provide a chart that outlines the level of authority associated with the implementation of a project if funds are awarded. This should reflect the front line person through to the authority who signs the Application and the Contract. **Label as Attachment 5**

Non-Profits or Special Districts – Additional Required Attachments



- Current List of Agency Board Members **Attachment No: PART I-D.4.1**
Provide a current list of Agency Board of Directors: Include name, position/title, city residence, length of time on the Board, and expiration of terms. Note any vacant positions.
- Current Bylaws; Articles of Incorporation **Attachment No: PART I-D.4.2**
- Copy of Non-Profit IRS Letter of Designation **Attachment No. PART I-D.4.3**

E. PROJECT PARTNER SPONSOR INFORMATION: *(Applies to King County Housing Authority and King County Department Sponsored Projects only)*

E.1. General Agency Name: _____
 Mailing Address: _____
 City/State/Zip: _____
 Phone and Fax #: _____
 Web Site Address: _____

E.2 Executive Director Name/Title: _____
 E-Mail: _____
 Phone and Fax #: _____

E.3. If King County:
 (Division Director) Name/Title: _____
 Department: _____
 E-Mail: _____
 Phone and Fax #: _____
 Assigned Staff Contact Name: _____
 E-Mail: _____
 Phone and Fax #: _____

F. CULTURAL COMPENTENCY

ADVISORY SECTION ON CULTURAL COMPETENCY IN PROVISION OF SERVICES

Purpose: Please note that this section is strictly advisory to the applicant. The purpose of this page is to call attention to a trend still in development, but that is receiving considerable discussion nationwide and for which standards will likely be developed in the future. This the trend to achieve cultural competency in the delivery of social services to populations of diverse ethnic, racial, religious, linguistic and other backgrounds. Most local agencies are already serving the needs of these diverse populations with great success. The concept of cultural competency seeks to extend these efforts to even better serve the diversity of people in our communities.

- Definition of Cultural Competency: An ongoing and evolving process that comprises knowledge attainment and the development of behaviors, attitudes, policies, and practices that come together in a system of care enabling agencies, programs, and individuals to increase access to services and to develop or adapt services that are appropriate to specific cultural needs.

- Cultural competency implies a process, rather than a single point in time. Further, it requires the attainment of knowledge and skills that will help providers and programs work more effectively with people who have diverse backgrounds and experiences. Finally, cultural competence requires action to increase access and cultural adaptation based on what is learned about individuals and communities.
- Cultural competency denotes a commitment to social change, accessibility to opportunity, and delivery of services that are relevant to the details of a household's particular cultural background.

Please respond to the following questions: *(Please answer all three questions one single page.)*

F.1 To the best of your ability please describe the diversity of people your agency currently serves in terms of the following categories: race, ethnicity, religious affiliations, language groups, sexual orientation, and disability (physical and psychiatric),

Insert text here

F.2 How are your agency's services constructed to meet the needs of its clients based upon their identity as a member of one or more of these groups? (Examples: give #'s of bilingual staff, access to interpreter services, or collaborations with specialized expertise from agencies that serve minority populations.)

Insert text here

F.3 Do you have a training strategy in place to achieve cultural competency? Please describe.

Insert text here

Resources: The following resources are available to increase your agency's ability to serve people of diverse backgrounds in a culturally competent manner:

- Training opportunities are available through: minority Executive Directors Coalition (206) 325-2542, or University of Washington School of Social Work.
On the web: www.air.org/cecp/cultural.

Continue to Next Page.

A. Eligibility

Check the one activity that you have determined your project would best qualify under:

| Activity | CFR Citation | HUD Matrix Code | Check Activity |
|---|--------------|-----------------|--------------------------|
| Community Facilities | | | |
| Acquisition of Real Property | 570.201(a) | 001 | <input type="checkbox"/> |
| Senior Centers | 570.201(c) | 03A | <input type="checkbox"/> |
| Handicapped Centers | 570.201(c) | 03B | <input type="checkbox"/> |
| Homeless Facility (Not operation) | 570.201(c) | 03C | <input type="checkbox"/> |
| Youth Centers | 570.201(c) | 03D | <input type="checkbox"/> |
| Neighborhood Facilities | 570.201(c) | 03E | <input type="checkbox"/> |
| Child Care Centers | 570.201(c) | 03M | <input type="checkbox"/> |
| Fire Station/Equipment | 570.201(c) | 03O | <input type="checkbox"/> |
| Health Facilities | 570.201(c) | 03P | <input type="checkbox"/> |
| Abused and neglected Children Facilities | 570.201(c) | 03Q | <input type="checkbox"/> |
| Facilities for AIDS Patients (Not Operation) | 570.201(c) | 03S | <input type="checkbox"/> |
| *Removal of Architectural Barriers | 570.201 | | |
| Parks | | | |
| Parks, Recreational Facilities | 570.201(c) | 03F | <input type="checkbox"/> |
| Tree Planting | 570.201(c) | 03N | <input type="checkbox"/> |
| Public Infrastructure | | | |
| Solid Waste Disposal Improvements | 570.201(c) | 03H | <input type="checkbox"/> |
| Flood Drainage Improvements | 570.201(c) | 03I | <input type="checkbox"/> |
| Water/Sewer Improvements | 570.201(c) | 03J | <input type="checkbox"/> |
| Street Improvements | 570.201(c) | 03K | <input type="checkbox"/> |
| Sidewalks | 570.201(c) | 03L | <input type="checkbox"/> |
| *Removal of Architectural Barriers | 570.201 | | |
| Miscellaneous | | | |
| Minor Home Repair | 570.202 | 14A | <input type="checkbox"/> |
| Non-residential Historic Preservation | | 16B | <input type="checkbox"/> |
| ED Direct Financial Assistance to For-Profits | 570.203 | 18A | <input type="checkbox"/> |
| Micro-Enterprise Assistance | 570.203 | 18C | <input type="checkbox"/> |

*As associated with one of the activities noted above it.

Provide (in narrative) why you feel the project falls within that category.

Insert text here

B. National Objective

B.1 AREA BENEFIT

L/M Income Area Benefit

For these purposes, an Area Benefit activity is an activity *that is available to benefit all the residents of an area* that is primarily residential. In order to qualify as addressing the national objective of benefit to L/M income persons on an area basis, an activity must meet the identified needs of L/M income persons residing in an area where at least 51 percent of the residents are L/M income persons. The benefits of this type of activity are available to all residents in the area regardless of income.

For example, typical Area Benefit activities include:

- ✓ Street improvements,
- ✓ Water and sewer lines,
- ✓ Neighborhood facilities, and
- ✓ Facade improvements in neighborhood commercial districts.

The requirement that an area benefit activity must qualify on the basis of the income levels of the persons who reside in the area served by the activity is statutory. (See section 105(c)(2) of the Housing and Community Development Act of 1974 as amended.) This means that the activity may not qualify as meeting the L/M income area benefit national objective on any other basis. For example, if the assisted activity is a park that *serves* an area having a L/M income concentration that falls below the required percentage, the activity may not qualify even if there is reason to believe that the park will actually be *used* primarily by L/M income persons.

Determining the Service Area

The inclusion or exclusion of a particular portion of the grantee's jurisdiction can make the difference between whether the percentage of L/M income residents in the service area is high enough to qualify under the L/M Income Benefit national objective. The principal responsibility for determining the area served by an activity rests with the grantee. HUD will generally accept a grantee's determination unless the nature of the activity or its location raises serious doubts about the area claimed by the grantee.

The area that the grantee determines will be served by an activity need not be coterminous with census tracts or other officially recognized boundaries, but it is useful if it reasonably coincides with such boundaries because of the need to consider census data in the area, as discussed later in this section. It is critical, however, that *the service area determined by the grantee be the **entire** area served by the activity*. This means that, even though a predominantly L/M income neighborhood may be one of several neighborhoods served by an activity (e.g., a grocery store) the percentage of L/M income persons in the *total area served by the activity* is considered for this purpose.

B.1.2 Define the service area. Briefly describe how the boundaries of the service area were determined.

Insert text here

B1. National Objective – Area Benefit

There are two ways to qualify for Area Benefit. Check the box and provide the information which supports the method of qualification that demonstrates how your proposed activity meets this national objective:

- B.1.3. Area Benefit / Census Tract(s) \ and Block Group(s)** and number of residents in Service Delivery Area. (Consult with HCD Staff to obtain HUD formula census data.) List ALL applicable Census Tracts and Block Groups along with the pertinent number of low/mod persons associated with the area.

Table B.2 – Census Tract / Block Group Project Information

| Census Tract(s) | Block Group(s) | Total Population | Low/Mod Population | % Low Mod |
|-----------------------------|----------------|------------------|--------------------|-----------|
| | | | | |
| | | | | |
| <i>[Add rows as needed]</i> | | | | |
| Area Total | | | | |

- B.1.4. Area Benefit / Survey of Residents** in Defined Service Delivery Area

If a grantee has reason to believe that the available census data does not reflect current relative income levels in an area, or where the area does not coincide sufficiently well with census boundaries, HUD will accept information obtained by the grantee from use of a special survey of the residents of the area. The grantee must obtain HUD’s approval of the survey instrument and other methodological aspects of the survey for this purpose. HUD will approve the survey where it determines that it meets standards of statistical reliability that are comparable to that of the Decennial Census data for areas of similar size.

HUD requires documenting the following Survey Results in the Low and Moderate Income Worksheet to determine level of eligibility: **Complete this table if the National Objective is determined via the Survey Instrument methodology.**

| | Action | Required (Assuming 95% Confidence Level) | Expected |
|---|---|--|----------|
| 1 | Number of Families in Project Service Benefit Area | | |
| 2 | Number of families interviewed (surveyed) | | |
| 3 | Number of persons in the families interviewed | | * |
| 4 | Number of persons in the families interviewed who are low and moderate-income persons | | |
| 5 | Divide Line 4 by Line 3 | | |
| 6 | Multiply Line 5 by 100. This is % of LMI persons in service area | % | % |

* Assuming 2.59 persons per household

B.2. National Objective - Limited Clientele Activities Benefiting Low/Moderate Income Persons

A *Low/Moderate income limited clientele activity* is an activity which provides benefits predominantly to low to moderate-income persons rather than everyone in an area generally. It may benefit particular persons without regard to the area in which they reside, or it may be an activity which provides benefit on an area basis but only to a specific group of persons who reside in the area. In either case, at least 51% of the beneficiaries of the activity must be documented Low to Moderate income persons.

Check the one box below that supports the method of qualification that demonstrates how your proposed activity meets the Limited Clientele national objective

B.2.1 Presumed Benefit - To qualify under this subcategory, a limited clientele activity must meet one of the following tests:

Exclusively benefit a clientele who are generally *presumed by HUD to be principally L/M income persons*. The following groups are currently presumed by HUD to be made up principally of L/M income persons:

- abused children,
- elderly persons, (defined as 62 years of age and older)
- battered spouses,
- homeless persons,
- adults meeting Bureau of Census' definition of severely disabled persons*,
- illiterate adults,
- persons living with AIDS, and
- immigrant farm workers.

(**Note:** this presumption may be challenged in a particular situation, if there is substantial evidence that the persons in the actual group that the activity is to serve are *most likely not* principally L/M income persons.)

* The census definition of "severely disabled" follows:

Persons are classified as having a severe disability if they:

- (a) used a wheel-chair or had used another special aid for six months or longer;
- (b) are unable to perform one or more "functional activities" or need assistance with an "ADL or IADL";
- (c) are prevented from working at a job or doing housework; or (d) have a selected condition including autism, cerebral palsy, Alzheimer's disease, senility or dementia, or mental retardation. Also, persons who are under 65 years of age and who are covered by Medicare or who receive SSI are considered to have a severe disability.

Note: For purposes of this definition, the term "functional activities" includes seeing, hearing, having one's speech understood, lifting and carrying, walking up a flight of stairs, and walking. An ADL is an "activity of daily living" which includes getting around inside the home, getting in or out of bed or a chair, bathing, dressing, eating, and toileting. An IADL is an "instrumental activity of daily living" and includes going outside the home, keeping track of money or bills, preparing meals, doing light housework, and using the telephone.

It should also be noted that the so-called "presumed" categories were modified in the regulations in 1995. A new group has been added: "persons living with AIDS." The former category of "handicapped persons" has been replaced with "severely disabled adults." This latter change was made for two reasons. First, the

word "persons" was replaced with "adults" to make it clear that an activity designed to treat handicapped children would not qualify for the presumption, because HUD has been unable to find evidence that the majority of handicapped (or even severely disabled) children are members of a L/M income family. Moreover, the term "handicapped" has been replaced with "severely disabled" (which now will use the census definition of that term). This change was made because the term "handicapped" has been used in so many different ways for different Federal programs and has taken on a much broader meaning than had been envisioned when it was originally introduced as a "presumed" L/M income group for CDBG purposes. A review of census data supports the presumption that adults (but not children, as mentioned above) having severe disability are predominantly L/M income persons.

B.2.2. Require *information on family size and income* so that it is evident that *at least 51%* of the clientele are persons whose family income does not exceed the L/M income limit. (This includes the case where the activity is restricted *exclusively to L/M* income persons). *Reference: §570.208(a)(2)(i)(B) and (C)*

An example of the current HUD Income Guidelines are found in the following table. Income guidelines are adjusted annually by the United States Department of Housing and Urban Development. Please contact County staff for technical assistance and guidance if you need additional information or clarification of required report documentation if funds are awarded for your project.

| 2013 HUD INCOME GUIDELINES Median Family Income = \$86,700 Effective January 1, 2013 | | | |
|--|----------------------------|-----------------------|----------------------------|
| FAMILY SIZE | 30% MEDIAN VERY LOW-INCOME | 50% MEDIAN LOW-INCOME | 80% MEDIAN MODERATE INCOME |
| • 1 | \$18,200 | \$30,350 | • \$45,100 |
| • 2 | • \$20,800 | • \$34,700 | • \$51,550 |
| • 3 | • \$23,400 | • \$39,050 | • \$58,000 |
| • 4 | • \$26,000 | • \$43,350 | • \$64,400 |
| • 5 | • \$28,100 | • \$46,850 | • \$69,600 |
| • 6 | • \$30,200 | • \$50,300 | • \$74,750 |
| • 7 | • \$32,250 | • \$53,800 | • \$79,900 |
| • 8 | • \$34,350 | • \$57,250 | • \$85,050 |

B.2.3. Be of *such nature and in such location* that it may reasonably be concluded that the activity's clientele will primarily be L/M income persons (e.g., a day care center that is designed to serve residents of a public housing complex). *Reference: §570.208(a)(2)(i)(D)*

B.2.4. Be an activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," **provided** it is restricted, to the extent practicable, to the removal of such barriers by assisting:

- the reconstruction of a public facility or improvement, or portion thereof, that does not qualify under the L/M income area benefit criteria;
- the rehabilitation of a privately-owned nonresidential building or improvement that does not qualify under the L/M income area benefit criteria or the L/M income jobs criteria; or
- the rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under the L/M income housing criteria.

Reference: §570.208(a)(2)(ii)

B.2.5. Be a microenterprise assistance activity carried out in accordance with the provisions of §570.201(o) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during each program year who are low- and moderate-income persons. (Note that, for these purposes, once a person is determined to be L/M income, he/she may be presumed to continue to qualify as such for up to a three-year period. This would enable the provision of general support services to such a person during that three-year period, without having to check to determine whether the person's income has risen.) *Reference: §570.208(a)(2)(iii)*

Because of certain statutory limitations, the regulations preclude the following kinds of activities from qualifying under the limited clientele category but qualify under the other statutes:

- Activities involving the acquisition, construction, or rehabilitation of property for housing, including *homeownership assistance (these must qualify under the Housing subcategory, because of section 105(c)(3) of the authorizing statute); or*
- Activities where the benefit to L/M income persons is the creation or retention of jobs (these must qualify under the Jobs subcategory with certain exceptions as noted under the previous area benefit section, because of the different presumptions provided under sections 105(c)(1)(C) and (4) of the authorizing statute).

Definitions

Low/Moderate Income Limited Clientele

Section 102(a)(20) of the HCDA defines the term 'low- and moderate income persons' as families and individuals whose incomes are no more than 80 percent of the median income of the area involved. The 'area involved' is determined for the CDBG program the same way it is determined for the Section 8 Housing program. The 80% of median income figure is determined by HUD based on a four-person family and is adjusted upward or downward for larger or smaller families.

A **family** is defined in the Entitlement program as all persons living in the same household who are related by blood, marriage, or adoption. An individual living in a housing unit that contains no other person(s) related to him/her is considered to be a one-person family for this purpose. Adult children who continue to live at home with their parent(s) are considered to be part of the family for this purpose and their income must be counted in determining the total family income. A dependent child who is living outside of the home (for example, students living in a dormitory or other student housing) is considered for these purposes to be part of the family upon which he/she is dependent, even though he/she is living in another housing unit.

A **household** is defined in the Entitlement program as all persons occupying the same housing unit, regardless of their relationship to each other. The occupants could consist of a single family, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

Persons vs. households:

It is important to note that, for all but one of the subcategories under this national objective, the test of meeting the objective of Benefit to L/M Income Persons is to be met based on L/M **Persons**. Only with the subcategory of L/M Income Housing must the test be met based on L/M **Households**.

Elderly or Senior Citizen: According to HUD, you must be at least 62 years of age and meet one of the following three situations in order to qualify as an elderly household. In the first situation, you must be living alone or be the head of household or spouse of the head of household. The second situation requires two or more elderly people living together. In the third situation, an elderly person has a live-in aide. If a household has elderly people who do not meet any of the above three scenarios, then HUD does not consider it an elderly household.

C. Project Benefit

The Agency will be required to ensure that services provided with funding under this award are made available to residents of jurisdictions participating in the King County CDBG Consortium: Indicate number of residents that will be served in each of the following communities.

- A minimum of thirty percent of the total population served must be CDBG Consortium residents for a project application that is multi-jurisdictional, including both CDBG Consortium and non-consortium jurisdictions;
- A CDBG Consortium funding award will be proportionate to the percent of consortium residents to be served for a multi-jurisdictional project application that serves CDBG Consortium and non-consortium residents.

Table C.1 – Residents Served:

| North/East Sub-region | | South Sub-region | | Outside CDBG Consortium | |
|--------------------------------------|-----------------------------|----------------------------------|-----------------------------|-------------------------|-----------------------------|
| City | Indicate # of Beneficiaries | City | Indicate # of Beneficiaries | City | Indicate # of Beneficiaries |
| Beaux Arts | | Algona | | Auburn | |
| Bothell | | Black Diamond | | Bellevue | |
| Carnation | | Burien | | Federal Way | |
| Clyde Hill | | Covington | | Kent | |
| Duvall | | Des Moines | | Seattle | |
| Hunts Point | | Enumclaw | | Other | |
| Issaquah | | Maple Valley | | | |
| Kenmore | | Pacific | | | |
| Lake Forest Park | | SeaTac | | | |
| Mercer Island | | Tukwila | | | |
| North Bend | | Renton – Joint Agreement City | | | |
| Sammamish | | Uninc. King Co | | | |
| Skykomish | | | | | |
| Snoqualmie | | | | | |
| Woodinville | | | | | |
| Yarrow Point | | | | | |
| Kirkland-- Joint Agreement City | | | | | |
| Redmond – Joint Agreement City | | | | | |
| Shoreline -- Joint Agreement City | | | | | |
| Uninc.King Co. | | | | | |
| TOTAL | | TOTAL | | TOTAL | |
| | | | | Grand Total | |

C.1 Describe the method and source(s) used for collecting the data in the project benefit worksheet.

Insert text here

D. ENVIRONMENTAL REVIEW

****Note on Choice-Limiting Activities:** From your application submittal date until the ER completion date, no “choice limiting” activities (such as property acquisition, clearing, grading, site prep, etc.) may occur. Undertaking such activities after application submittal could void the project’s eligibility.

Please thoroughly answer the following questions:

D.1 What is the current use of the site?

Insert Text Here

D.2. What are the current site natural conditions (trees, ground surface, etc.)? How developed (buildings, roads, etc.) is the site? Describe the surrounding area (commercial, residential, wooded, etc.).

Insert Text Here

D.3. Identify the nearest natural waterbody (stream, lake, etc.). How far, and in which direction, is it from the project site?

Insert Text Here

D.4 How much of a net increase in impervious surface (ex: concrete/asphalt) will occur (if applicable)?

Insert Text Here

D.5 Does a current stormwater system exist at the project site? Please explain.

Insert Text Here

D.6 Will the project excavate or otherwise disturb soil? If so, to what depth and horizontal dimensions? Will any previously-undisturbed soil be impacted? Please explain.

Insert Text Here

D.7 Is the project located in a(n): *(check and respond to all that apply)*

D.7.1 FEMA-designated floodplain? If so, does your agency have flood insurance (please provide covered items, dollar amount and duration)? *(CDBG funds may not be used for any projects located in a FEMA-designated floodway).*

D.7.2 Wetland?

D.7.3 Ecologically-sensitive area?

D.7.4 Designated Historic neighborhood?

D.8 Toxics:

- Has a *Phase I Environmental Site Assessment* (or equivalent toxics review) been completed? (These are normally completed upon property purchase.) If so, on what date?

Insert Text Here

- Do any underground storage tanks (used to store oil/fuel) exist on, or adjacent to, the property? Did any exist in the past? If yes, please explain, include size of the tank(s).

Insert Text Here

- What was the previous use of the property?

Insert Text Here

D.9 Identify any other environmental reviews or studies completed for this site.

Studies: [Title _____] Date Completed: _____

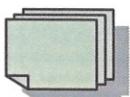
SEPA [Title _____] Date Completed: _____

Other: [Title _____] Date Completed: _____

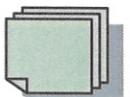
D.10 Provide and label pictures of project site as follows:

D.10.1 North D.10.2 East D.10.3 South and D.10.4 West.

Label Pictures as **Attachment No. 6.**



D.11 Attach a site plan - label it “**Attachment 7**”.



D.12 Climate Change. In the near future, the National Environmental Policy Act (NEPA) and State Environmental Policy Act (SEPA) will require climate change impact assessments for certain project actions. In preparation for these coming requirements, this application asks some basic climate questions relating to your project. Please answer as best you can.

- Generally, what project construction practices and/or features will minimize climate impacts?
Examples could include: green building materials, energy efficient design, pervious surfaces installed, proximity to mass transit, etc.
- Does your agency/organization have a climate change plan (guidance on reducing impacts to, or adapting to the effects of, climate change)? If so, please explain.

If you need assistance with the Environmental Review Details section, please contact Randy Poplock at (206) 263-9099 or Randy.Poplock@kingcounty.gov.

Continue to next page.

E. RELOCATION DETAILS

E.1 Is there Acquisition involved in any aspect of the project? (This includes Right of Way acquisition associated with infrastructure projects.) [] Yes [] No

E.2 Will this project involve: Residential tenant relocation? [] Yes [] No Commercial tenant relocation? [] Yes [] No

If your answer is No for B.1 – move on to the next section of the application.

E.3 Type of Relocation

Residential: [] Permanent [] Temporary

Commercial: [] Permanent [] Temporary

Briefly describe anticipated relocation needs and how they will be addressed

E.4 What requirements or guidelines govern your relocation plan? (Check all applicable)

- [] Uniform Relocation Act [] Section 104 [d] [] Washington State Department of Transportation [] Other (please specify): _____

E.5 Are there tenants in the facility at this time? [] Yes [] No

E.6 Have you developed a relocation plan for this project? [] Yes [] No

E.7 How many tenants will need to be relocated in this project? Residential _____ Commercial _____

E.8 Have you provided notices to the tenants indicating the type of displacement and benefits provided to tenants? [] Yes [] No

E.9 Have you identified replacement or temporary units for those who will be displaced? [] Yes [] No

E.10 Have you determined the tenants' relocation benefits? [] Yes [] No

E.11 Have you included the total relocation budget in the development budget under relocation? [] Yes [] No

Attachments (use colored separator sheets between documents)

E.12 - Attach copies of notices required indicating the type of displacement and benefits provided to the tenants

E.13 - Attach URA Checklist [HCD/CD URA FORM 1]

If you feel your project activity is a planning or human service activity and does not trigger the Uniform Relocation Act, please indicate such. If you are unsure, please contact Wendy DeRobbio for technical assistance at the following contact information and for documentation concurring with your interpretation.

If you need assistance with the Relocation Details section, please contact Wendy DeRobbio, Relocation Specialist, 206-263-9070; or wendy.derobbio@kingcounty.gov or Kathy Tremper, CDBG Coordinator, 2060263-9097; or Kathy.tremper@kingcounty.gov.

Continue to Application Forms. **Complete PART I and II for ALL applications** and attach it to the appropriate PART from the options below, depending on the category of your project.

SELECT THE APPROPRIATE PART

Answer associated questions pertinent to the type of project you are seeking funds to complete. Limit your response to no more than one page in length to each question. Do not leave any question unanswered. Indicate 'Not Applicable' rather than leave a question blank.

PART I - Title Page w/Signature Block

PART II - Federal Requirements, Agency Information

PART III - Community Facility Category

PART IV – Public Improvements Category

PART V – Park Projects

PART VI – Economic Development & Microenterprise Activities

Part VII – Minor Home Repair

Public Improvement Projects

This section of the 2014 CDBG Application form should be used by nonprofit organizations with IRS tax-exempt status and local governments to request CDBG funds for projects involving acquisition, development or improvement of public infrastructure serving predominantly low- and moderate-income residential neighborhoods in unincorporated King County and cities listed in the referenced Sub-regions.

Public improvement projects include but are not limited to construction or reconstruction of stormwater systems, water and sewer systems, streets and sidewalks. Funds may also be requested to pay special assessments levied on low-income homeowners in connection with such projects and for removal of architectural barriers in existing public facilities. Projects must be consistent with the King County Consortium Consolidated Housing & Community Development Plan for 2010-2014. Projects will be awarded funding in 2014 and must be completed by May 31, 2015.

If an environmental technical report or study is required for your project, it will be prepared by a consultant retained by HCD and paid for with a portion of your CDBG award. Consequently, your application should include a sufficient amount to cover the cost of required reports or studies. The amount should be included in your project budget, section D of this application, under “Environmental Review, Reports or Studies Costs”.

You are strongly encouraged to obtain technical assistance from HCD staff prior to completing your application in order to determine whether reports or studies will be required, their estimated cost and potential impacts on the project schedule.

Threshold and Evaluation Criteria for Public Improvements**THRESHOLD REQUIREMENTS –**

1. Proposed projects must be consistent with CDBG Program Regulations.
2. Proposed projects must be consistent with Consolidated Plan objectives and policies.
3. Proposed public improvement projects must be listed in an adopted 6-year Capital Improvement Program or be mandated by a court or State or Federal agency.
4. Proposals for public improvement projects located in an unincorporated community and which will be implemented by a King County department must be signed by the appropriate department director. In addition, such proposals must be authorized and signed by an authorized representative of the appropriate Unincorporated Area Council (UAC), if one has been formed. If a UAC has not been formed, the proposal must be authorized and signed by a community group in the project area such as a community club, homeowners association or chamber of commerce.

EVALUATION CRITERIA — (LISTED IN NO PARTICULAR ORDER)

1. The extent to which the project addresses one or more of the following: makes the community a healthier and/or safer place to live; and/or provides more amenities, including increased geographic accessibility for low- and moderate-income communities and increased physical accessibility for persons with disabilities; and/or increases the capacity for more dense housing, which predominantly benefits low to moderate-income households.
2. The extent to which the project is ready to proceed, including the applicant’s capacity to complete the project within the year 2014; the extent to which project environmental and land use issues have been identified and planned for; and the extent to which all funding necessary to implement the project has been committed.

(Evaluation Criteria Continued)

3. The extent the project addresses an immediate and severe public health or safety issue.
4. Projects under \$50,000 are discouraged.
5. The extent that all geographic areas and participating jurisdictions benefit fairly from CDBG- and HOME-funded activities over the three-year agreement period, so far as is feasible and within the goals and objectives of the Consolidated Plan.
6. The extent to which the project meets a specified need or a geographic sub-region as identified in the Request For Proposal (RFP).

Contents of

PART IV – Public Improvements Category

- Threshold and Evaluation Criteria
- Part IV A – Project Information
- Part IV B – Project Benefit
- Part IV C – Performance Measures
- Part IV D -- Budget - Public Improvements Project
 - D.1 – Construction Budget
 - D.2 – Budget Narrative
 - D.3 -- Engineer’s Estimate

- Part IV E -- Schedule - Public Improvements Project
- Part IV F – Project Team
- Part IV G -- Property Description

The following are required Hard Copy Attachments

- Part IV Required Attachments:
 - ATT IV.1 - Capital Improvement Plan **Label it Attachment 8**
 - ATT IV.2 - A detailed map that shows project site and identifies service delivery area.
Label it Attachment 2

Responses to Public Improvement Questions:**A. Project Information**

A.1 Project Description: Describe, in detail, what you plan to construct or rehabilitate and identify how the CDBG funds will be used. (indicate if any acquisition is a part of the activity).

Insert text here

A.2 Specify the size of the project in square feet or lineal feet (if applicable). Your answer should correspond with Form IV D.3 Engineer's Estimate.

Insert text here

A.3 Specify how you arrived at the total cost of the project. Identify the permits that will be required for the project as well as any land use approvals (i.e. lot line adjustment, subdivision, rezone, conditional use, etc.). Your answer should correspond with Form IV D.3 Engineer's Estimate.

Insert text here

A.4 Describe how the project is accessible or is working toward full accessibility in terms of transportation (proximity to public facilities, schools, low and moderate income housing neighborhoods, senior retirement areas, special transportation programs, etc.).

Insert text here

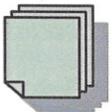
A.5 Describe extent the project addresses a public health and/or safety need. Attach all supporting documentation that relates to this need. (documentation that supports this need, e.g. orders, letters, traffic accident counts, Department of Transportation (DOT), public safety statistics).

Insert text here

A.6 Capital Improvement Plan (CIP): Where is this project listed in priorities. Is it identified as high, medium, or low on the list? Is CDBG the identified targeted source? What role or percentage does it constitute in this project? If applicable, provide a copy of the Transportation Improvement Plan (TIP) submitted to the State reflecting projects slated to be addressed in the term of this project.

Insert text here

A.7 Provide specific reference documentation of this project as it is presented in the adopted CIP. Required attachment – **Label it Attachment 8**

**B. Project Benefit**

B.1 The proposed project must serve either an area which is primarily residential and predominantly low- and moderate-income (Area Benefit) or be limited to serving a predominantly low- and moderate-income clientele (Limited Clientele). Describe the area and identify the residents that will benefit from this project activity.

Insert text here

B.2 Describe how the boundaries of the service area were determined and provide a detailed map that shows project site in relation to service delivery area. **(Required Attachment 2)**

Insert text here



B.3 Limited Clientele – (Example: Projects which propose design and rehabilitation work in order to eliminate architectural barriers to existing facilities and public infrastructure.)
 Proposed project is limited to paying special assessments levied on owner-occupied low-income homes. There are strict guidelines in determining eligibility - please contact a member of the Community Development Technical Assistance Team listed on page 3 of guidelines.

C. Performance Measures

Describe how the project meets the Consolidated Plan Objective Outcome and what performance measure(s) are used to demonstrate an outcome for both short term and long term indicators.

C.1 Performance Indicators

Provide indicators of service delivery before and after project completion.

Table C.1 – Performance Measures

| Define Unit | Number of Units | | Difference | Indicate Annual No. of Households/Persons | | Difference |
|---|---------------------------------------|--|--|---|---|------------|
| | Before No. of Units Provided | After Project Completion Annual No. of Units Provided | | Before Project Annual No. of Households/Persons Served | After: Annual No. of Households/Persons Served | |
| Current measurement of unit (i.e. square feet; lineal feet; park) | | | | | | |
| Example: water transmission main | 250' | 350' | 100' new and 250' rehabilitated/replaced | 25/69 | 35/96 | +10 |
| | | | | | | |
| <i>[Add rows as needed]</i> | | | | | | |

C.2 Describe how these indicators were determined.

Insert text here

Continue to next page.

D. Budget for Public Improvement**D.1 Line Item Budget for Construction and Rehabilitation Projects**

Indicate funding Status with corresponding letter:

“A” – anticipate submitting an application in future grant RFP process;

“S” - submitted application, award unknown;

“C” – funds are committed.

Table D.1 – Construction Budget

| Item | 2014 CDBG Funds | Other Funds | Status: A, S or C: | Total Funds |
|--|--------------------|----------------|--------------------|-------------|
| *Environmental Review (King County Set-aside) | \$ 4,000 | \$ | C | \$ |
| **HCD Project Management – <i>To Be Determined</i> | | | | |
| Development | | | | |
| Appraisal(s) | \$ | \$ | | \$ |
| Architect/Engineer | \$ | \$ | | \$ |
| Right of Way Acquisition (If applicable) | \$ | \$ | | \$ |
| Security Document and Title Report Fees | \$ | \$ | | \$ |
| Construction: | | | | |
| Construction Contract: Line 30 from Table D.3 (Include Sales Tax and Construction Contingency) | \$ | \$ | | \$ |
| Project Management _____ % | \$ | \$ | | \$ |
| Other: | | | | |
| Real Estate Tax | \$ | \$ | | \$ |
| Legal | \$ | \$ | | \$ |
| Insurance | \$ | \$ | | \$ |
| Relocation | \$ | \$ | | \$ |
| Other: (list) | \$ | \$ | | \$ |
| Sub-Total* (Less Environmental Review Cost) | \$ | \$ | | \$ |
| Insert Cost Identified for Right of Way Acquisition - Attachment 9 (if applicable) | \$ | \$ | | \$ |
| Total Project Budget: | \$ | \$ | | \$ |

*Environmental Review (King County Cost Set-aside): This amount is set-aside until final environmental review costs are determined. Any balance remaining will be available for expenditure by Budget Revision Request from the Agency. ** HCD Project Management: Funds will be provided through HCD Project Management Capital Account.

D.2 Budget Narrative

D.2.1 Provide background and explanation of 'Other' fund sources and status of other funding pursued for this project, i.e. what other grant/fund sources have you submitted applications?

Insert Text Here

D.2.2 Provide dates of anticipated award announcements and if 'Other' funds are identified through capital campaign commitments?

Insert Text Here

D.2.3. What 'Other' funds have been committed. Are there any time expirations for those funds?

Insert Text Here

D.2.4. Are any of the 'Other' funds from a federal source?

Insert Text Here

D.2.5 Reduction Options -- Can your project or program be funded a reduced level if necessary? *(This should be the same response as listed at Item No. 6 on page 1 PART I.)*

Yes No Minimum amount needed to make project viable: \$ _____

Insert Text Here

D.2.6 If yes, indicate what amount of funding is the minimum that would be required in order to be successful in the project activity but at a reduced level?

Insert Text Here

D.2.7 Explain what element of your project/program be modified to address this reduction?

Insert Text Here

D.2.8 Wage Requirements: Prevailing Wages/Davis-Bacon

Federal prevailing wage rates are the minimum requirement whenever King County CDBG funds are used for construction. Projects receiving federal funds are required to follow Davis Bacon wage rate requirements.

Describe how federal wage requirements are reflected in the project budget. Identify by name the member of the development team who will work with HCD Project Manager to ensure compliance with wage requirements.

Insert Text Here

FORM D.3 Engineer's Estimate**THIS FORM MUST BE SUBMITTED COMPLETE AND SIGNED BY A LICENSED/CERTIFIED ARCHITECT OR ENGINEER**

2014 Community Development Block Grant Program Proposal

Engineer's Estimate

Date: _____, 2013

Project Name: _____

City of: _____

Prepared by: _____

| Item No. | Description | Est. Quantity | Units | Unit Price | Total Price |
|----------|---|---------------|-------|------------|-------------|
| 1 | Mobilization | | LS | | |
| 2 | Maintenance and Protection of Traffic | | LS | | |
| 3 | Demolition, Clearing and Grubbing | | LS | | |
| 4 | Remove A.C. Pavement | | SY | | |
| 5 | Earthwork | | LS | | |
| 6 | Subgrade Preparation | | SY | | |
| 7 | Foundation Material | | CY | | |
| 8 | Crushed Surfacing | | CY | | |
| 9 | A.C. Pavement | | TN | | |
| 10 | Cement Concrete Curb | | LF | | |
| 11 | Cement Concrete Sidewalk | | SY | | |
| 12 | Cement Concrete Driveway Approach | | SY | | |
| 13 | Driveway Reconstruction, Gravel | | SY | | |
| 14 | Driveway Reconstruction, A.C. | | SY | | |
| 15 | Adjust Structure to Finish Grade | | EA | | |
| 16 | Storm Drain Pipe | | LF | | |
| 17 | Trench Safety System | | LS | | |
| 18 | Manhole | | EA | | |
| 19 | Catch Basin | | EA | | |
| 20 | Combination Curb Inlet | | EA | | |
| 21 | Connect to Existing Catch Basin | | EA | | |
| 22 | Relocation of Existing Fire Hydrant | | EA | | |
| 23 | Relocation of Signs/Mailboxes | | EA | | |
| 24 | Hydroseeding | | LS | | |
| 25 | Finishing and Cleanup | | LS | | |
| 26 | Other (specify) | | | | |
| 27 | Sales Tax | | | | |
| 28 | Contingency | | | | |
| 29 | <i>[Modify line items as necessary to reflect specific project activities].</i> | | | | |
| 30 | TOTAL Construction Budget: | | | | \$ 0 |

LS = lump sum; SY = square yards; CY = cubic yards; TN = ton; EA = each; LF = lineal feet

E. Schedule – Public Improvement Project

Table E.1

| Milestones | Projected Completion Date |
|--|---------------------------|
| Environmental Review Complete | * |
| Contract Executed with King County | ** |
| Right of Way Acquisition Timeline (if applicable) | MONTH YEAR |
| Procure for Professional Design Services | MONTH/YEAR |
| Design Begun | MONTH/YEAR |
| Design Complete, Bid Specs Submitted for County Review | MONTH/YEAR |
| Right of Way Acquisition (If Applicable) | MONTH/YEAR |
| Bid Opening | MONTH/YEAR |
| Preconstruction Conference | MONTH/YEAR |
| Construction 50% Complete | MONTH/YEAR |
| Construction Complete | December 2014 |
| Closing Documentation Submitted | March 2015 |
| Labor Standards Reviewed and Accepted Release Retainage | April 2015 |
| Project Funding Report Form Filed w/HCD Staff | April 2015 |
| Project Closed | May 2015 |

*Obtain an estimate from King County Environmental Review Specialist

** Contract Start Date can only occur AFTER Environmental Review Date

Optional:

Complete the King County Scorecard and provide as a 'baseline' for use in project implementation: Please visit the following web link for additional information.

<http://your.kingcounty.gov/solidwaste/greenbuilding/documents/green-building-sustainable-dev-guide.pdf>

THIS IS NOT A REQUIRED ATTACHMENT – Information regarding the King County Scorecard is provided here because the Scorecard may be part of the contract requirements in the project implementation of a successful application.

Continue to next page.

F. PROJECT TEAM

Provide the name of the consultant or staff person who will perform the following tasks. Please note that consultants paid for with CDG funds must be selected through a competitive process and in accordance with 24 CFR Part 84 (nonprofit organizations) and 24 CFR Part 85 (local governments). If any of the tasks will be performed by a consultant, indicate who in your agency will be responsible for selecting the consultant.

Complete all of the following:

Application Phase

Prepare and submit CDBG Grant Application:

Consultant or Agency Staff _____ Contact: _____

E-mail: _____ Phone: _____

Applicant Staff responsible for consultant selection process: _____

E-mail: _____ Phone: _____

Prepare and submit environmental review forms:

Consultant or Agency Staff _____ Contact: _____

E-mail: _____ Phone: _____

Applicant Staff responsible for consultant selection process: _____

E-mail: _____ Phone: _____

Agency Contracting – Contract Phase

Prepare and submit application for required permit and land use approvals:

Consultant or Agency Staff: _____ Contact: _____

E-mail: _____ Phone: _____

Applicant Staff responsible for consultant selection process: _____

E-mail: _____ Phone: _____

Procurement – Professional Services

Prepare and submit construction bid specifications:

Consultant or Agency Staff: _____ Contact: _____

E-mail: _____ Phone: _____

Applicant Staff responsible for consultant selection process: _____

E-mail: _____ Phone: _____

Procurement – Construction

Solicit and review construction bids:

Consultant or Agency Staff: _____ Contact: _____

E-mail: _____ Phone: _____

Applicant Staff responsible for consultant selection process: _____

E-mail: _____ Phone: _____

Construction

Identified Agency Project Manager who will work with HCD Project Manager on construction:

Consultant or Agency Staff: _____ Contact: _____

E-mail: _____ Phone: _____

Applicant Staff responsible for consultant selection process: _____

E-mail: _____ Phone: _____

G. Property Description:

G.1 Is Right of Way acquisition involved? Complete Acquisition Supplement and add as Attachment 9

G.1.2 The following is required if project involves acquisition of real property for easement for improvements to be completed that are not in a public right of way. Complete this form for each Right of Way acquisition.

TAX PARCEL NUMBER: _____

Property Owner.

(Provide name, address and phone number)

Name: _____

If not an individual -- indicate Agency, Agent or Management Firm and

Contact Name: _____

Address: _____

Phone No: _____ E-Mail: _____

Property size _____ Zoning Classification _____

List Deed Restrictions, Liens, Covenants (if applicable)

List Existing debt (if applicable) \$ _____

Lien Holder Name and Address: _____

Landmark designation (if applicable) _____

IV Table G.1. Please complete the following table (include information for each building located on site):

| | Size (sq ft) | Year Built | Current Use | Proposed Use |
|-----------|--------------|------------|-------------|--------------|
| Structure | | | | |
| | | | | |
| | | | | |

Resource Link:

King County i-map and parcel viewer

- <http://www.kingcounty.gov/operations/GIS/PropResearch/ParcelViewer.aspx>
- Enter parcel # or address, or zoom using magnifying glass cursor → click “Districts & Development Report” and “Assessor’s Data Report”, and **print both and provide as an Attachment 3**



The following are required Attachments



Part IV Required Attachments:

ATT IV.1 - Capital Improvement Plan: Copies of specific pages that reference project activity.
Marked as Attachment No. 8

ATT IV.2 - A detailed map that shows project site and identifies service delivery area.
Marked as Attachment No. 2

ATT IV.3 – Acquisition Supplement **as Attachment 9 (If applicable)**

PART IV - ACQUISITION – SUPPLEMENTARY QUESTIONS -- Attachment 9

(Use this form only if CDBG funds are intended for Acquisition (in whole or in part) of your proposed project).

D. SUPPLEMENT - BUDGET - PUBLIC IMPROVEMENT (i.e. Easement Acquisition)

D.1 Line Item Budget

Indicate funding Status with corresponding letter:

“A” – anticipate submitting an application in future grant RFP process;

“S” - submitted application, award unknown;

“C” – funds are committed

| Item | CDBG Funds | Other Funds | Status: A, B, or C | Total Funds |
|--|------------|-------------|-----------------------|-------------|
| *Environmental Review (King County Cost Set-aside) | \$ 4,000 | \$ | C | \$ |
| *HCD Project Management – To Be Determined | | | | |
| Development | | | | |
| Appraisals | \$ | \$ | | \$ |
| Architect/Engineer | \$ | \$ | | \$ |
| Purchase Price | \$ | \$ | | \$ |
| Title Insurance | \$ | \$ | | \$ |
| Title Report, Closing and Recording Fees | \$ | \$ | | \$ |
| Other: | | | | |
| Real Estate Tax | \$ | \$ | | \$ |
| Legal | \$ | \$ | | \$ |
| Insurance | \$ | \$ | | \$ |
| Relocation | \$ | \$ | | \$ |
| Sub-Total* (Less Environmental Review Cost) | \$ | \$ | | \$ |
| Appraised Land/Structure Value (Match) | \$ | \$ | | \$ |
| Total Project Budget: | \$ | \$ | | \$ |

*Environmental Review (King County Cost Set-aside): This amount is set-aside until final environmental review costs are determined. Any balance remaining will be available for expenditure by Budget Revision Request from the Agency. ** HCD Project Management: Funds will be provided through HCD Project Management Capital Account.

D.2 Budget Narrative

D.2.1 Provide background and explanation of fund sources and status of other funding pursued for this project, i.e. what other grant/fund sources have you submitted applications?

Insert Text Here

D.2.2 Provide dates of anticipated award announcements and if ‘other’ funds are identified through capital campaign commitments?

Insert Text Here

D.2.3. What 'other' funds have been committed. Are there any time expirations for those funds?
Insert Text Here

D.2.4. Are any of the 'Other' funds from a federal source?
Insert Text Here

D.2.5 Reduction Options -- Can your project or program be funded a reduced level if necessary? *(This should be the same response as listed at Item No. 6 on page 1 PART I.)*

Yes No Minimum amount needed to make project viable: \$ _____
Insert Text Here

D.2.6 If yes, indicate what amount of funding is the minimum that would be required in order to be successful in the project activity but at a reduced level?
Insert Text Here

D.2.7 Explain what element of your project/program be modified to address this reduction?
Insert Text Here

PART IV E – PUBLIC IMPROVEMENT PROJECT SCHEDULE

E.1 Timeline and Milestones for an Acquisition portion of Project Activity

| Milestones | Projected Completion Date |
|---|---------------------------|
| Environmental Review Complete | |
| Uniform Relocation Act (Relocation Criteria Documented) | |
| Appraisal complete; reviewed | Month/Year |
| Contract with King County for Funds | Month/Year |
| Closing Date Established | Month/Year |
| Insurance Secured | Month/Year |
| Escrow Account Established | Month/Year |
| Title Report Secured; Schedule B Reviewed | Month/Year |
| Closing – Property Purchased | Month/Year |
| Commence Construction | Month/Year |

NARRATIVE:

URA REVIEW

Complete for all projects involving acquisition, demolition or rehabilitation in any phase

Site Acquisition Section

1. Did the applicant own the site prior to the initiation of the current project? If so, indicate when the property was acquired and skip to question 4, below.

2. Does the purchase meet one of the voluntary acquisition exceptions of 49 CFR 24.101(b)(1)-(5) [identify which exception is being met]? If no, complete a basic acquisition policies review (see 49 CFR 24.102-24.108) and skip to question 4.

3. In obtaining site control, did applicant/buyer provide seller with voluntary, arm’s length transaction information?

4. Does the project site represent undeveloped land or has the property been unoccupied for at least 90 days (prior to the purchase offer (or application if no acquisition)), with no person having been made to move for the project?

Yes ___ No ___ **If yes, skip Tenant Information Section.**

Tenant Information/Relocation Section

5. Has the applicant identified all persons who were made to move from the site within the past three months and explained the reason for such moves? Yes ___ No ___

6. Has the applicant identified all persons (families, individuals, businesses and nonprofit organizations) by race/minority group, and status as owners or tenants occupying the property on the date of submission of the application (or initial site control, if later).

Persons occupying the property include:

| | # Not to be Displaced | # Temporarily Displaced | # Permanently Displaced |
|---------------------------------------|-----------------------|-------------------------|-------------------------|
| Households (families and individuals) | _____ | _____ | _____ |
| Business and Nonprofit Organizations | _____ | _____ | _____ |
| Farms | _____ | _____ | _____ |
| Totals | _____ | _____ | _____ |

7. Has applicant indicated the estimated cost of relocation payments and other services and the basis for the estimate?

Yes ___ No ___

8. Are the estimated costs for relocation reasonable (are they based on actual tenant incomes and available comparable replacement housing)?

Yes ___ No ___

9. Has the applicant indicated the source of funds to be used to pay relocation costs?

Yes ___ No ___

Comments:

10. If relocation costs will be funded from sources other than HOME or CDBG, has the applicant provided evidence of a firm commitment of the funds?

Yes ___ No ___ N/A ___

Comments: _____

11. Has the applicant identified the staff organization that will carry out the relocation activities?

Yes ___ No ___ N/A ___

Comments: _____

12. Were all persons occupying the site issued a General Information Notice (personally acknowledged or sent certified mail, return receipt requested) at the time of application submission (or when the option to acquire the property was executed, if later)? (Obtain copies)

Yes ___ No ___

Comments: _____

13. Is the applicant prepared to issue each tenant at contract award either a Notice of Eligibility for relocation assistance (including information on comparable replacement housing) or a Notice of Non-Displacement?

Yes ___ No ___ N/A ___

Comments: _____

14. Is the applicant/property owner prepared to issue move-in notices to all new tenants?

Yes ___ No ___ N/A ___

Comments: _____

Summary of 2014 CDBG Non-Housing Capital Pre-Applications

Overall - 28 Pre-Applications submitted for a total Request of \$5,747,934

N/E Summary

10 Pre-Applications for a total of \$2,534,994

1 Pre-Application was for MHR in Redmond; the remaining 9 are infrastructure related

South Summary

18 Pre-Applications for a total of \$3,212, 940

1 Pre- Application for MHR

6 Pre-Applications for Community Facility

5 Pre-Applications for Infrastructure

2 Pre-Applications for Parks

3 Pre-Applications for Micro-Enterprise

1 Pre-Application determined ineligible – determined to be a maintenance project.

| App. No. (1) | Project Title (2) | Agency 2(a) | Project Description (3) |
|--------------|---|--|--|
| CAPITAL | | | |
| NE-MHR-1 | Senior Services Minor Home Repair | Senior Services | We propose that Redmond residents will call the Minor Home Repair telephone number to request a repair. The call will be answered by one of the I&A Advocates between the hours of 8:00 a.m. and 6:00 p.m., Monday through Friday. If all of the Advocates are busy, the call will be forwarded to voice mail. Senior I&A Advocates will be responsible for coordinating screening and intake for home repair services in Redmond. |
| NE-PI-2 | Carnation Spilman Ave Water Main Replacement | City of Carnation | Replace 1,100 linear feet of 6" asbestos concrete (AC) water main in Spilman Avenue from Entwistle Street to the southerly edge of Morrison Street with an 8" ductile iron (DI) water main. The AC water main would be abandoned in situ. The project would also replace a 2" water line that connects the 8" water main in Alley 'E' with the water main in Spilman Avenue. |
| NE-PI-3 | Duvall NE 142nd Place Sidewalk Improvements | City of Duvall | This project is requesting funds for design and construction of approximately 1800 linear feet of five foot wide concrete sidewalk with ADA ramps connecting and completing a missing link of pedestrian walkway in a residential neighborhood. The sidewalk will begin at the intersection of 282nd Place NE and be installed on the south side of 142nd Place then continue west thru the 278th Avenue NE intersection on NE 142nd Place ending at 275th Avenue NE. |
| NE-PI-4 | Duvall NE Virginia Street Sidewalk Improvements | City of Duvall | This project is requesting funds for design and construction of approximately 800 linear feet of five foot wide concrete sidewalk with ADA ramps on the South side of NE Virginia Street and will begin at the intersection of 1st Avenue NE ending at 3rd Avenue NE. The project will continue at 1st Avenue NE and ending at Main Street, or we would like to consider the option based on Environmental Restriction to continue south on 1st Avenue NE ending at the Stewart Street intersection. |
| NE-PI-5 | Imagine Housing SR-20 Infrastructure Improvements | Imagine Housing | CDBG funds to provide either (1) a portion of the costs for site work, grading and street improvements associated with the public access road into the site or (2) acquisition costs. Imagine |
| NE-PI-6 | Issaquah NW Dogwood Street Improvements | City of Issaquah | The project includes construction of sidewalks on both sides where sidewalks are nonexistent which will complete missing links between the Issaquah Creek and NW Newport Way. Project includes construction of raised 5 ft wide sidewalks, 5 ft landscaped median buffers, curb and gutter. |
| NE-PI-7 | Issaquah Raimier Boulevard Improvements Phase 2 | City of Issaquah | The project includes completing the design, NEPA documentation, and construction of a raised 12' wide Non-Motorized Trail on the east side of the roadway and a raised 5' wide sidewalk with a 5' landscape buffer on the west side of the roadway, including curb and gutter along both sides of the roadway. It also includes removal of existing non-stand and sidewalks that are at grade and do not meet American's with Disabilities Act (ADA) Standards |
| NE-PI-8 | Kenmore NE 181 St Sidewalks | City of Kenmore | Add approximately 700 linear feet of sidewalk on the south side of the street on the south side of the street between 68th Avenue NE and 73' Avenue NE. |
| NE-PI-9 | North Bend Way Pedestrian Accessibility Improvements | City of North Bend | This project is to reconstruct/improve the pedestrian corridor along the north side of North Bend Way between the limits indicated. The current corridor has intermittent sidewalks and the ones that do exist are narrow, cracked, uneven, and not in conformance with ADA standards |
| NE-PI-10 | Skykomish Pedestrian and Drainage Improvements: Helen to Thelma Streets | Town of Skykomish | ramps), associated storm drainage improvements, and street trees and grates, consistent with the City's downtown design |
| SOUTH | | | |
| SO-CF-1 | Emergency Feeding Program Facility Acquisition | Emergency Feeding Program of Seattle & King County | The Emergency Feeding Program of Seattle & King County (EFP) plans to acquire its permanent operating facility. EFP will use the CDBG funds to purchase the facility. The site is currently used as warehouse and office. The building is large enough for EFP's daily operations, storage, and delivery. The site is near downtown Renton, in close proximity to the major traffic arterials including I-405, I-5, and SR-167 with plenty of parking. We do not anticipate that we will be |

| | | | |
|---------|--|------------------------------|---|
| SO-CF-2 | NAVOS Facility Construction - Gymnasium | NAVOS | required to have permits or land use approval at this time. |
| SO-CF-3 | Skyway Community Center | Skyway Solutions | Construction of a new 9650 square foot gymnasium on the Ruth Dykeman Children's Center site, which will include rooms for art, music, event storage, exercise, restrooms, a stage and storage for sports equipment |
| SO-CF-4 | Somali Community Center Facility Acquisition | Somali Youth and Family Club | Skyway Solutions seeks funds to support Phase I (planning, research, pre-construction) of a much-needed community center to serve the Skyway community and surrounding area known as West Hill. Need to acquire at least 4000 sq. ft. classrooms, senior activities, 5-office space, 3-Bathrooms, 1- kitchen, 1-Gym, 1-coffee shop, basket ball court and backyard space. Make improvements to an existing outbuilding: include: • Automatic fire sprinkler and alarm system • Accessible sink and restroom facilities • Barrier-free accessibility features for the structure including entry and exit ramps • HVAC improvements • Signage • Automatic fire sprinkler and alarm system • Accessible sink and restroom facilities • Barrier-free accessibility features for the structure including entry and exit ramps • HVAC improvements • Signage • Automatic fire sprinkler and alarm system • Accessible sink and restroom facilities • Barrier-free accessibility features for the structure including entry and exit ramps • HVAC improvements • Signage • Automatic fire sprinkler and alarm system • Accessible sink and restroom facilities • Barrier-free accessibility features for the structure including entry and exit ramps • HVAC improvements • Signage |
| SO-CF-5 | Washington Elder Care facility improvements | Washington Elder Care | Facility improvements as listed: • Kitchen approximately 400 SF: including ovens, stoves, hood and ventilation unit, sinks, washer/dryer, built-in refrigerator/freezers, storage • Dining/Activity area approximately 2,000 SF, designed to accommodate dining and social, educational and recreational activities • Automatic fire sprinkler and alarm system • Accessible sink and restroom facilities • Barrier-free accessibility features for the structure including entry and exit ramps • HVAC improvements • Signage |
| SO-CF-6 | Washington Elder Care facility improvements: Seniors Community Kitchen and Dining Facility | Washington Elder Care | Project will replace 750 feet of 6 inch asbestos water main on Baker St, from 2nd Avenue to just west of Railroad Ave., and Railroad Ave. from north of Baker St. (in front of the museum) to Commission Ave. with 600 feet of 8 inch ductile iron water main. This project will install 200 feet of new 8 inch ductile iron water main on 1st Ave. from Baker St. to the existing dead end 8 inch ductile iron pipe to provide looping and upgrade fire flow. This project will also replace 350 feet of 1.25 inch corroded iron pipe with 2 inch PVC pipe on Commission Ave. and will install 200 feet of 2 inch PVC from Commission Ave. to the existing dead end 1.25 inch pipe on Miner St. This project will replace hydrants as needed. add ADA ramps at up to seven intersections by Shorewood Elementary School along SW 116th Street between 14th Ave SW and 26th Ave SW in Burien, WA 98146. The existing ramps at these locations are not ADA compliant. This project would serve persons with disabilities that live in the residential neighborhood nearby. The City is looking into the possibility of using the King County Roads Department to do this work, since we have an Interlocal Agreement |
| SO-PI-7 | Black Diamond Asbestos Water Main Replacement & Looping | City of Black Diamond | |
| SO-PI-8 | Burien ADA Ramps along SW 116th Street | City of Burien | |

| | | | |
|-----------|---|--|--|
| | | | with them for roads maintenance services. The funds would be used mainly for the construction of the ramps, design work, and some city project management costs. |
| SO-PI-9 | Burien South 132nd Street Pedestrian/Bicycle Trail | City of Burien | construction of a pervious pavement path, approximately 300' long and 8" wide for primarily walking and bicycle use at South 132nd Street, between 9th Ave South and 10th Ave South, near Cedarhurst Elementary School. Bollards will be put on both ends, restricting vehicular access to service vehicles only. Lighting will be added along the trail to enhance access, visibility, safety and security. Bench seating will also be added. This trail serves as a primary walking route to Cedarhurst Elementary School for children in the nearby low-moderate income neighborhood. CDBG funds would be used for the design, construction, and project management costs of the project. |
| SO-PI-10 | Covington Jenkins Creek Park Bridge and Mixed-Use Path | City of Covington | Project will restore an existing trail system within Jenkins Creek Park. Improvements include construction of a new bridge in the location of a previous bridge that was washed out, and widening and paving approximately 2,200 feet of existing path, including replacement of an existing timber bridge, all to meet current multi-use trail standards |
| SO-PI-11 | Des Moines So224th Street Sidewalk Improvements | City of Des Moines | City would place new sidewalks on the north and south side of South 224th Street between SR-99 (Pacific Highway) and 30th Avenue South. The improvements would include undergrounding a portion of the aerial utilities, provide streetlights, concrete curb and gutter, and a 5 foot continuous concrete sidewalk on both sides of South 224th Street |
| SO-PK-12 | Enumclaw McFarland Park Accessibility And Pathway Repairs | City of Enumclaw | 1) Remove and retrofit six curb ramps from parking areas to park to meet current ADA standards. 2) Replace existing asphalt paving that is currently broken by tree roots and inaccessible in places with 10 foot wide concrete sidewalk along the frontage of the park. 3) Replace existing asphalt path around eastern most play structure to create an accessible route/path from the new sidewalk to and around the play structure. Existing path is broken by tree roots - 400 linear feet of 5' wide asphalt paving and 4) Replace circular pathway in the park that is bubbled and broken by tree roots with new path. |
| SO-PK-13 | SeaTac Senior Ctr Park Improvements | City of SeaTac | The requested funds will allow the City to design and construct 2 bocce courts and a horse shoe pit located next to the Sea Tac Senior Center |
| SO-ED-14 | HCC Startzone Microenterprise | Highline Community College | StartZone's main purpose is to promote economic development by helping qualifying residents of south sub-region cities achieve financial self-sufficiency by providing assessable training, consulting and other support for building small businesses that are on the pathway to becoming bankable, profitable and sustainably connected to the local economy |
| SO-ED-15 | New Roots Microenterprise | Diocese of Olympia Refugee Resettlement Office | The Refugee Office microenterprise program has made 331 loans since 2003. Loans range from \$500 to \$15,000. The proposed project will not request loan funds. CDBG funds will be used for business training; and the general preparation of low income entrepreneurs to receive business loans |
| SO-ED-16 | Washington Cash Microenterprise | Washington Community alliance for Self-Help | In 2014, \$80,000 in requested CDBG funding will go toward: 1) Four business development trainings led in Spanish, 2) culturally-relevant financial services, one-on-one coaching and consultation, and advanced trainings and workshops for 75 people, 3) launching or expanding 50 new microenterprises among households with low incomes in South King County. |
| SO-MHR-17 | Tukwila Minor Home Repair Program | City of Tukwila | Funds will be used to provide minor home repair services for low- and moderate income homeowners in the South Sub-region of King County, living in Sea Tac, Tukwila, Des Moines, and Covington. Funds address low/moderate income housing preservation and maintenance. |
| SO-PI-18 | Black Diamond Water Tank Repainting | City of Black Diamond | The City proposes to repaint the reservoir in order to ensure it has the protection from rust and other wear and tear. |

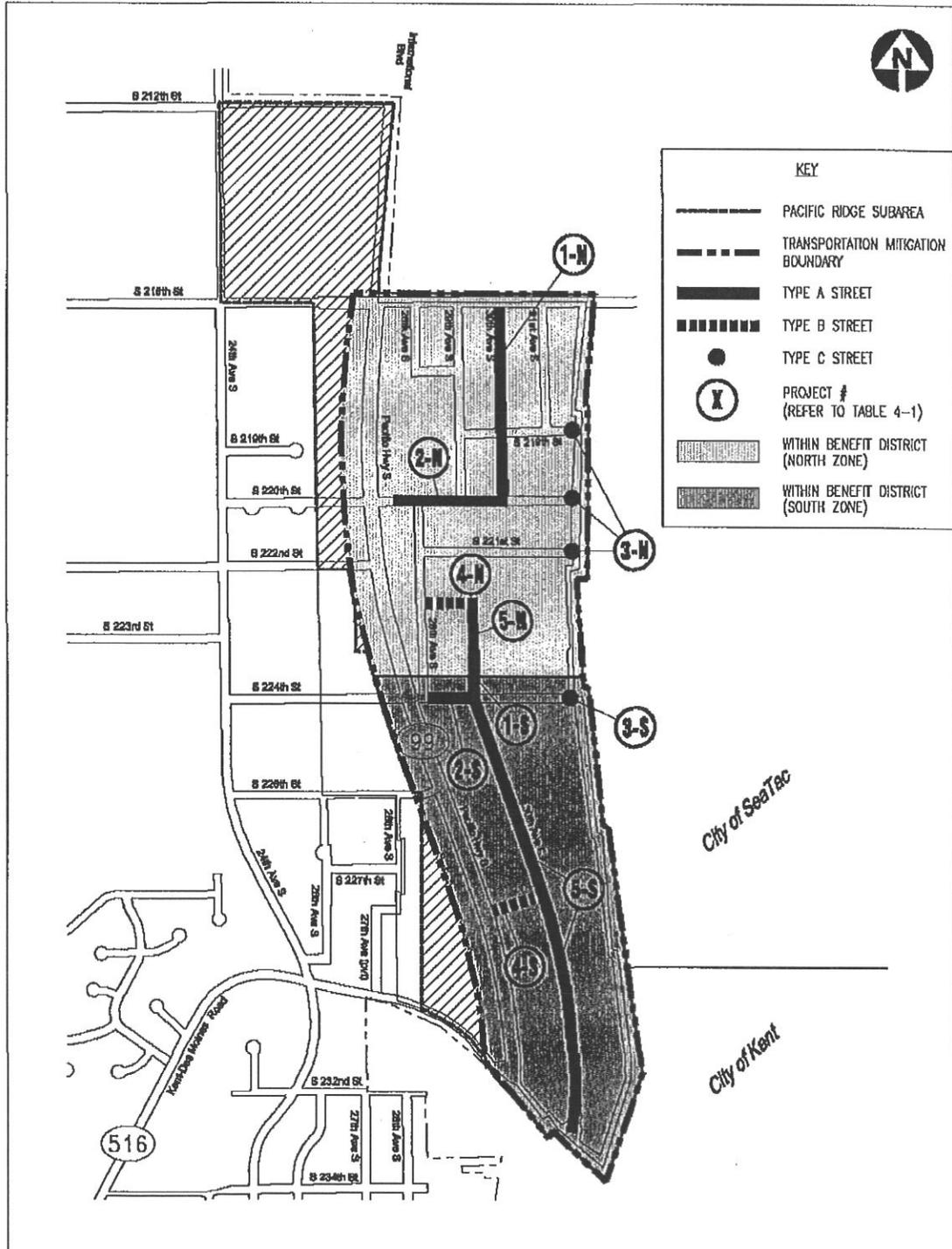


Figure 4-2
 Core Transportation Mitigation Plan Projects Within North and South Zones
 Pacific Ridge Subarea - Planned Action EIS

M:\9999027\Task 04\Graphics\Graphic02 rob a fm 12/05/01 11:04

| Project Number | Location | Improvement | Total Estimated Project Costs | Total Estimated Costs for Mitigation Plan |
|---|---|--|--------------------------------------|--|
| 1-N | 30 th Ave S (S 216 th St to S 220 th St) | Reconstruct roadway | \$780,000 | \$780,000 |
| 2-N | S 220 th St (180 ft e/o Pacific Hwy S to 30 th Ave S) | Reconstruct roadway | \$470,000 | \$470,000 |
| 3-N | S 219 th , S 200 th , & S 221 st Sts (Eastern terminus w/o I-5) | Construct three cul de sacs, turnarounds | \$504,000 | \$504,000 |
| 4-N | S 222 nd Pl. Connection (28 th Ave S to 30 th Ave S) | Construct new roadway | \$864,500 | \$454,500 ¹ |
| 5-N | 30 th Ave S (S 222 nd PL Connection to n/o S 224 th St) | Reconstruct roadway | \$380,000 | \$380,000 |
| North | Total | | \$2,998,500 | \$2,588,500 |
| 1-S | 30 th Ave S (n/o S 224 th St to S 224 th St) | Reconstruct roadway | \$90,000 | \$90,000 |
| 2-S | S 224 th St (220 ft e/o Pacific Hwy S to 30 th Ave S) | Reconstruct roadway | \$210,000 | \$210,000 |
| 3-S | S 224 th St (Eastern terminus, w/o I-5) | Construct cul de sac, turnaround | \$168,000 | \$168,000 |
| 4-S | S 225 th PL. Connection (Pacific Hwy S to 30 th Ave S) | Construct new roadway | \$2,300,700 | \$1,730,700 ¹ |
| 5-S | 30 th Ave S (S 224 th St to Kent-Des Moines Rd) | Reconstruct roadway | \$1,960,000 | \$1,960,000 |
| South | Total | | \$4,728,700 | \$4,158,700 |
| GRAND TOTAL | | | \$7,727,200 | \$6,747,200 |
| 1. Mitigation plan only includes cost of property acquisition for projects 4-N and 4-S. Both projects involve new construction of road in a new right-of-way. At this time, acquisition of the property for the new alignment is the key element of these two projects. | | | | |

Cost Allocation Strategy

The basic cost allocation methodology considered in this plan simply takes the total cost of the improvements and divides them by an estimate of the number of new trips generated within the benefit district. The resulting cost per trip can then be converted to a cost per unit of development (e.g., multi-family dwelling unit) based on average trip generation rates.

In developing the Pacific Ridge Transportation Mitigation Plan, several concepts for allocating the improvement costs to new developments were considered. These included developing a single mitigation fee for the total area or developing fees by district. A combined approach that allocated costs for projects such as 30th Avenue South to the total area and costs for more local improvements by district was also evaluated.

The City opted for a district-based system, since it more accurately reflects the potential impacts and associated mitigation. As shown on Figure 4-2, north and south districts were defined. The districts represent a logical dividing line based on travel patterns, traffic impacts, and mitigation needs.



**DRAFT 2014 - 2019 CAPITAL IMPROVEMENT PLAN
Transportation CIP Fund**

**CAPITAL IMPROVEMENT PLAN
REQUEST FORM**

| | | | |
|---------------------|--|--------------------------------|---------|
| CATEGORY | Transportation | PROJECT NO. | 319.336 |
| PROJECT | South 224th Street Improvement Project | Project Type: | Improve |
| LOCATION | Pacific Highway South to 30th Avenue South | Council Goals met: | 1, 2, 3 |
| DESCRIPTION: | Provide for the design of sidewalk improvements consistent with the Pacific Ridge Neighborhood Improvement Plan. | Council Objectives met: | Adopted |

EXPENDITURE SCHEDULE

| COST ELEMENTS | TOTAL* | FY 11 Act | FY 12 Est | FY 12 Amend | FY 13 | FY 14 | FY 15 | FY 16 | FY 17 | FY 18 |
|------------------------|-------------------|-----------|-------------|-------------|-------|-------------------|-------|-------|-------|-------|
| ADMIN (CITY STAFF) | \$ 25,000 | | | | | \$ 25,000 | | | | |
| CIP PROJ MANAGEMENT | 30,000 | | | | | 30,000 | | | | |
| DESIGN / ENGINEERING | 85,000 | | | | | 85,000 | | | | |
| LAND | 5,000 | | | | | 5,000 | | | | |
| BUILDINGS | - | | | | | | | | | |
| IMPROVEMENTS | 425,000 | | | | | 425,000 | | | | |
| WD #54 IMPROVEMENTS | - | | | | | | | | | |
| INSPECTION | - | | | | | | | | | |
| CONTINGENCY | - | | | | | | | | | |
| UTILITY UNDERGROUNDING | - | | | | | | | | | |
| OTHER | - | | | | | | | | | |
| TOTAL | \$ 570,000 | | \$ - | \$ - | | \$ 570,000 | | | | |

| FUNDING SOURCES | TOTAL* | FY 11 Act | FY 12 Est | FY 12 Amend | FY 13 | FY 14 | FY 15 | FY 16 | FY 17 | FY 18 |
|--------------------------------|-------------------|-----------|-------------|-------------|-------|-------------------|-------|-------|-------|-------|
| PACIFIC RIDGE MITIGATION FEES | \$ 300,000 | | | | | \$ 300,000 | | | | |
| CDBG - King County (Unsecured) | 270,000 | | | - | | 270,000 | | | | |
| TOTAL | \$ 570,000 | | \$ - | \$ - | | \$ 570,000 | | | | |

*Excludes FY 12 Amd



**DRAFT 2014 - 2019 CAPITAL IMPROVEMENT PLAN
Transportation CIP Fund**

**CAPITAL IMPROVEMENT PLAN
REQUEST FORM**

| | | | |
|-----------------|--|--------------------------------|---------|
| CATEGORY | Transportation | PROJECT NO. | 319.336 |
| PROJECT | South 224th Street Improvement Project | Project Type: | Improve |
| LOCATION | Pacific Highway South to 30th Avenue South | Council Goals met: | 1, 2, 3 |
| | | Council Objectives met: | |
| | | Project Status | Adopted |

DESCRIPTION: Provide for the design of sidewalk improvements consistent with the Pacific Ridge Neighborhood Improvement Plan.

JUSTIFICATION: The need for improvements along South 224th Street in Pacific Ridge have been identified in the Pacific Ridge Neighborhood Improvement Plan, the City's Comprehensive Transportation Plan, and the Six Year Transportation Improvement Plan. There are numerous multi-family developments located near South 224th Street that generate pedestrian traffic. This area is also envisioned for commercial redevelopment. This route will continue to be used by pedestrians to access bus stops, shopping, and other attractions on the Pacific Highway South business corridor.

SCOPE OF WORK: Improvements identified for South 224th Street are for a "Type A" street including curbs, gutters, sidewalks, and bike lanes. This project includes design, environmental analysis, and preparation of plans, specifications, and estimates by a consultant. Permitting and construction of the improvements will be performed by a developer, or alternatively, a developer will provide in-lieu fees to the City and the City will provide for the construction of the improvements.



S 224th ST

ARTEMIS
FRONTAGE

* NOT PART OF CDBG S/W PROJECT

SR - 99

30th AVE S

Scale: 1"=40'

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 2013 Poverty Bay Brews & Blues Festival at the Des Moines Beach Park

FOR AGENDA OF: May 23, 2013

ATTACHMENTS:

1. Draft Resolution No. 13-116
2. Draft Agreement Between City of Des Moines and the Des Moines Rotary Club for 2013 Poverty Bay Brews & Blues Festival

DEPT. OF ORIGIN: Legal Department

DATE SUBMITTED: May 13, 2013

CLEARANCES:

Legal [Signature]

Finance N/A

Marina [Signature]

Parks, Recreation & Senior Services [Signature]

Planning, Building & Public Works DJB

Police [Signature]

Courts N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this item is to seek Council approval of Draft Resolution No. 13-116 authorizing Poverty Bay Brews & Blues Festival on August 24, 2013, sponsored by the Rotary Club of Des Moines to be held at the Des Moines Beach Park and Marina.

Suggested Motions

First Motion: "I move to adopt Draft Resolution No. 13-116, authorizing the fourth annual Poverty Bay Brews & Blues Festival on August 24, 2013, at the Des Moines Beach Park and Marina."

Second Motion: "I move to authorize the City Manager to enter into an Agreement with the Rotary Club of Des Moines related to the provision of support services and amenities for the 2013 Poverty Bay Brews & Blues Festival, substantially in the form as attached."

Background

The Rotary Club of Des Moines has requested the use of the Des Moines Beach Park meadow, Founders Lodge and parking lot and Marina north parking lot to hold its fourth annual Poverty Bay Brews & Blues Festival. Proceeds from the event will be used to provide the opportunity for music education for disadvantaged Highline School District students through Highline Music 4 Life.

Discussion

The Rotary Club of Des Moines requests that City Council approve Draft Resolution No. 13-116 authorizing the use of the Des Moines Beach Park and Marina for the fourth annual Poverty Bay Brews & Blues Festival. Rotary would provide event management, production and fund raising necessary for event production including \$2,000,000.00 event liability insurance coverage naming the City of Des Moines as an additional insured.

Rotary would work with City Departments to prepare the Beach Park and Marina event layout, parking lot management and pedestrian safety plans as required by the City's Special Event Permit to ensure a safe event open to the public on Saturday, August 24, 2013 between the hours of 12:00 p.m. and 8:00 p.m. The Rotary Club of Des Moines proposes to pay the city for the use of Beach Park facilities and will be responsible for providing event security officers, parking attendants, fencing, portable restrooms and garbage collection and removal. The Beach Park facility rental charge will cover the cost of on-site recreation facility support staff, water and power.

The City would assist the Rotary Club of Des Moines by promoting the event through its promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Rec & Roll Guide, City Web Page, Channel 21 and Seattle Southside Visitors Service.

The net proceeds from this event will be used to fund Rotary charities.

Alternatives

Approve or do not approve the Resolution and the Agreement.

Financial Impact

The Rotary Club of Des Moines requests that the City of Des Moines allow use of the Beach Park for the Festival and the north Marina parking lot for event parking. Facility rental charges and any City permit fees will be determined by the hours of park facilities use and impacts to other City services identified by City departments as part of the Special Event Permit process. Staff anticipates minimal City support would be required because Rotary will provide event security officers and parking lot attendants and pay for fencing, signage, portable restrooms, garbage collection and removal and any other event expenses.

Recommendation or Conclusion

Staff recommends that City Council approve Draft Resolution No. 13-116 for the fourth annual Rotary Club of Des Moines Poverty Bay Brews & Blues Festival.

CITY ATTORNEY'S FIRST DRAFT 05/14/2013

RESOLUTION NO. 13-116

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing the Des Moines Rotary Club ("Rotary Club") to conduct its 2013 Poverty Bay Brews and Blues Festival ("Festival") at the Des Moines Beach Park and Marina and listing conditions under which such permission is granted.

WHEREAS, the Rotary Club wishes to conduct its fourth annual Festival in August 2013 at the Des Moines Beach Park and Marina, and

WHEREAS, the Rotary Club will solicit sponsors to assist in financing the Festival from hotels, motels, restaurants, suppliers, car rental companies, and other area business, and

WHEREAS, the Rotary Club has designed the Festival to raise funds for charitable, community, and educational projects supported by the Rotary Club, and to promote the Des Moines community and area businesses,

WHEREAS, the Festival will enhance the quality of life for residents of the City of Des Moines, and

WHEREAS, the City of Des Moines wishes to permit the Rotary Club Festival; and, at the same time, be held harmless from any liability arising from the existence of such activity; now therefore,

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

Sec. 1. Permission to conduct the 2013 Poverty Bay Brews and Blues Festival ("Festival") on August 24, 2013 is granted to the Des Moines Rotary Club, subject to the following conditions:

(1) The Rotary Club shall defend and hold the City of Des Moines harmless from any liability which may result from the conduct of the Festival or its activities; and an authorized official of the Rotary Club shall sign a written agreement on behalf of the Rotary Club that approval of this 2013 Festival resolution does not constitute a waiver of the Rotary Club's obligation to defend and hold the City of Des Moines harmless

Resolution No. _____

Page 2 of 4

from any liability that may result from the conduct of the Festival event or its activities.

(2) The Rotary Club shall purchase liability insurance in the amount of two million dollars (\$2,000,000) and shall name the City of Des Moines as a named additional insured. Proof of such insurance must be delivered to the City thirty (30) days prior to the event.

(3) The Rotary Club shall be permitted to erect such special signage as is appropriate in the thirty (30) days prior to and during the event. The Rotary Club must remove all such signage within ten (10) days after the final day of the Festival.

(4) Normal fees for conduct of a community event shall be paid by the Rotary Club. Fees required by other governmental agencies, including the Health Department and Liquor Control Board, shall be the responsibility of the Rotary Club.

(5) An authorized official of the Rotary Club shall execute a written agreement, on behalf of the Rotary Club, acknowledging its responsibilities for the conduct of Festival activities and accepting such limitations as are contained in this resolution, in addition to such limitations as may be imposed by the City Council or City Manager, including, but not limited to:

(a) The Rotary Club agrees to take whatever measures are necessary to prevent damage to the Des Moines Beach Park and Marina facilities and to be responsible for any damage that may occur as a result of the Festival.

(b) The hours of operation of the Festival shall occur within the following times:

Saturday, August 24, 2013 12:00 p.m. to 8:00 p.m.

Set-up and take-down hours shall be determined by the City Manager.

Resolution No. _____
Page 3 of 4

A Des Moines Police Department command officer will have the authority to close the Festival down at any time should it be necessary, following assessment of any security issue.

(c) The Rotary Club will be responsible for providing security officers for the event, and will provide portable sanitary facilities and garbage bins at its own expense.

(d) The Rotary Club will use all reasonable efforts to advertise the Festival as a community festival.

(e) The Rotary Club will obtain necessary special occasion licenses from the Liquor Control Board and will not allow admission to minors.

(f) All retail sales of food, beer, wine, and merchandise will be subject to permission of the Rotary Club.

(g) To enhance the security of the patrons of the Festival, the Rotary Club shall be required to fence areas in the Beach Park and is given permission to install tents within the fenced area as necessary for festival vendors and attendees. The tent(s) will meet fire code requirements. The layout of the Festival grounds shall be presented to the City Manager or his designees for review and approval at least ninety (90) days before the date of the Festival.

(h) An admission fee will be charged by the Rotary Club.

Sec. 2. The City Manager is authorized, at his discretion, to grant permission to the Rotary Club to use and occupy for the purpose of the Festival City facilities and property at the Des Moines Beach Park and Marina.

Sec. 3. The City Manager is authorized, at his discretion, to grant permission to utilize City promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 to inform and educate the public about the event. Any event marketing costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

Resolution No. _____
Page 4 of 4

Sec. 4. The City Manager is authorized to provide City assistance to the Rotary Club, which may include services by the Police, Public Works, Parks and Recreation, and Marina departments for the purpose of event logistics coordination, facility management and public safety. Any event operational costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

ADOPTED BY the City Council of the City of Des Moines, Washington this _____ day of May, 2013 and signed in authentication thereof this _____ day of May, 2013.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

**AGREEMENT BETWEEN THE CITY OF DES MOINES AND
THE DES MOINES ROTARY CLUB
2013 POVERTY BAY BREWS AND BLUES FESTIVAL**

THIS AGREEMENT is entered into by and between the CITY OF DES MOINES, WASHINGTON (hereinafter "City"), a municipal corporation of the State of Washington, and the DES MOINES ROTARY CLUB (hereinafter "Rotary Club") for the 2013 Poverty Bay Brews and Blues Festival.

WHEREAS, the City finds that the Festival enhances the quality of life for residents of the City of Des Moines, and

WHEREAS, the Rotary Club, as sponsor of the Festival, carries out all activities as a Rotary Club function, and

WHEREAS, the City of Des Moines wishes to permit the Poverty Bay Brews and Blues Festival activities of the Rotary Club while at the same time being held harmless from any liability arising from the existence of such activities and to have the Rotary Club sponsor the Festival pursuant to certain terms and conditions; now therefore,

IN CONSIDERATION of the mutual benefits and conditions listed below, the parties agree as follows:

(1) The Rotary Club agrees as follows:

(a) The Rotary Club shall conduct the 2013 Festival in compliance with the conditions outlined in City of Des Moines Resolution No. ____, a copy of which is attached hereto and incorporated by this reference, and will comply with all federal, state, and local statutes, ordinances, and regulations.

(b) The Des Moines Rotary Club shall defend, indemnify and hold the City of Des Moines, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the conduct of the event or its associated activities, except for injuries and damages caused by the sole negligence of the City. In the event that any suit based upon such claim, injury, damage, or loss is brought against the City, the Des Moines Rotary Club shall defend the same at its sole cost and expense; provided, that the City retains the right to participate in said suit if any principal of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, employees, or any of them, or jointly against the City and the Des Moines Rotary Club and their respective officers, agents, and employees, or any of them, the Des Moines Rotary Club shall satisfy the same.

(c) The Rotary Club shall purchase liability insurance in the amount of two million dollars (\$2,000,000) and shall name the City of Des Moines as an additional named insured. Proof of such insurance shall be delivered to the City no later than thirty (30) days prior to the event.

(d) The Rotary Club shall remove all signage within ten (10) days after the final day of the Festival.

(e) The Rotary Club acknowledges its responsibilities for the conduct of Festival activities and accepts such limitations as are contained herein, in addition to such limitations as may be imposed by the City Council or City Manager.

(f) The Rotary Club agrees to take whatever measures are necessary to prevent damage to the Des Moines Beach Park and Marina facilities and to be responsible for any damage that may occur as a result of the Festival.

(g) The date and hours of operation of the Festival shall be held within the following limits:

Saturday, August 24, 2013 12:00 p.m. to 8:00 p.m.

Set-up and take-down hours shall be determined by the City Manager.

(h) A Des Moines Police Department command officer will have the authority to close the Festival down at any time should it be necessary following assessment of any security issues.

(i) The Rotary Club will use all reasonable efforts to advertise the Festival as a Community Festival.

(j) Retail sales of food, beer, and Brews and Blues merchandise will be subject to permission of the Rotary Club.

(k) The Rotary Club will be responsible for providing security officers for the event, and will provide portable sanitary facilities and garbage bins at its own expense.

(l) The Rotary Club will obtain necessary special occasion licenses from the Liquor Control Board and will not allow admission to minors inside the festival area.

(m) To enhance the security of the patrons of the Festival, the Rotary Club will be required to fence event areas in the Beach Park for use as the Festival grounds. Any tents shall meet fire code requirements. The layout of the Festival grounds shall be presented to the City Manager or designees for review and approval at least ninety (90) days before the date of the Festival.

(n) An admission fee will be charged by the Rotary Club.

(2) The City agrees as follows:

(a) Upon execution of this Agreement, the City grants permission to the Rotary Club to use and occupy, for the purpose of the Festival, City facilities and property at the Des Moines Beach Park for the main event venue and the Des Moines Marina parking lot for event parking.

(b) Normal City fees for conduct of this community event, and those fees required by other governmental agencies, including Health Department and Liquor Control Board, shall be the responsibility of the Rotary Club.

(c) The City authorizes the Rotary Club to utilize the official City of Des Moines logo in connection with the Festival.

(d) The City shall permit the Rotary Club to erect such special signage as is appropriate in the thirty (30) days prior to and during the event.

(e) The City Manager is authorized, at his discretion, to grant permission to utilize City promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 to inform and educate the public about the event. Any event marketing costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

(f) The City Manager is authorized to provide City assistance to the Rotary Club, which may include services by the Police, Public Works, Parks and Recreation, and Marina departments for the purpose of event logistics coordination, facility management and public safety. Any event operational costs incurred by the City at Rotary's request will be paid to the City of Des Moines by the Rotary Club.

(3) Duration of Agreement. This Agreement is solely for the 2013 Festival. The Agreement will commence upon date of execution and ends upon completion of all contractual obligations, execution of a new Contract, City's written termination of the Contract as described in section 4 of this Agreement, or the Rotary Club's decision not to have the Festival, whichever is sooner. Provided, however all indemnification and hold harmless provisions of this Agreement shall survive the termination of this Agreement.

(4) Termination. This Agreement may be terminated by the City for good cause upon thirty (30) days' written notice to the Rotary Club of the City's intention to terminate the same. Good cause is defined as either:

(a) Failure of the Rotary Club to perform any requirement of this contract within ten (10) days after the City makes written demand for such performance; or

(b) Termination required for purposes of public health, safety, welfare or the public interest, as determined by a majority of the Des Moines City Council in open public meeting.

(5) Discrimination Prohibited. The Rotary Club shall not discriminate against any employee, applicant, vendor, or any person seeking to participate in Festival festivities on the basis of race, color, religion, creed, sex, national origin, sexual orientation, marital status, or presence of any sensory, mental, or physical handicap.

(6) Entire Agreement. This Agreement contains the entire agreement between the parties and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties. Either party may request changes in the Agreement. Proposed changes mutually agreed upon will be incorporated by written amendments to this Agreement.

(7) Governing Law. The existence, validity, construction, and enforcement of this Agreement shall be governed in all respects by the laws of the State of Washington.

(8) Mediation/Arbitration Clause. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(9) Amendments/Authorization for Additional Services. This Agreement may be modified or amended and additional conditions may be authorized during the term of this Agreement upon the mutual written consent of the parties.

(10) Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

(11) Waiver. The waiver by either party of any breach of any term, condition, or provision of the Agreement shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Agreement.

(12) Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

(13) Time of Essence. Time is of the essence for each and all of the terms, covenants, and conditions of this Agreement.

(14) Concurrent Originals. This Agreement may be signed in counterpart originals.

(15) Ratification and Confirmation. Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

CITY OF DES MOINES

DES MOINES ROTARY CLUB

Anthony A. Piasecki
Its City Manager
At the direction of the Des Moines City
Council by Adoption of Resolution No. _____
In an Open Public Meeting on May 23, 2013

By _____
Its _____

Date _____

Date _____

APPROVED AS TO FORM:

City Attorney

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 2013 Classic Car and Wooden Boat Show

FOR AGENDA OF: May 23, 2013

ATTACHMENTS:

1. Draft Resolution 13-112
2. Draft Agreement Between the City of Des Moines and the Des Moines Waterfront Farmers Market

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: May 13, 2013

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

The Des Moines Waterland Farmers Market (“Farmers Market”) has proposed to sponsor the Des Moines Classic Car and Wooden Boat Show to be held on July 20, 2013 in the North Marina Parking Lot. The purpose of this agenda item is to seek the Council’s approval of Draft Resolution No. 13-112 which allows the Farmers Market to conduct the Event on City property, subject to conditions, as well as to authorize an agreement with the City Manager describing the details and obligations for the event.

Suggested Motions

Motion 1: “I move to approve Draft Resolution 13-112 authorizing the Farmers Market to use City property to conduct the Des Moines Classic Car & Wooden Boat Show on July 20, 2013.”

AND:

Motion 2: “I move to authorize the City Manager to sign the agreement with the Farmers Market for the Classic Car and Wooden Boat Show, specifying the responsibilities assumed by the Farmers Market and identifying the in-kind services that will be provided by the City, substantially in the form as attached.”

Background

The Des Moines Waterfront Farmers Market, a 501(c)(4) non-profit organization, has created a successful and vibrant Farmers Market in the Marina. Since the inception, the Des Moines City Council has provided support to the Market because of the benefits it provides to the City and its businesses and citizens.

Discussion

The Farmers Market's vision is to provide benefits to the community by providing a consistent variety of produce and crafts by local farmers and vendors promoting a vibrant, educational, and inviting atmosphere. Its mission is to enhance the Des Moines waterfront while fostering a sense of community through education and diversity. Consistent with that vision, this year the Farmers Market would like to sponsor the Des Moines Classic Car and Wooden Boat Show to promote the Des Moines Waterfront as a destination.

The Des Moines Classic Car and Wooden Boat Show was first started by the Marina staff in 2006 and has been held every year since then with the exception of 2010 when the north Marina was being remodeled. Participation in the Classic Car and Wooden Boat Show has increased every year.

Alternatives

- The Council may reject the staff recommendation and not allow the car show.
- The Council may direct the staff to make specified changes to Draft Resolution 13-112 and/or the draft agreement with Destination Des Moines.
- The Council may accept the staff recommendation and adopt Draft Resolution No. 13-112 and the agreement in the current form.

Financial Impact

In total, the Farmers Market is requesting that the City provide in-kind services as necessary for the purposes of logistics coordination, downtown and Marina area traffic control, road closures, parking lot management, boater and pedestrian safety and the reduction/elimination of rental rates for the use of City property.

Recommendation or Conclusion

Marina staff and the Parks and Recreation Department recommend that the Council approve both motions.

CITY ATTORNEY'S FIRST DRAFT 05/10/2013

DRAFT RESOLUTION NO. 13-112

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, authorizing the Des Moines Waterfront Farmers Market ("Farmers Market") to conduct the Classic Car and Wooden Boat Show ("Event") on July 20, 2013 at the Des Moines Marina North Parking Lot, and listing conditions under which such permission is granted.

WHEREAS, the City Council finds that community events enhance the quality of life for residents of the City of Des Moines, and

WHEREAS, the Farmers Market wishes to sponsor and conduct the Event on July 20, 2013, and

WHEREAS, the City of Des Moines wishes to permit the conduct of the Event; and, at the same time, be held harmless from any liability arising from such activity; now therefore,

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

Sec. 1. Permission to conduct the 2013 Classic Car and Wooden Boat Show ("Event") is granted to the Farmers Market, subject to the following conditions:

(1) Farmers Market shall defend and hold the City of Des Moines harmless from liability.

(2) Farmers Market, the sponsors and promoters of the Event, will provide financial support for the Event and will pay for Event expenses such as portable toilets, garbage collection, paid advertising and/or promotional banners associated with the Event.

(3) The prime leadership of the Event activities shall be non-City personnel and it shall be clearly understood that assistance by City personnel is advisory to the Farmers Market.

(4) Farmers Market will secure all permits and shall provide liability insurance in the amount of two million dollars (\$2,000,000) for the Event. The City of Des Moines shall be

Resolution No. _____
Page 2 of 3

named as an additional insured. Proof of such insurance must be delivered to the City thirty (30) days prior to the Event.

(5) As promoters of the Event, Farmers Market will be permitted to erect such special signage as is appropriate in the thirty (30) days prior to and during the event. All such signage shall be removed within ten (10) days after the Event.

(6) Normal fees for conduct of the Event on City property shall be waived where possible. Fees required by other governmental agencies shall be the responsibility of Farmers Market.

(7) An authorized official of Farmers Market shall execute a written agreement, on behalf of Farmers Market, acknowledging its responsibilities for the conduct of the Event and accepting such limitations as are contained in this Resolution in addition to such limitations as may be imposed by the City Council or City Manager, including, but not limited to:

(a) Farmers Market agrees to take whatever measures are necessary to prevent damage to City property and to be responsible for any damage that may occur as a result of the Event; and

(b) A Des Moines Police Department Command Officer and/or the Fire Marshall of South King Fire and Rescue will have the authority to close the Event down at any time should it be necessary, following assessment of any security issue.

Sec. 2. Upon execution of a written agreement incorporating all the terms and conditions of this Resolution, the City Manager is authorized, at his discretion, to grant permission to Farmers Market to use and occupy, for the purpose of the Event, City streets, rights-of-way, and City property.

Sec. 3. The City Manager is authorized, at his discretion, to grant permission to utilize City promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Brochure, City Web Page, and Channel 21 to inform and educate the public about the Event. Farmers Market understands that fees to cover City expenses may be charged for this use.

Resolution No. _____
Page 3 of 3

Sec. 4. The City Manager is authorized, at his discretion, to provide City assistance to the Event which may include, services by the Police, Public Works, Parks, and Marina Departments for the purpose of logistics coordination, downtown and Marina area traffic control, road closures, parking lot management, and boater and pedestrian safety, and rental fees for the use of City property. The City Manager shall provide a report to the City Council on services provided and costs thereof.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2013 and signed in authentication thereof this ____ day of _____, 2013.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

**AGREEMENT
BETWEEN THE CITY OF DES MOINES AND
DES MOINES WATERFRONT FARMERS MARKET
FOR THE 2013 CLASSIC CAR AND WOODEN BOAT SHOW**

THIS AGREEMENT is entered into by and between the CITY OF DES MOINES, WASHINGTON (hereinafter “City”), a municipal corporation of the State of Washington, and DES MOINES WATERFRONT FARMERS MARKET (hereinafter “Farmers Market”) regarding the 2013 Classic Car and Wooden Boat Show (hereinafter “Event”).

WHEREAS, the City finds that community events enhance the quality of life for residents of the City of Des Moines, and

WHEREAS, Des Moines Waterfront Farmers Market has become the sponsor of the Event, and

WHEREAS, the City of Des Moines wishes to permit the Event and to have the Farmers Market plan and sponsor the Event pursuant to certain terms and conditions; now therefore,

IN CONSIDERATION of the mutual benefits and conditions listed below, the parties agree as follows:

- (1) Des Moines Waterfront Farmers Market agrees as follows:

The Farmers Market shall conduct the Event in compliance with the conditions outlined in City of Des Moines Resolution No. ____, a copy of which is attached hereto and incorporated by this reference, and will comply with all federal, state, and local statutes, ordinances, and regulations. The Farmers Market further agrees as follows:

(a) The Farmers Market shall defend, indemnify and hold the City of Des Moines, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the conduct of the Event or its associated activities, except for injuries and damages caused by the sole negligence or intentional conduct of the City its officers, agents and employees. In the event that any suit based upon such claim, injury, damage, or loss is brought against the City, Farmers Market shall defend the same at its sole cost and expense; provided, that the City retains the right to participate in said suit if any principal of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, employees, or any of them, or jointly against the City and Farmers Market and their respective officers, agents, and employees, or any of them, the Farmers Market shall satisfy the same.

(b) Farmers Market and/or other promoters of the Event will provide financial support for the Event and will pay for Event-related expenses for portable sanitary facilities, garbage collection, paid advertising and/or promotional banners associated with the Event.

(c) Farmers Market and/or other promoters of the Event will contract with other companies to provide services to all listed events.

(d) Farmers Market and/or other promoters of the Event will secure all permits.

(e) Farmers Market and/or other promoters of the Event shall provide general liability insurance in the minimum amount of two million dollars (\$2,000,000) to cover the Event. The City of Des Moines shall be named as additional insured. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII. The City shall be furnished with original certificates evidencing the Event insurance requirements thirty (30) days prior to the Event.

(f) Farmers Market and/or other promoters of the Event will be permitted to erect such special signage as is appropriate in the thirty (30) days prior to and during the Event. All such signage shall be removed within ten (10) days after the Event.

(g) Farmers Market and/or other promoters of the Event will be allowed to have associated retail sales of food or merchandise and will be exempt from the requirements of the City's Mobile and Itinerant Vendor Code, chapter 5.57 DMMC.

(h) Farmers Market and/or other promoters of the Event will be allowed to solicit donations for the Event. Farmers Market and/or other promoters shall bear responsibility for all collection, accounting, and reporting of any funds collected. The City grants this privilege based upon the promoter's agreement that any funds collected in amounts greater than the cost of the Event will be held in a special event fund account to help pay for future Farmers Market Events.

(i) Farmers Market agrees to take whatever reasonable measures are necessary to prevent damage to the Marina District facilities and to be responsible for any damage that may occur as a result of the Event.

(j) A Des Moines Police Department Command Officer and/or the Fire Marshall of South King Fire and Rescue will have the authority to close the Event down at any time should it be necessary, following assessment of any safety and security issues.

(2) The City agrees as follows:

(a) Upon execution of this Agreement, the City Manager is authorized to grant permission to Farmers Market to use and occupy, for the purpose of the Event, City facilities, property, streets, roads, and rights-of-way.

(b) Normal City fees shall be waived where possible. Fees required by other governmental agencies shall be the responsibility of Farmers Market.

(c) The City Manager is authorized, at his discretion, to grant permission to Farmers Market to utilize City promotional tools such as the *City Currents*, Parks, Recreation and Senior Services Brochure, City Web Page and Channel 21 to inform and educate the public

about the Event. Farmers Market understands that fees to cover City expenses may be charged for this use.

(d) The City Manager is authorized to provide, at his discretion, City assistance to the Event, which may include, services by Police, Public Works, Parks, and Marina departments for the purpose of logistics coordination, downtown and Marina area traffic control, parking lot management, boater and pedestrian safety, and the reduction/elimination of rental rates for the use of City property.

(3) Duration of Agreement. This Agreement will commence upon date of execution and ends upon successful completion of the terms of this Contract, execution of a new Contract, City's written termination of the Contract as described in Section 4 of this Agreement, or Farmers Market's decision not to have the Event, whichever is sooner, provided, however, all indemnification and hold harmless provisions of this Agreement shall survive the termination of this Agreement.

(4) Termination. This Agreement may be terminated by the City for good cause upon thirty (30) days' written notice to Farmers Market of the City's intention to terminate the same. Good cause is defined as either:

(a) Failure of Farmers Market to perform any requirement of this contract within ten (10) days after the City makes written demand for such performance; or

(b) Termination required for purposes of public health, safety, welfare or the public interest, as determined by a majority of the Des Moines City Council in open public meeting.

(5) Discrimination Prohibited. Farmers Market shall not discriminate against any employee, applicant, vendor, or any person seeking to participate in the Event on the basis of race, color, religion, creed, sex, national origin, marital status, sexual orientation, or presence of any sensory, mental, or physical handicap.

(6) Entire Agreement. This Agreement contains the entire agreement between the parties and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties. Either party may request changes in the Agreement. Proposed changes mutually agreed upon will be incorporated by written amendments to this Agreement.

(7) Governing Law. The existence, validity, construction, and enforcement of this Agreement shall be governed in all respects by the laws of the State of Washington.

(8) Mediation/ Arbitration Clause. If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association's Rules before resorting to arbitration. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating

to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under the American Arbitration Association's Arbitration Rules. The arbitrator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(9) Amendments/Authorization for Additional Services. This Agreement may be modified or amended and additional conditions may be authorized during the term of this Agreement upon the mutual written consent of the parties.

(10) Severability. If any provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

(11) Waiver. The waiver by either party of any breach of any term, condition, or provision of the Agreement shall not be deemed a waiver of such term, condition, or provision or any subsequent breach of the same or any condition or provision of this Agreement.

(12) Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

(13) Time of Essence. Time is of the essence for each and all of the terms, covenants, and conditions of this Agreement.

(14) Concurrent Originals. This Agreement may be signed in counterpart originals.

(15) Ratification and Confirmation. Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

DES MOINES WATERFRONT
FARMERS MARKET

CITY OF DES MOINES

BY _____
Wayne S. Corey, President

Anthony A. Piasecki, City Manager
At the direction of the Des Moines City
Council by Adoption of Resolution No. ____
in Open Public meeting on May 23, 2013.

Date: _____

Date: _____

Approved as to Form:

Assistant City Attorney

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Memorandum of Understanding with the Des Moines Police Management Association

FOR AGENDA OF: May 23, 2013

DEPT. OF ORIGIN: Administration

ATTACHMENTS:

- 1. Memorandum of Understanding

DATE SUBMITTED: May 16, 2013

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to request the City Council to approve a memorandum of understanding between the City of Des Moines and the Des Moines Police Management Association (DMPMA) regarding changes to amounts the City contributes to each member's 401(a) Social Security Replacement Account and 457 Deferred Compensation Account.

Suggested Motion

"I move to approve the memorandum of understanding with the Des Moines Police Management Association regarding the amounts the City contributes to each member's 401(a) Social Security Replacement Account and 457 Deferred Compensation Account."

Background

In the early 1980's, the City of Des Moines withdrew from the Social Security System at the request of city employees. The City replaced the elements of Social Security (i.e. pension, long-term disability (LTD), survivors' income benefit (SIB) and small life insurance payout) by using the funds that would have gone to Social Security. The City deposits an amount equal to 5.0% of each DMPMA member's

salary into a 401(a) Account to replicate the pension element of Social Security. Unrelated to the Social Security replacement program, the City contributes an amount equal to 1.52% of each member's salary into a 457 Deferred Compensation Account.

Discussion

The DMPMA has requested that the City move the 1.52% 457 contribution into their 401(a) account, resulting in a total 401(a) contribution by the City of 6.52% and none into their 457 accounts.

Alternatives

1. Approve
2. Not approve
3. Not approve and direct City Manager continue discussions with the Association.

Financial Impact

There is a slight reduction in City costs as a result of this MOU. 457 Deferred Compensation contributions by employers are considered part of total compensation by the state's retirement systems, whereas 401(a) contributions are not. The City will no longer be paying into the LEOFF system on behalf of the two members of the DMPMA for the 1.52% that was going into their 457 accounts, resulting in a slightly lower pension costs for the City in the range of \$200-300 combined for both members of the DMPMA

Recommendation or Conclusion

The City Manager recommends approval.

Concurrence

None.

MEMORANDUM OF UNDERSTANDING
 By and between
 CITY OF DES MOINES, WASHINGTON
 And
 DES MOINES POLICE MANAGEMENT ASSOCIATION

THIS MEMORANDUM OF UNDERSTANDING is supplemental to the AGREEMENT by and between the CITY OF DES MOINES, WASHINGTON, hereinafter referred to as the City, and the DES MOINES POLICE MANAGEMENT ASSOCIATION, hereinafter referred to as the Association.

WHEREAS, the Association has requested the City to combine the ICMA-RC 401 Savings Plan and ICMA-RC 457 Deferred Compensation Plan contributions into the 401 Savings Plan;

WHEREAS, the City currently contributes an amount equal to 5% of the employee's wage into the ICMA-RC 401 Savings Plan;

WHEREAS, the City currently contributes an amount equal to 1.52% of the employee's wage into the ICMA-RC 457 Deferred Compensation Plan;

WHEREAS, the requested changes will not have any associated cost for the City;

NOW THEREFORE, the parties agree as follows:

1. The City will stop the current contribution of 1.52% of the employee's wage into the ICMA-RC 457 Deferred Compensation Plan by July 1, 2013;
2. Upon cessation of the City's contribution into the 457 Plan, the City will begin a total contribution of 6.52% of the employee's wage into the ICMA-RC 401 Savings Plan;
3. This agreement will modify Article 17, Section 17.5 of the Association Collective Bargaining Agreement to the above listed terms and conditions. This agreement will not modify any other terms or conditions within Article 17 or the Collective Bargaining Agreement.

DES MOINES POLICE MANAGEMENT ASSOCIATION

By _____ By _____
 Barry Sellers Anthony A. Piasecki
 President City Manager

Date _____ Date _____

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Planning Agency Dissolution;
Setting a Public Hearing Date

FOR AGENDA OF: May 23, 2013

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

1. Draft Resolution No. 13-080
2. Draft Ordinance No. 13-080
3. Type IV and VI Land Use Code

DATE SUBMITTED: May 14, 2013

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL [Signature]

Purpose and Recommendation

The purpose of this agenda item is for Council to discuss the dissolution of the Planning Agency and to set a date for a public hearing to consider Draft Ordinance No. 13-080.

Suggested Motion

Motion: "I move to adopt Draft Resolution No. 13-080 to set a public hearing to consider an Ordinance that would dissolve the Des Moines Planning Agency."

Background

The City Council discussed the dissolution of the City's Planning Agency at its April 6, 2013 Council Retreat and asked staff to prepare an Ordinance that would dissolve the Planning Agency. This Resolution sets the public hearing date to consider Draft Ordinance No. 13-080.

Discussion:

A "Planning Agency" is any person, body, or organization designated by the legislative body to perform a planning function or portion thereof for a municipality, and includes, without limitation, any commission, committee, department, or board together with its staff members, employees, agents, and consultants. Code cities are not required by law to have a formal citizen's Planning Agency. The

definition of what constitutes a Planning Agency in the state laws applying to code cities specifically provides the option of having a City department or staff perform this function.

Code cities have considerable flexibility in establishing a Planning Agency to perform planning functions, which may or may not include a traditional citizens' planning commission. Des Moines Planning Agency is currently responsible for reviewing Type IV and Type VI land use actions (see attached Type IV and VI Land Use Code) and for making recommendations on Type IV and Type VI land use actions to the City Council.

The City of Des Moines Planning Agency is authorized under chapter 4.28 DMMC. This chapter defines the duties and responsibilities of the Agency which include:

4.28.030 Powers – Duties – Generally.

The planning agency shall have all powers and perform each and all of the duties specified by chapter 35A.63 RCW, together with any other duties or authority which may be conferred upon it by ordinance. The performance of such duties and the exercise of such authority shall be subject to each and all of the limitations expressed in such legislative enactment or enactments. [Ord. 611 § 3, 1984.]

4.28.040 Powers – Duties – Parks.

In addition to the powers and duties specified in DMMC 4.28.030, the planning agency may provide comprehensive planning recommendations to the city council for the acquisition of sites or lands for use as park and recreational facilities, consistent with long-range comprehensive planning of the city. Detailed development planning of each specific park or recreation site shall be according to procedures specifically directed by the city council as deemed appropriate for the particular project. Prior to approval of any detailed development park plan, such plan may be presented to the planning agency for its comments as to the consistency of the development plan with the long-range comprehensive park and recreation plan of the city. [Ord. 1287 § 23, 2001; Ord. 689 § 1, 1987; Ord. 611 § 4, 1984.]

4.28.050 Referral to planning agency – Recommendations.

The city council may refer to the planning agency, for its recommendations and report, any ordinance, resolution, or other proposal and the planning agency shall promptly report to the city council thereon, making such recommendations and giving such counsel as it may deem proper in the premises. [Ord. 611 § 5, 1984.]

The proposed Draft Resolution would set a public hearing to adopt an Ordinance which would eliminate the Planning Agency. If passed, all actions that were previously the responsibility of the Planning Agency would instead be handled by either the City Council or City staff.

Amendments to Titles 17 Subdivisions and 18 Zoning DMMC are considered Type VI Land Use Actions pursuant to DMMC 18.56.080(1) and as such require a public hearing with the City Council pursuant to DMMC 18.56.200 and 18.60.040. Approval of this Resolution setting the hearing date does not obligate the City Council to approve any of the amendments that would be presented at the public hearing.

Alternatives:

With respect to Draft Resolution 13-080, the City Council has the following alternatives:

1. Alternative 1: Adopt the Draft Resolution

The City Council may adopt Draft Resolution No. 13-080 establishing the hearing date for Draft Ordinance No. 13-080.

2. Alternative 2: Do Nothing

The City Council could decline to adopt Draft Resolution 13-080, setting the required public hearing. Doing so would not allow Draft Ordinance No. 13-080 to be placed on an Agenda for consideration.

3. Alternative 3: Adopt the Draft Resolution with a different hearing date.

The City Council may adopt Draft Resolution 13-080 establishing a different hearing date for Draft Ordinance No. 13-080.

Financial Impact:

The financial impact of dissolving the Planning Agency is unknown at this time.

CITY ATTORNEY'S FIRST DRAFT 05/14/2013

DRAFT RESOLUTION NO. 13-080

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, fixing a time for a public hearing to consider Draft Ordinance No. 13-080 which dissolves the Planning Agency; repeals chapter 4.28 DMMC, DMMC 17.16.080, and 18.64.060; and amends DMMC 17.16.100, 18.56.180, 18.56.200, 18.60.030, 18.60.120, 18.64.01, 18.64.040, 18.84.040, 18.84.060, and 18.84.080.

WHEREAS, the City Council is considering dissolving the Planning Agency and amending portions of Titles 17 and 18 DMMC referencing the Planning Agency, and

WHEREAS, a public hearing is required to receive public comment regarding amendments to Title 17 and Title 18 DMMC, commonly referred to as the Subdivision and Zoning Codes; now therefore,

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

The matters of dissolution of the Planning Agency by the repeal of chapter 4.28 DMMC and the repeal and amendment of sections of Titles 17 and 18 DMMC referencing the Planning Agency, is set for a public hearing before the City Council on Thursday, August 8, 2013, at 7:00 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers, 21630 11th Ave South, Suite B, Des Moines, Washington.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2013 and signed in authentication thereof this ____ day of _____, 2013.

M A Y O R

APPROVED AS TO FORM:

Assistant City Attorney

ATTEST:

City Clerk

CITY ATTORNEY'S FIRST DRAFT 05/164/2013

DRAFT ORDINANCE NO. 13-080

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the dissolution of the City's Planning Agency, repealing chapter 4.28 DMMC, DMMC 17.16.080, and 18.64.060, and all underlying ordinances; and amending DMMC 17.16.100, 18.56.180, 18.56.200, 18.60.030, 18.60.120, 18.64.010, 18.64.040, 18.84.040, 18.84.060, and 18.84.080.

WHEREAS, Ordinance No. 611 established the Planning Agency on November 15, 1984, and

WHEREAS, at the April 6, 2013, City Council Retreat, the City Council considered the dissolution of the City's Planning Agency, and

WHEREAS, pursuant to DMMC 18.56.080 amendments of the Subdivision Code (Title 17) and Zoning Code (Title 18 DMMC) are legislative (Type VI) land use decisions, and

WHEREAS, pursuant to DMMC 18.56.200 amendments to the Subdivision Code (Title 17) and Zoning Code (Title 18 DMMC) require the City Council to conduct a public hearing to receive public comment regarding this proposal, and

WHEREAS, DMMC 18.60.120(3) requires that the date of the public hearing to consider amendments to Title 18 be set by motion of the City Council, and

WHEREAS, The City Council set the public hearing and date by resolution which was, in this case, established by Resolution No. _____, fixing the public hearing for _____, and

WHEREAS, the textual code amendments proposed in this Ordinance were provided to the Department of Commerce as required by RCW 36.70A.106, and

WHEREAS, notice of the public hearing was issued on _____ in accordance with the DMMC, and

Ordinance No. ____
Page 2 of 12

WHEREAS, a public hearing was held on _____ and all persons wishing to be heard were heard, and

WHEREAS, the cCity council finds that the amendments contained in this Ordinance are appropriate and necessary, and

WHEREAS, the cCity council hereby dissolves the Planning Agency, effective January 1, 2014; now therefore,

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

NEW SECTION. Sec. 1. Chapter 4.28 DMMC, *Planning Agency*, and all underlying ordinances, are each repealed.

NEW SECTION. Sec. 2. DMMC 17.16.080 and section 22 of Ordinance No. 931 as amended by section 40 of Ordinance No. 1174 as amended by section 9 of Ordinance No. 1287 are each repealed.

Sec. 3. DMMC 17.16.100 and section 24 of Ordinance No. 931 as amended by section 11 of Ordinance No. 1287 as amended by section 6 of Ordinance No. 1341 are each amended to read as follows:

City Council review.

(1) General. As specified by chapter 18.56 DMMC, the cCity council shall hold a public hearing on each proposed Type IV land use action. No later than the first regular public meeting after receiving the recommendation of the planning agency—planning official on the preliminary subdivision, the City Council shall set by motion the date of the hearing.

(2) Notice. The planning official shall prepare and distribute public notice of the hearing as set forth in DMMC 17.40.070.

(3) Electronic sound recording. The City Council shall make a complete electronic sound

Ordinance No. ____
Page 3 of 12

recording of each public meeting involving the review of a Type IV land use action.

Sec. 4. DMMC 18.56.180 and section 18 of Ordinance No. 1174 are each amended to read as follows:

Review process for Type IV land use action.

~~(1) The planning agency shall conduct a public meeting for review of the proposed land use action. The planning agency may recommend approval, approval with conditions or amendments, or denial of a Type IV land use action. The recommendation(s) of the planning agency shall be forwarded to the city council.~~

(2) Upon conclusion of the 15-day comment period and any applicable SEPA appeal period, the City Council may approve, approve with conditions, or deny a Type IV land use action upon compliance with the procedural requirements of chapter 18.94 DMMC (Hearing Examiner Code).

(3) The City Council's decision regarding a Type IV land use action is appealable to the Superior Court of Washington for King County as specified by DMMC 18.94.300 (Appeal from decision of the City Council).

Sec. 5. DMMC 18.56.200 and section 20 of Ordinance No. 1174 as amended by section 5 of Ordinance No. 1193 are each amended to read as follows:

Review process for Type VI land use action.

~~(1) For all Type VI land use actions except textual code amendments, the planning agency shall conduct a public hearing for review of the proposed land use action. The planning agency may recommend approval, approval with conditions, or denial of a Type VI land use action. The recommendation(s) of the planning agency shall be forwarded to the city council.~~

Ordinance No. ____
Page 4 of 12

(21) For textual code amendments, the city manager or his/her designee~~Community Development Director~~ may schedule a public meeting~~hearing~~ before the planning agency~~City Council~~ as provided in DMMC 18.60.120.

(32) Upon conclusion of the 15-day comment period, the City Council may approve, approve with conditions, or deny a Type VI land use action upon compliance with the procedural requirements of chapter 18.60 DMMC (Amendments, Unclassified Use Permits, Planned Unit Developments, and Appeals).

(43) Except for matters subject to review by the Central Puget Sound Growth Management Hearings Board as provided by RCW 36.70A.280 as presently constituted or as may be subsequently amended, the City Council's decision regarding a Type VI land use action is appealable the Superior Court of Washington for King County as specified by DMMC 18.94.300 (Appeal from decision of the City Council).

Sec. 6. DMMC 18.60.030 and section 1(24.60.030) of Ordinance No. 175 as amended by section 1 of Ordinance No. 553 as amended by section 67 of Ordinance 770 are each amended to read as follows:

Initiation of amendment. Amendments to this Title and the zoning map of the ecCity are initiated as follows:

(1) Amendments to the zoning map of the ecCity may be initiated by:

(a) The verified application of one or more owners of property which is proposed to be reclassified or rezoned;

(b) Adoption of a motion by the ecCity ecCouncil directing the planning, buildings and

Ordinance No. ____
Page 5 of 12

~~public works department~~~~Community~~~~dDevelopment~~
~~dDepartment~~ to initiate the amendment;

~~(c) Adoption of a motion by the planning agency requesting the city manager to initiate the amendment through the community development department;~~

~~(d) The planning, building, and public works department~~~~Community~~~~dDevelopment~~~~dDepartment~~ with the approval of the ~~ec~~City ~~mm~~Manager.

(2) In the case of textual changes to the Zoning Code, in the manner provided in DMMC 18.60.120.

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Sec. 7. DMMC 18.60.120 and section 2 of Ordinance No. 553 as amended by section 68 of Ordinance No. 770 as amended by section 1 of Ordinance No. 1062 as amended by section 65 of Ordinance No. 1174 as amended by section 3 of Ordinance No. 1237 are each amended to read as follows:

Textual changes to zoning code. Amendments to this Title that constitute a textual change are made in the following manner:

(1) As used in this section, unless the context or subject matter clearly requires otherwise, "textual change" means a change or amendment to this Title except:

(a) Amendments changing the zone of a particular parcel of property (commonly known as a rezone); or

(b) Actions relating to adoption or amendment to the comprehensive plan.

(2) No textual change is made without at least one public hearing before the City Council.

(3) The ~~c~~City ~~c~~Council shall set a date for the public hearing by motion. Notice of the public

Ordinance No. ____
Page 6 of 12

hearing shall generally conform with DMMC 17.44.030 (Notice). Continued hearings may be held at the discretion of the ~~c~~City ~~c~~Council but no additional notice is required.

~~(4) The Community Development Director may schedule a public meeting of the planning agency to allow for review of a proposed textual code amendment. The planning agency may recommend approval, approval with conditions or amendments, or denial of the proposed textual code amendment. The recommendation(s) of the planning agency shall be forwarded to the city council for review during the public hearing.~~

Sec. 8. DMMC 18.64.010 and section 1(24.62.010) of Ordinance No. 175 as amended by section 70 of Ordinance No. 770 are each amended to read as follows:

Establishment of rules for conduct of hearings.

~~(1) The hHearing eeExaminer shall conduct public hearings in accordance with the provisions of the hHearing eExaminer eCode.~~

~~(2) The planning agency may establish rules governing the conduct of public hearings and meetings conducted by it on matters within its jurisdiction. Modifications or changes in such rules may be made, but such changes or modifications shall not become effective until 30 days following the date of the meeting at which such changes or modifications are determined. Copies of the rules shall be made available to the public at the community development department office.~~

Sec. 9. DMMC 18.64.040 and section 1(24.62.040) of Ordinance No. 175 are amended to read as follows:

Ordinance No. ____
Page 7 of 12

~~Records.~~ The ~~agency~~ cCity shall cause to be kept a brief minute record of the proceeding. Such record, applications filed pursuant to this title, the written order or motion showing the action and the reasons therefor and the evidence of notice, and other material shall become a part of the records of the ~~agency~~ cCity to which application is made. Provisions for custody of such additional records or minutes may be adopted by the ~~agency~~ cCity.

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NEW SECTION. Sec. 10. DMMC 18.64.060 and section 1(24.62.060) of Ordinance No. 175 as amended by section 67 of Ordinance No. 1174 are repealed.

Sec. 11. DMMC 18.84.040 and section 89 of Ordinance No. 1174 as amended by section 4 of Ordinance No. 1376 are each amended to read as follows:

Initiation of amendment. Amendments to the City of Des Moines Comprehensive Plan may be initiated as follows:

(1) Application by the owner(s) of property proposed for redesignation;

(2) Adoption of a motion by the City Council directing the Planning, Building and Public Works Department to initiate the amendment; or

~~(3) Adoption of a motion by the planning agency requesting the city manager to initiate the amendment through the planning, building and public works department; or~~

(4) The pPlanning, bBuilding and pPublic wWorks dDepartment with the approval of the cCity mManager.

Sec. 12. DMMC 18.84.060 and section 1 of Ordinance No. 1193 as amended by section 6 of Ordinance No. 1376 are amended to read as follows:

Ordinance No. ____
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(1) Applications for amendment of the City of Des Moines Comprehensive Plan may be submitted to the ~~p~~Planning, ~~b~~Building and ~~p~~Public ~~w~~Works ~~d~~Department between January 1st and June 30th of each calendar year.

(2) Applications for amendment of the City of Des Moines Comprehensive Plan that do not require an environmental impact statement as determined by the ~~p~~Planning, ~~b~~Building and ~~p~~Public ~~w~~Works ~~d~~Director shall be acted upon by the ~~planning agency and the~~ ~~c~~City ~~c~~Council between September 1st and December 31st of the calendar year of application. In the event the ~~c~~City ~~c~~Council cannot act upon the applications for amendment by December 31st of the calendar year, the ~~c~~City ~~c~~Council may extend its review to the following calendar year.

(3) Applications for amendment of the City of Des Moines Comprehensive Plan that require an environmental impact statement as determined by the ~~p~~Planning, ~~b~~Building and ~~p~~Public ~~w~~Works ~~d~~Director may be acted upon by the ~~planning agency and~~ ~~c~~City ~~c~~Council between September 1st and December 31st of the year following completion of the environmental impact statement.

(4) By resolution, the ~~c~~City ~~c~~Council may adopt an alternative review schedule from the schedule specified by this section for a particular calendar year.

Sec. 13. DMMC 18.84.080 and section 3 of Ordinance No. 1193 as amended by section 3 of Ordinance No. 1237 as amended by section 8 of Ordinance No. 1376 are amended to read as follows:

Decision criteria.

(1) Amendment of the City of Des Moines Comprehensive Plan is a legislative action (Type VI land use action) and the ~~planning agency and~~ ~~the~~ ~~c~~City ~~c~~Council shall be afforded the broadest

Ordinance No. ____
Page 9 of 12

possible discretion during review of amendment requests. ~~The planning agency may recommend approval, approval with modifications, or denial of any application for amendment.~~ The City Council may approve, approve with modifications, or deny any application for amendment.

(2) The ~~planning agency may recommend and the~~ ~~City Council~~ may approve or approve with modifications an amendment to the City of Des Moines Comprehensive Plan when:

(a) The amendment would correct a technical error; or

(b) The amendment addresses changing circumstances or the needs of the ~~City~~ as a whole, and will benefit the City as a whole; and

(c) All of the following conditions are satisfied:

(i) The amendment is consistent with the Growth Management Act.

(ii) The amendment is not inconsistent with other elements or policies of the City of Des Moines Comprehensive Plan.

(iii) The amendment will not adversely impact community facilities and bears a reasonable relationship to public health, safety, and welfare.

(iv) For amendments relating to a specific property:

(A) The amendment is compatible with adjacent land use and the surrounding development pattern as existing or as specified by the City of Des Moines Comprehensive Plan; and

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(B) The subject property is suitable for development as allowed by the development regulations of the potential zone.

(3) During the review of a proposed amendment to the City of Des Moines Comprehensive Plan, factors that may be considered by the ~~p~~Planning, ~~b~~Building and ~~p~~Public ~~w~~Works ~~d~~Director, ~~planning agency,~~ and the City Council include, but are not limited to, the following:

(a) The effect upon the physical environment.

(b) The effect upon the economic environment.

(c) The effect upon the social environment.

(d) The effect upon open space, surface waters, and environmentally critical areas.

(e) The effect upon parks of local significance.

(f) The effect upon historic and archaeological resources of local significance.

(g) The compatibility with an impact upon adjacent land uses and surrounding neighborhoods.

(h) The adequacy of and impact upon capital facilities, utilities, and public services.

(i) The quantity and location of land planned for the proposed land use type and density.

(j) The current and forecasted population in the area or ~~c~~City.

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(k) The effect upon other aspects of the City or the City of Des Moines Comprehensive Plan.

NEW SECTION. Sec. 14. Severability - Construction.

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

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

NEW SECTION. Sec. 15. Savings clause. Chapter 4.28 DMMC, DMMC 17.16.080, and DMMC 18.64.060 which are repealed and replaced by this Ordinance, shall remain in force and effect until the effective date of this Ordinance.

NEW SECTION. Sec. 16. Effective date. This Ordinance shall be in full force and effect on January 1, 2014.

PASSED BY the cCity council of the city of Des Moines this ____ day of _____, 2013 and signed in authentication thereof this ____ day of _____, 2013.

M A Y O R

Ordinance No. ____
Page 12 of 12

APPROVED AS TO FORM:

City Attorney

ATTEST:

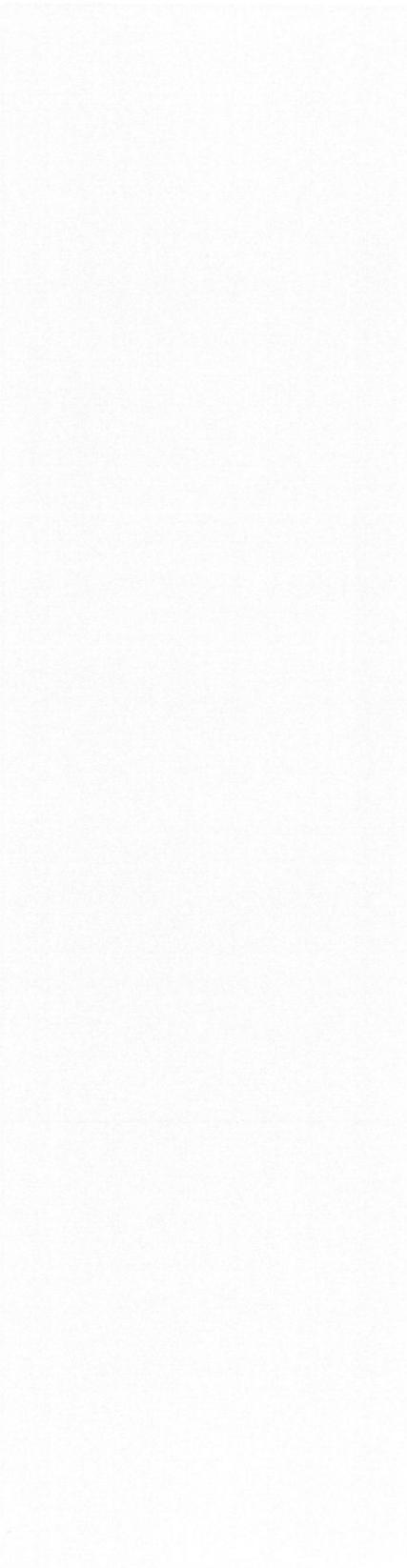
City Clerk

Published: _____

Effective Date: _____

DRAFTORD:

1ST DRAFT



Type IV and VI Land Use Code

18.56.180 Review process for Type IV land use action.

(1) The planning agency shall conduct a public meeting for review of the proposed land use action. The planning agency may recommend approval, approval with conditions or amendments, or denial of a Type IV land use action. The recommendation(s) of the planning agency shall be forwarded to the city council.

(2) Upon conclusion of the 15-day comment period and any applicable SEPA appeal period, the city council may approve, approve with conditions, or deny a Type IV land use action upon compliance with the procedural requirements of chapter 18.94 DMMC (Hearing examiner code).

(3) The city council's decision regarding a Type IV land use action is appealable to the Superior Court of Washington for King County as specified by DMMC [18.94.300](#) (Appeal from decision of the city council). [Ord. 1174 § 18, 1996.]

18.56.200 Review process for Type VI land use action.

(1) For all Type VI land use actions except textual code amendments, the planning agency shall conduct a public hearing for review of the proposed land use action. The planning agency may recommend approval, approval with conditions, or denial of a Type VI land use action. The recommendation(s) of the planning agency shall be forwarded to the city council.

(2) For textual code amendments, the community development director may schedule a public meeting before the planning agency as provided in DMMC [18.60.120](#).

(3) Upon conclusion of the 15-day comment period, the city council may approve, approve with conditions, or deny a Type VI land use action upon compliance with the procedural requirements of chapter 18.60 DMMC (Amendments, Unclassified Use Permits, Planned Unit Developments, and Appeals).

(4) Except for matters subject to review by the Central Puget Sound Growth Management Hearings Board as provided by RCW 36.70A.280 as presently constituted or as may be subsequently amended, the city council's decision regarding a Type VI land use action is appealable the Superior Court of Washington for King County as specified by DMMC [18.94.300](#) (Appeal from decision of the city council). [Ord. 1193 § 5, 1997; Ord. 1174 § 20, 1996.]

18.56.210 Written report or decision.

A written report shall be provided as required by RCW 36.70B.060 and 36.70B.130 as presently constituted or as may be subsequently amended. [Ord. 1174 § 21, 1996.]

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Surface Water Management Rate
Structure Study Briefing

AGENDA OF: May 23, 2013

DEPT. OF ORIGIN: Planning, Building and
Public Works

ATTACHMENTS:

1. Powerpoint Presentation by FCS Group
2. Issue Papers (5)

DATE SUBMITTED: May 14, 2013

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation:

The purpose of this agenda item is to brief the City Council on the results of a Surface Water Management (SWM) Rate Structure Study that is being done by Financial Consulting Solutions Group (FCS Group). The Study purpose is to evaluate the equity of how the costs of the SWM utility are recovered from the various rate classifications.

The presentation of the draft results of the Rate Structure study that will be made by John Ghilarducci (Principal) and Nihat Dogan (Project Manager) of FCS Group is provided as Attachment 1.

Suggested Motion:

Motion "I move to direct staff to prepare an ordinance for adjusting the Surface Water Management Utility rate structure as recommended by Financial Consulting Solutions Group."

Background:

The needs of the SWM program should be established as part of a comprehensive plan, based on a desired level of service. A comprehensive plan should typically be prepared every 10 years, with an update every 5 years. The costs to address the comprehensive needs of the SWM program (based on the

needs identified in the comprehensive plan for a defined level of service) are documented in a Rate Study. The last comprehensive plan for the SWM program was prepared in 1998. In 2014, a new comprehensive plan for the SWM program is scheduled to be prepared, along with a new SWM Rate Study to document to costs of the program.

How the costs of the SWM program are allocated to various rate classifications (property owners) is determined based on a Rate Structure. That Rate Structure is the focus at this time, which dovetails nicely with the scheduled comprehensive plan preparation in 2014.

The SWM program was established in 1990 to address the surface water needs of the city. The formula for allocating the costs of the SWM program is comprised of a series of variables developed when the utility was first established. In the development of the variables for the Rate Structure, the analysis considered a number of factors such as the amount of impervious surface area, the land use, and water quality and quantity impacts, etc. The summation of these variables equates to the needs of the SWM program, which have been defined based on a "Moderate Level of Service".

Since the establishment of the SWM program in 1990, the Rate Structure has mostly stayed the same. However, the rate itself (ie the cost of the program) has been adjusted at least ten times to cover changes in the needs for the utility (to maintain the level of service). Only twice has the Rate Structure itself been modified; in 1997, Ordinance 1187 was adopted repealing service charges to state highways and in 1999, Ordinance 1230 was adopted repealing service charges to all public streets.

Anytime the Rate Structure is altered, a Rate Structure study should be performed to ensure that the adjusted structure remains equitable to all of the rate payers. While Rate Studies have been made by outside consultants as well as by staff over the years, these studies were only focused on the needs to the program, such as capital improvements or changes to the requirements of the program as a result of the NPDES permit. These studies did not review changes to the Rate Structure or any proposed changes to the rate structure that may affect the equity or "fairness" of how the rate is allocated to the rate payers. To answer this question and to address any desired changes in policy, staff recommended that a Rate Structure study be performed that, at a minimum, looks at the variables and assumptions for the rate structure itself.

Any changes resulting from this Rate Structure Study would not be made effective until January 1, 2014, to allow time for completion of the study, conduct public hearings, and for King County to modify the billing system.

Discussion:

As part of the Rate Structure study, the consultant prepared five issue papers which are included as Attachment 2. These papers were prepared to assist the Council with potential policy changes regarding the rate structure, stormwater fees for private streets, rate credits, rates for multi-family properties, and rates for public institutions. A summary of each issue paper follows:

1) Stormwater Rate Structure

Single family homes are currently charged a flat rate of \$12.20 per month based on an assumed average of 2,400 square feet of impervious area. This single family rate comprises the Equivalent Billing Unit or EBU, upon which the other rate classifications are defined. Commercial rates are charged a variable rate based on the amount of impervious area divided by

the EBU value. For example, a commercial property comprised of 9,600 square feet of impervious area would be charged for 4 EBUs (9,600sf/2,400sf) or \$48.80 per month. Multi-family properties are charged a flat rate per dwelling plus a variable rate for the impervious area on the property. The multi-family rate is discussed separately in Issue Paper #4.

The study recommends that rates continue to be charged, as is most common, using the impervious area as the basis for the rates. However, the study concluded that the present EBU value of 2,400 square feet is too low. All of the single family properties in the city have now been measured by staff, using the city GIS system, and the average single family property consists of approximately 3,650 square feet of impervious area, or approximately 50% more impervious area than previously determined when the utility was first created. The consultant in evaluating the single family impervious area calculations has proposed a 4-tiered system whereby a flat rate is charged for small, medium and large single family residential properties and a variable rate (commercial rate) for single family properties exceeding 7,500 square feet of impervious area. The new EBU, as recommended by FCS Group, would be the average impervious area for the medium single family property, or 3,450 square feet. Using this EBU and maintaining the total utility rate revenue (as revenue neutral), the new rate per EBU is estimated to be \$13.93 per month.

2) Stormwater Fees for Private Streets

FCS Group has concluded that because private streets do not provide a system-wide benefit, the stormwater fee be discounted only in those instances where an offsetting contribution and benefit is determined. Such discount or credit should be applied in the same manner as described in Issue Paper #3.

The consultant also reviewed how other jurisdictions assessed for private streets and of the other 10 cities that were reviewed, only Seattle allowed full exemption by an application process and only when the private street met certain 'function' standards. The rest of the jurisdictions applied a full charge to all private streets. As stated, the consultant is recommending the City to fully charge for its private streets but allow a discount (or credit) where applicable when it can be demonstrated that a contribution is provided to the city public system over and above that which was originally required.

3) Stormwater Credits/Discounts

FCS Group is recommending the City to continue providing low-income seniors or disabled rate discounts. FCS Group has also proposed a system of rate credits whereby a range of credit can be achieved depending on the ability to mitigate the impact to the city system for having and maintaining an on-site measure. Such measures may include the use of infiltration, the use of low-impact development (LID) techniques such as rain gardens or permeable pavement, and incorporating dedicated open space within developments whereby the amount of impervious area is reduced. FCS Group is recommending that credits for on-site mitigation measures be available for qualifying non-single family residential customers and qualifying private streets.

4) Multi-Family Rates

The City presently charges a flat rate of \$2.56 per month per dwelling as a water quality charge and a variable charge of \$9.64 per month per EBU as a water quantity charge. Because the impervious surface area method is now widely accepted as a measure of contribution runoff, FCS Group is recommending the City change the current method to that of most other jurisdictions by charging a variable rate similar to commercial properties. In this manner, the rate would be charged on an EBU basis; but because most properties would have less EBUs than dwelling units, most multi-family properties would see a reduction in the stormwater rate.

5) Public Institution Rates

Public Institutions such as public schools, government buildings, colleges, parks and sewer and water facilities are charged a variable rate per EBU in the same manner as commercial properties. FCS Group is recommending that the City continue to charge its rates for public institutions in the same way. However, the City should allow the stormwater credits that would apply to all customer types, except single family residences. It should be noted that because the EBU will be increasing from the current 2,400 square feet, the rates for public institutions will be significantly reduced.

Following discussion of the issue papers with the Environment Committee, a revenue neutral rate analysis was then performed using several rate structure alternatives.

Financial Impact:

The recommendations of this Rate Structure study are revenue neutral and therefore no financial impacts are anticipated to the SWM Utility. However, most of the recommendations impact the various rate classifications by lowering the rate for most or all commercial and multifamily properties as well as single family properties that qualify for the small impervious tier consisting of less than 2,800 square feet of impervious area. Single family properties that meet the medium or large tiers as well as those that exceed 7,500 square feet of impervious area would be charged a higher rate.

Alternatives:

The City Council may decide not to proceed with the consultant recommendations at this time and direct staff to further evaluate any of the policy issues. This is not recommended by staff given the lead time needed to make any substantial changes to the billing system and to implement the changes for next year's rates.

The City Council could decide not to make any changes to the rate structure. This not recommended by staff given that the study is addressing equity of the current rates.

Recommendation/Conclusion:

Staff requests that Council approve the proposed motion.

Concurrence:

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



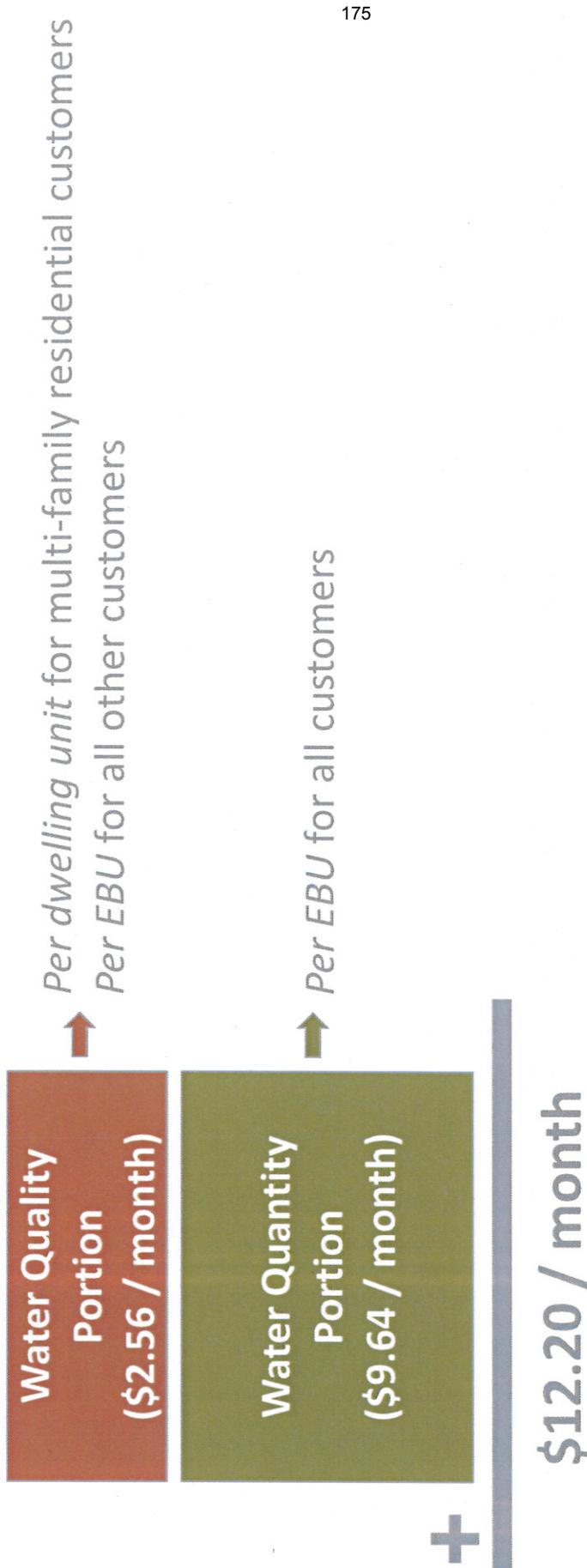
City of Des Moines

Stormwater Rate Study Draft Results May 23, 2013

- ❖ Develop Rate Structure Policy Framework
 - Rate structure alternatives
 - Private streets and public right-of-way
 - Rate credits
 - Multi-family rates
 - Rates to public entities
- ❖ Revenue Neutral Rate Analysis
 - Recalculate equivalent billing unit (EBU) value and resulting total EBUs
 - Develop rate structure alternatives incorporating outcomes of the policy discussion

Existing Rate Structure

- ❖ Existing rate structure consists of two components:



- ❖ One equivalent billing unit (EBU) is equal to one single family residential dwelling; 2,400 sq. ft. of impervious surface area for non-single family residential customers.

Existing Credit Policy

- ❖ Low-income elderly or disabled customers receive a 30% rate discount.
- ❖ Private streets receive a 30% rate discount.
- ❖ There are no other rate credits or discounts offered to customers.

Rate Structure Recommendations

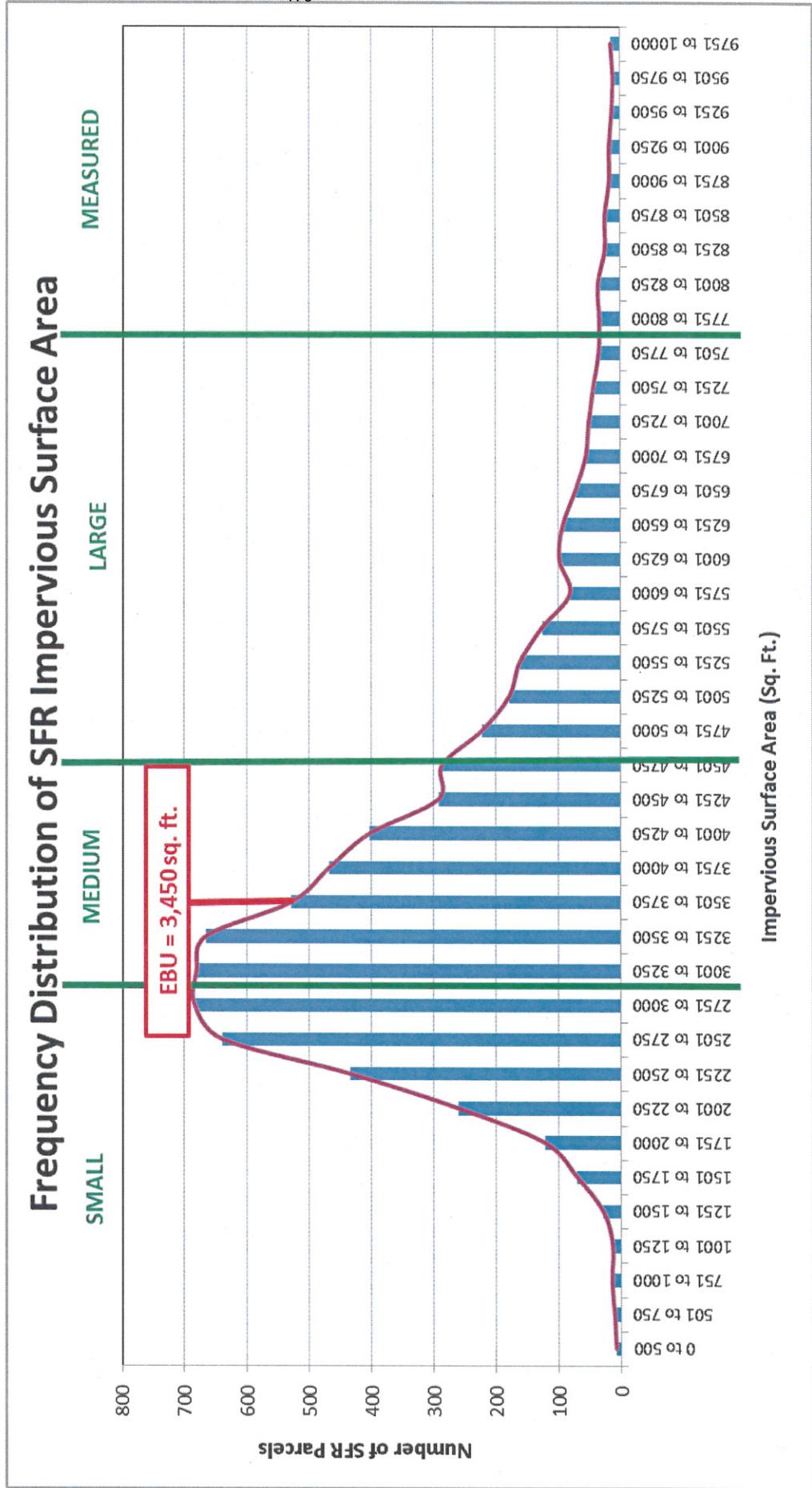
- ❖ Maintain the impervious rate basis
 - Impervious surface area is widely used and accepted as an appropriate measure of a property's contribution of runoff, providing a clear relationship, or "rational nexus", to service received from a stormwater program.
- ❖ Update the EBU definition to reflect the current average impervious surface area of single family residential customers.
 - Create tiered approach for small, medium, large, and extra large footprints
 - Charge extra large parcels based on measured impervious surface area
- ❖ Recalculate the water quality and water quantity rate components based on the utility's current program costs.
- ❖ Charge multi-family residential customers based on impervious surface area for both the water quality and water quantity components – similar to commercial customers. Eliminate per dwelling unit approach for multi-family customers.

Rate Structure Recommendations (continued)

- ❖ Private Streets and Public Right-of-Ways
 - Continue to exempt public streets because they are part of the stormwater conveyance system.
 - Continue charging private streets, provide rate credits within the framework of a broader credit policy for on-site mitigation measures.
- ❖ Rate Credits / Discounts
 - Continue providing low-income senior or disabled rate discounts.
 - Institute a rate credit policy for qualifying on-site mitigation.

EBU Definition Update

- ❖ City staff measured each single family residential parcel using geographic information system (GIS) data and techniques.



EBU Definition Update

- ❖ One EBU is set equal to 3,450 square feet of impervious surface area.

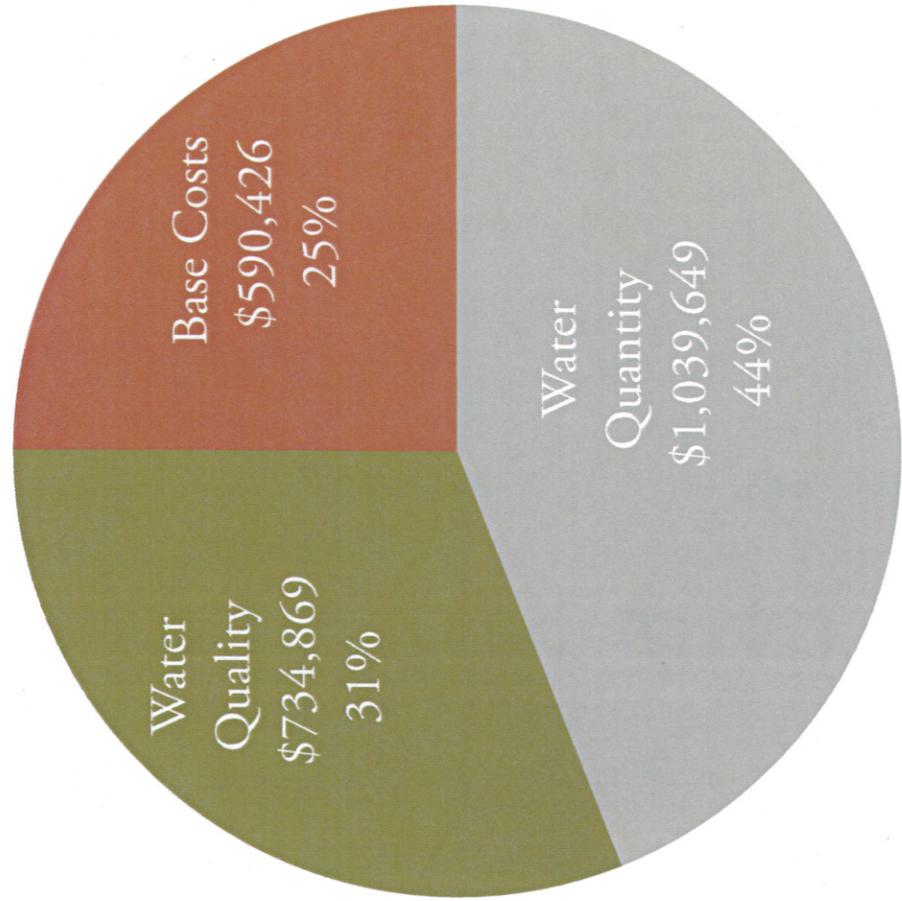
| Tier Classifications & Thresholds | No of Customers | % Shares | Avg. ISA |
|-----------------------------------|-----------------|---------------|--------------|
| Small (0 to 2,800 sq. ft.) | 1,739 | 25.5% | 2,341 |
| Medium (2,800 to 4,350 sq. ft.) | 3,408 | 50.1% | 3,471 |
| Large (4,350 to 7,500 sq. ft.) | 1,660 | 24.4% | 5,402 |
| subtotal | 6,807 | 100.0% | 3,653 |
| Measured (> 7,500 sq. ft.) | 440 | | |
| TOTAL | 7,247 | | |

| Equivalent Billing Unit Conversions | | |
|-------------------------------------|-----------------|----------|
| Small (0 to 2,800 sq. ft.) | 2,350 / 3,450 = | 0.68 EBU |
| Medium (2,800 to 4,350 sq. ft.) | 3,450 / 3,450 = | 1.00 EBU |
| Large (4,350 to 7,500 sq. ft.) | 5,400 / 3,450 = | 1.57 EBU |

Functional Breakdown of Utility Costs

2013 Budgeted Rate Revenues

\$2,364,945



Calculated Monthly Rates

| Rate Design | Base | Water Quality | | Water Quantity | | Total |
|--|----------------|----------------|----------------|----------------|----------------|-----------------|
| | | Direct | Indirect | Direct | Indirect | |
| Revenue Requirements | \$ 590,426 | \$ 320,943 | \$ 413,927 | \$ 369,874 | \$ 669,775 | \$ 2,364,945 |
| Weighted Number of EBUs [a] | 14,311 | 13,752 | 14,311 | 13,752 | 14,311 | |
| Monthly Rates per EBU | \$ 3.44 | \$ 1.94 | \$ 2.41 | \$ 2.24 | \$ 3.90 | \$ 13.93 |
| Single Family Residential Customers | | | | | | |
| Small (0.68 EBU) | \$ 3.44 | \$ 1.32 | \$ 1.64 | \$ 1.53 | \$ 2.66 | \$ 10.59 |
| Medium (1 EBU) | \$ 3.44 | \$ 1.94 | \$ 2.41 | \$ 2.24 | \$ 3.90 | \$ 13.93 |
| Large (1.57 EBU) | \$ 3.44 | \$ 3.04 | \$ 3.77 | \$ 3.51 | \$ 6.10 | \$ 19.87 |
| Discounted Rate for On-site Mitigation (per EBU) | | | | | | |
| With Full Credit | \$ 3.44 | \$ - | \$ 2.41 | \$ - | \$ 3.90 | \$ 9.75 |
| With Partial Credit [b] | \$ 3.44 | \$ 0.97 | \$ 2.41 | \$ 1.12 | \$ 3.90 | \$ 11.84 |

[a] Assumes 5% of non-single family residential customers would benefit from full discount, and 10% of non-single family residential customers would benefit from partial discount.

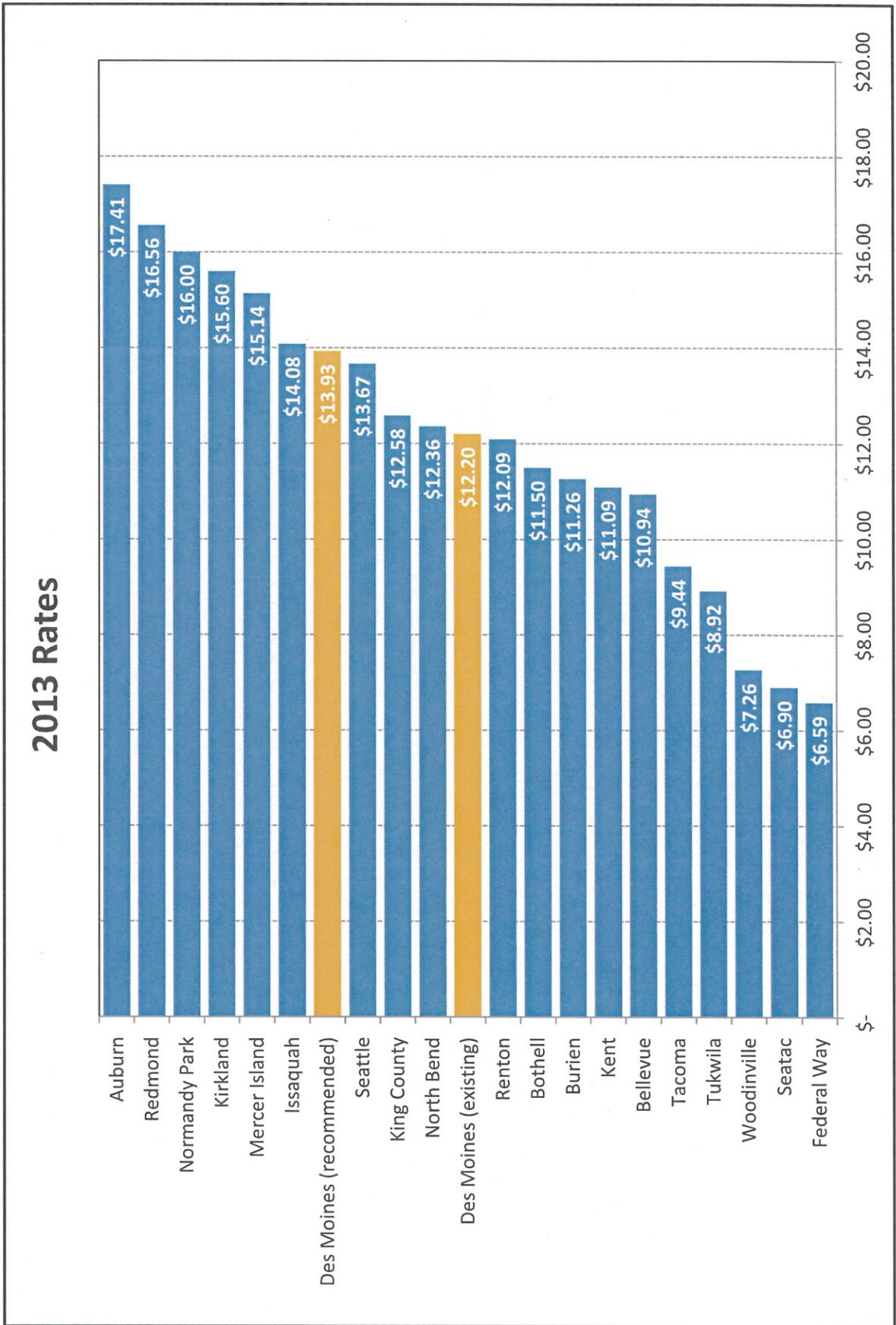
[b] Assumes partial credit amount is 50% of direct water quality and water quantity costs.

Creditable Rate Portion

Implementation of the New Rate Structure

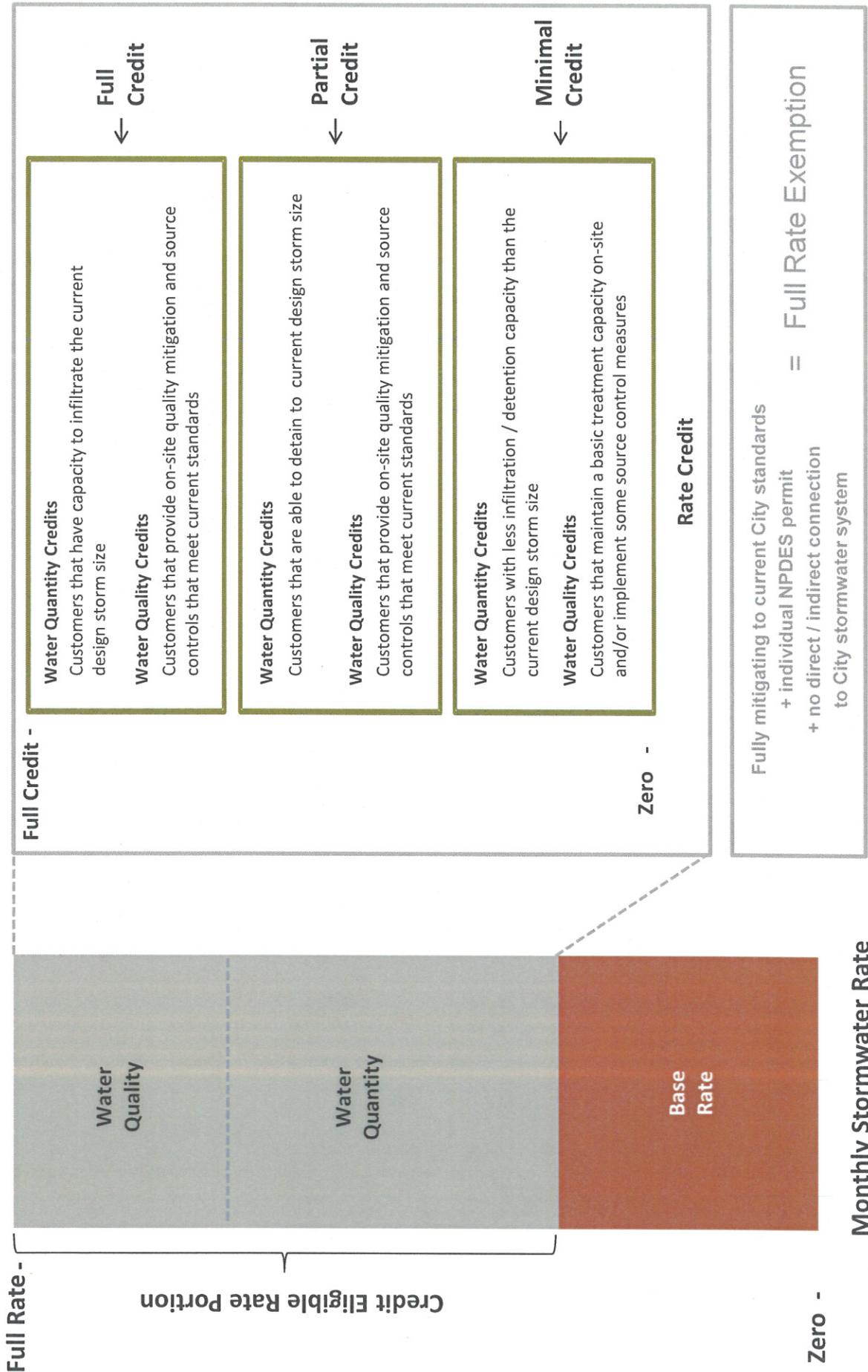
- ❖ Regularly inspect for proper maintenance of on-site facilities, and require periodic renewal / application process for rate credits.
- ❖ Amount of credit will be dependent on site-specific analysis by City staff.
- ❖ Credits for on-site mitigation measures will be only available for qualifying non-single family residential customers and qualifying private streets.

Comparison of Rates with Other Jurisdictions



Other Issues / Questions

Application of Credit Approach



Assumptions Used in the Rate Analysis

- ❖ Number of EBUs that benefit from rate discounts for having and maintaining on-site mitigation measures
 - 5% with full credit
 - 10% with partial credit
- ❖ Rate discounts are assumed to be
 - 100% for full credit
 - 50% for partial credit
- ❖ Actual credit amounts (i.e. percentage of rate discounts) will be determined based on site analysis by City staff upon property owners' application
 - Calculated rates will provide for the maximum allowable credit amount



Issue Paper #1: Stormwater Rate Structure February 1, 2013

Issue:

The City of Des Moines stormwater utility rate is currently based on impervious surface area with two rate components: water quantity and water quality. Single family homes are charged a flat rate for both components based on an assumed average of 2,400 square feet of impervious surface area, commercial properties are charged a variable rate for both components based on actual impervious square footage divided by one Equivalent Billing Unit (EBU; equal to 2,400 square feet of impervious surface area), and multi-family customers are charged a flat rate for water quality on a per dwelling unit basis and a variable rate for water quantity based on actual impervious area that is calculated the same as the commercial rate.

The City has requested an evaluation to determine if the current rate structure continues to be the most appropriate for purposes of rate equity and administration. City staff indicated that newer single family homes are much larger now, and it might be reasonable to reevaluate the EBU size to ensure it remains accurate.

Alternatives:

There are a number of rate structures which can fulfill the need for an appropriate and equitable stormwater rate.

- ◆ **Impervious surface area.** The most common basis for charging stormwater fees is impervious surface area (ISA). The term refers to hard surface area that prevents or slows water permeation into the ground. Impervious surface area is widely accepted as an appropriate measure of a property's contribution of runoff, providing a clear relationship, or "rational nexus," to service received from a stormwater program. This has been the basis of charging since the inception of the City's stormwater utility.

Rate structures based on impervious surface area require per-parcel data quantifying the applicable impervious surface area. Similar to the approach adopted by the City, stormwater utilities typically develop a uniform rate for single family residential (SFR) customers based on an estimated average amount of ISA per residential parcel to minimize administrative and data collection costs. The charge basis for all other customer types (non-SFR) is generally actual measured impervious surface area by parcel. The charge itself is most commonly calculated as a dollar amount per unit of impervious surface area, or EBU in the City's case. For the City, one impervious unit is 2,400 square feet of

ISA, with all single family residences charged for one EBU.

Note that, under this structure, while all non-SFR impervious surface area is accounted for in the monthly rate, all single family residential developments are typically assessed the same monthly fee. In so doing, in essence, some (smaller) homes are charged for impervious area that they do not have, and other (larger) homes are not charged for impervious area that they do have. This has been thought to be a worthwhile tradeoff for the added administrative burden of distinguishing among single family residences.

- ◆ **Density of development.** An alternative measurement of runoff contribution, known as density of development, can also be used. The term refers to density factors that can be applied to parcel size. Density factors may also be used in combination with actual ISA measurements to adjust charges depending on the percentage of the parcel covered by hard surface. As an adjusting factor, it is used to acknowledge that, for example, 3,000 square feet of impervious surface on a 5,000 square foot lot more directly impacts the public system than 3,000 square feet of hard surface on a one-acre lot. As with impervious surface area, density of development is an appropriate charge basis because it adequately quantifies the relationship between the rate paid and the amount of service received.
- ◆ **Runoff coefficients.** Yet another measurement of a property's contribution to stormwater impacts is the runoff coefficient. The factor is similar to density of development, but it is more closely associated with the physical characteristics of properties. When applied to lot size, runoff coefficients are generally accepted as a measure of stormwater contribution and hence, service received. Information required to charge under this basis includes basic physical characteristics of land (such as slope and soil type), land use, and lot size. Under this approach, undeveloped parcels may also be charged depending upon slope variables and soil characteristics. Runoff coefficients are typically charged either as a fee per unit of area or as an adjustment factor to impervious surface area to modify the final charge based on a parcel's runoff characteristics. In measuring contribution to stormwater runoff by evaluating property-specific characteristics that cause impacts, this approach rationally recovers the costs of several aspects of the stormwater program.
- ◆ **Land use.** Another basis that can be used to develop rates is land use. Using this fee approach, runoff characteristics are linked to types of land use. For example, empirical analysis may find that industrial land use has a more significant contribution to water quality problems from stormwater runoff than undeveloped land and therefore, should be charged a proportionately higher rate for its share of program costs.
- ◆ **Trip generation.** While the fee structures discussed above focus on

runoff contribution, trip generation as a fee basis attempts to relate automobile traffic to non-point source pollution contributed by properties. Data used to measure traffic is available from the Institute of Transportation Engineers' Trip Generation manual, which assigns a number of daily trips generated by specific categories of land use. In addition to this information, customer land uses and lot size would be required to accurately calculate rates. This fee approach would be best used to recover the costs of water quality activities within the stormwater program.

Analysis:

A rate may be found legally valid if the funded services generally benefit those who pay the fee. There need not be a property-specific link between the fee paid and level of service delivered. In fact, case law (*Teter v. Clark County*) has supported that a reasonable effort must be made to link services delivered to fees charged, but that the linkage need only be indirect.

Throughout the United States, impervious surface area is a widely accepted measure of contribution of runoff, providing the basis for stormwater rates in most utilities. Additionally, the "functional" nexus between impervious surface area, contribution of runoff, and increased flooding, water quality degradation, and damage to habitat is "scientifically" strong and supportable.

The following selection from *Stormwater Strategies: Community Responses to Runoff Pollution* describes this nexus clearly:

"The problem of polluted stormwater runoff has two main components: the increased volume and rate of runoff from impervious surfaces and the concentration of pollutants in the runoff. Both components are highly related to development in urban and urbanizing areas. When impervious cover (roads, highways, parking lots, and rooftops) reaches 10 and 20 percent of the area of a watershed, ecological stress becomes clearly apparent. Everyday activities, including driving and maintaining vehicles, maintaining lawns and parks, disposing of waste, and even walking pets, often cover these impervious surfaces with a coating of various harmful materials. Construction sites, power plants, failed septic systems, illegal discharges, and improper sewer connections also contribute substantial amounts of pollutants to runoff. Sediments, toxic metal particles, pesticides and fertilizers, oil and grease, pathogens, excess nutrients, and trash are common stormwater pollutants. Many of these constituents end up on roads and parking lots during dry weather only to be washed into waterbodies when it rains or when snow melts.

Together, these pollutants and the increased velocity and volume of runoff cause dramatic changes in hydrology and water quality that result in a variety of problems. These include increased flooding, stream channel degradation, habitat loss, changes in water temperature, contamination of water resources, and increased erosion and sedimentation. These changes affect ecosystem functions, biological diversity, public health, recreation, economic activity, and general community well-being. Urban stormwater is not alone in causing these impacts. Industrial and agricultural runoff are equal or greater contributors. But the environmental, aesthetic, and public health impacts of diffuse pollution will not be eliminated until urban stormwater pollution is controlled."¹

¹ Peter H. Lehner, George P. Aponte Clarke, Diane M. Cameron, and Andrew G. Frank, *Stormwater Strategies Community Responses to Runoff Pollution (Natural Resources Defense Council, May 1999)*, xi.

In addition to increasing the deposition of pollutants, supporting scientific research shows that the impervious surface area in even moderately developed areas greatly increases peak flows to streams, while decreasing base flows. The higher peak flows cause flooding and erosion, increasing sediment deposition and damage to aquatic habitat. The lower base flows can also damage habitat.

So, the impervious surface area rate basis is widely supported and accepted. That is not to say, however, that the method with which it has been typically applied does not warrant examination.

For example, it may be beneficial to create individual distinctions or size classes for single family residential customers in those cases where there is a wide range in the amount of ISA on single family parcels.

Additionally, an ISA-based rate structure can also be enhanced by incorporating density of development – as the City does for non-SFR customers – based on the fact that more intense development more directly impacts the public stormwater system.

The runoff coefficient approach is more difficult to administer than an ISA-based charge, would require a relatively extensive data collection effort on the part of the City, and is less defensible as a fee basis, because it incorporates physical land characteristics over which the property owner has little or no control.

A land use based approach, while administratively simple compared to an ISA-based approach, is typically used only when property-specific ISA information is unavailable. Finally, trip generation, while supportable for water quality-related functions, provides little if any advantage over impervious surface area at greater administrative effort and associated cost.

Recommendation: We recommend that the City maintain its current stormwater rate structure that is based on impervious surface area, with single family residential customers defined as one EBU and non-SFR customer charges based on the actual measured impervious surface area per parcel. We also recommend that the City charge its multifamily residential customers - similar to commercial customers - based on a impervious surface area both for water quality and water quantity rate components, and eliminate the current per dwelling unit water quality rates. Please note that, at the request of City staff, a separate issue paper has been prepared discussing multifamily residential rates and recommended charges in more detail. An impervious-based rate structure defines a linkage between a parcel's contribution of runoff impacting the system infrastructure and the fee that parcel pays. The fee basis creates a standard of charging that quantifies how different amounts of impervious surface area cause proportionately different impacts on the environment in terms of flooding, water quality, and habitat degradation. By recognizing that relationship, the fee structure basis proportionately charges different customers their share of the system's cost burden and provides an equitable, defensible means of cost

recovery for stormwater management. This proportionality is strengthened with the addition of a tiered residential rate, however preliminary data suggests that the impact to the stormwater rate may not be sufficient to justify the expense of generating home-by-home ISA data.

Finally, we recommend that the City account for the updated average ISA per SFR home since utility inception. This could be accomplished either through an updated equivalent billing unit value or by increasing the assumed number of EBUs for single family residences. We have attached directions for sampling and measuring the average impervious surface area of single family residences that we would recommend.

CITY OF DES MOINES

COMPREHENSIVE STORMWATER RATE STRUCTURE STUDY

MEASURING THE AVERAGE IMPERVIOUS SURFACE AREA OF SINGLE FAMILY RESIDENCES

By employing GIS analysis techniques, the City can determine the average impervious surface area for single family residences and establish its equivalent service unit (EBU) definition. Based on the new EBU definition, the number of EBUs for each non-single family residential customer could be subsequently calculated.

To assist the City in determining the average impervious surface area for single family residences, FCS GROUP has developed the following preliminary work plan.

Proposed Approach

1. Segregate single-family residential (SFR) and non-SFR (all other) accounts in the selected billing list.
2. Number single-family residential accounts sequentially in an unused field, starting with the number 1. For example, assuming there are 7,000 single family parcels, number these parcels 1 through 7,000 in their existing order, *regardless of any other recorded numbering system*, e.g., assessor parcels number or location identification number. These numbered parcels will make up the population from which the sample will be taken.
3. Using random numbers generated in Excel² to identify parcels to be sampled, extract the following information from each sampled parcel and record it on the worksheet provided:
 - Sample number
 - Property address
 - Other common identifier (if applicable)
 - Utility billing account number
4. Continue sampling and recording data until a sample of 126 parcels has been compiled. *Note: Appendix A details the methodology used to determine the recommended sample size.*
5. Using the common parcel identifier and corresponding maps, identify each sampled parcel on the system.
6. Measure impervious surface area on each of the sampled parcels using AutoCAD or ArcView. Record measured impervious surface area on worksheet. Note any anomalies or irregularities on the worksheet, identifying the parcel(s) concerned by the sample number or common identifier.
7. Deliver completed worksheets to FCS GROUP for statistical analysis.

² FCS GROUP can provide the random numbers if desired.

APPENDIX A

SAMPLE SIZE DETERMINATION

Recommended sample sizes were determined in the following manner.

For residential parcels, the sampling program is intended to verify the *average amount of impervious area per dwelling unit* in order to determine the value of an equivalent dwelling unit. In order to state with confidence that the sample is representative of the entire customer class, the sample size is determined by using a standard estimating technique.³ This technique is based on: (1) the maximum probable error B we are willing to tolerate, (2) the expected range of responses to the sample, and (3) a desired level of confidence.

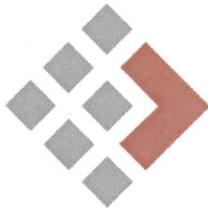
A sampling error B of 100 square feet was chosen for all residential customer classes because this value yields a manageable sample size, while still providing a reasonably accurate point estimate for the mean.

Assuming we wish to be 90% confident that the sample mean represents the population mean ± 100 square feet, the following formula may be used to determine sample size.

$$n = \frac{1.645 (s)^2}{B^2} ; \text{ where } B = 100, \text{ and } s = \frac{(\text{expected high} - \text{expected low})}{4}$$

If we assume that responses for single-family residences will range between 5,000 and 1,500 square feet of impervious area per unit, this formula yields a sample size of 126 developed single-family parcels.

³ Statistics for Business and Economics; S. Christian Albright; 1987.



Issue Paper #2: Stormwater Fees for Private Streets February 1, 2013

Issue: The City's current practice is to charge private streets for their impervious surface area at 30 percent of the base rate, to recognize their offsetting role in stormwater conveyance. The City currently exempts publicly owned streets from the stormwater fee. The main issue in question - Should the City charge private streets a stormwater fee?

Analysis: Applicable statute (RCW 35.67.020 and RCW 35.92.020) grants discretion to city legislative bodies in the setting of rates and allowing for the consideration of such factors as differences in the cost and/or character of service provided and capital contributions made to the system.

When considering how to charge different types of customers, it is important to remember that a stormwater rate is a fee for service, not a tax. As such, the level of a customer's charge must substantially relate to that customer's proportionate share of the utility's costs. In terms of equity and legal defensibility, it is important to recognize the significance of that type of relationship when defining exemption because such policies could potentially move a utility away from the rational linkage between service delivered and the amount of the fee.

When a cost of service approach is used as the basis for fee evaluation, exemptions and credits should only be granted when the characteristics of a parcel or improvements to that property cause runoff to differ when compared to similar parcels.

The City's Right-of-Way Construction Standards and Requirements apply to both private and public streets. In comparing the characteristics of the private and public streets it does not appear that the characteristics for stormwater contribution would differ in a significant way. This would indicate they should both be treated in a similar manner.

However, the similar treatment of public streets and private streets diverges when considering the following regarding public streets: first, costs and revenues are coming from comparable "public" sources and, second, public streets can be considered part of the stormwater conveyance system. The conveyance system is a network of pipes primarily designed to intercept drainage from paved streets and transport it underground (generally under a roadway) to an open drainage way. Cities often choose to exempt their streets in recognition of the key role they play in this system.

It is commonly thought that charging public streets simply transfers money from one City fund to another. Administratively, this may be a valid perception. However, by not charging public property, the City may

not accurately and equitably allocate what can be viewed as an overhead cost borne to support the departments that use stormwater services because of their land holdings. Effectively, utility ratepayers bear the costs of stormwater management provided to other user-supported services or the general public. This is not an issue for private streets.

Private streets do not provide such a system-wide benefit. The streets are owned by private owners, homeowners associations, or management groups that are responsible only for stormwater related to the specific development.

The stormwater fee is collected for the purpose of maintaining the City's public stormwater system. The City's stormwater conveyance system includes much more than storm drains. Ditches, curbs, gutters, culverts and open stream channels all make up the citywide drainage system that conveys stormwater runoff away from structures and sites in a manner that minimizes the potential for flooding and erosion to ALL properties. Customers always benefit from adequate, properly functioning drainage and flood control systems that decrease the likelihood of flooding, erosion, and unlimited pollutants from surface and stormwater runoff. Customers also benefit from the regulation and monitoring of the properties above and around the property. Although, the property may have its own stormwater system that complies with best management practices, these devices are not absolute and pollutants generally still exit a property depending on a number of factors such as the intensity and duration of rainfall. The stormwater runoff is still conveyed to the public drainage system.

It is more common than not that each unit of a development with common property (private streets, common driveways and parking areas) such as townhouse developments, cluster unit developments or condominiums is responsible for the pro rata share of the total impervious surfaces of the common areas of the development.

Alternatives:

Arguably, there might be some alternative ways to address the issue of stormwater fees for private streets, among them, (1) condominiums could be charged on a per dwelling unit basis and (2) both private streets and sidewalks could be exempted.

First, charging condominiums as residential property would require a change to all multi-family properties. The stormwater rates currently charged to multi-family properties in the City are based mainly on impervious surface area, a common industry practice. Most instances where the rate per multi-family dwelling unit is higher than the single-family residential rate are when properties have a large amount of private streets and roadways.

Charging each multi-family unit the same rate as a single-family residential customer would penalize those many multi-family units who have less impervious surface area per unit. This approach would also move away from the relationship of impervious area as an equitable basis for stormwater contribution and instead be a per unit charge for multi-family that is less related to runoff contribution.

Exempting private streets and sidewalks, is perhaps a more problematic approach. The City would require public ownership or access to the private streets and sidewalks; otherwise the exemption could be considered a gifting of public funds – prohibited by law. Any change would have to be offered to all other private streets and sidewalks for consistency. This would result in a loss of revenue for the City that would need to be met through an increase in the rate to other customers.

On the contrary, the City has full access to public streets. Transportation improvement projects on these streets also address storm related elements and issues. The City maintains public streets to their required standards including the street sweeping program, which is not a requirement for private streets. This maintenance can also be considered stormwater conveyance system maintenance that is paid for by City streets.

Recommendation: Public streets should continue to be exempted from the stormwater rates as they are considered a key part of the stormwater conveyance system. Private streets should continue to be charged as non-residential property and charged a discounted stormwater fee to recognize the contribution of runoff generated by City streets, but at the same time acknowledge the benefit of City streets to the stormwater system, which is the standard approach in the industry.

The issue of charges to private streets may be addressed more equitably by quantifying the offsetting contribution and benefit to determine a more exact portion of the rate to be charged to private streets.



Issue Paper #3: Stormwater Rate Credits February 1, 2013

Issue:

City of Des Moines Municipal Code Section 11.12.080 provides for rate adjustments when the amount charged “was not calculated in accordance with the terms of this chapter.” When is it reasonable (or required) to provide additional rate credits / adjustments for stormwater customers who mitigate their stormwater impacts and what is a rational basis for such credits?

RCW 90.03.510 authorizes such credits, stating that:

“Whenever a county, city, town, water-sewer district, or flood control zone district imposes rates or charges to fund storm water control facilities or improvements and the operation and maintenance of such facilities or improvements under RCW [35.67.020](#), [35.92.020](#), [36.89.080](#), [36.94.140](#), [57.08.005](#), or [57.08.081](#), it may provide a credit for the value of storm water control facilities or improvements that a person or entity has installed or located that mitigate or lessen the impact of storm water which otherwise would occur.”

Alternatives:

A review of potential credit bases / approaches reveals a number of alternatives.

- ◆ **On-site retention / detention.** Many residential subdivisions and commercial developments provide on-site retention / detention facilities as a condition of development, often maintaining such facilities as well. There are several ways to structure a potential rate credit for on-site retention / detention, the following among them:
 - ◆ **Performance against current standards.** Rate credits may be structured to reward customers who provide mitigation to current development standards, while offering lesser or no credits for mitigation that does not meet current development standards.
 - ◆ **Current vs. older standards for quantity and quality management.** Quantity and quality standards have increased greatly over the years. The City could offer credits by time of development, in order to reflect the benefit received from customers who help meet this historical change in stormwater management standards.
- ◆ **Customers covered by NPDES stormwater permits.** In order to protect the quality of receiving waters, the federal Clean Water Act requires a National Pollutant Discharge Elimination System (NPDES) permit for stormwater generated by specific industrial activities. The NPDES permit typically requires performance standards, monitoring,

and additional treatment of runoff generated by permitted industrial activities.

Under the NPDES permitting program, the specific stormwater detention and treatment measures that are required vary from permittee to permittee. Furthermore, industrial sites, which typically are subject to NPDES permitting requirements, are exempt from the program if 100% of their stormwater runoff is detained and treated.

As a result, the fact that a development is subject to NPDES permitting requirements may not tell the whole story regarding the stormwater mitigation measures it must incorporate. In the consideration of granting credits for individual permittees, it is important to remember that the City could instead provide credits for customers providing qualifying on-site mitigation including detention, treatment, and infiltration.

- ◆ **Infiltration.** Impervious surfaces, among other development features, prevent water from infiltrating the soil and replenishing the groundwater supply (if any). Customers that infiltrate their runoff may benefit both the City's drinking water system, by recharging the aquifer, and the City's stormwater system and receiving waters, by reducing the required size of system facilities. However, allowing infiltration also requires that the City work with owners to reduce contamination risks from such systems. Another factor to consider is the fact that not all stormwater is actually infiltrated; instead, infiltration systems are still connected to the public system via overflow piping.
- ◆ **Low-impact development, green building, and rainwater harvesting.** Low-impact development (LID) techniques, such as rainwater harvesting, permeable pavement, open space retention, bio-retention swales and rain gardens could also be worthy of credits. Other aspects of LID – such as green “vegetated” roofs – may affect the “effective” impervious area of a development or home if properly maintained.

Green building techniques include site planning to take greater advantage of natural site features, achieving LEED or Built Green certification, planting drought-resistant native landscaping, amending soils with compost, reducing impervious surface area, minimizing site disturbance during development, and previously noted low-impact development features. Implementing these techniques will result in increased natural resource conservation, lower home operating costs, and better stewardship of the City's drinking water aquifer. Other than its LID aspects, green building techniques are not strongly linked to a reduction in stormwater utility costs. The one aspect that is directly related to smaller service requirements is the minimization of impervious surface area.

A credit for low-impact development would recognize the fact that effective impervious area can be much smaller than the impervious surface area that is measured from aerial photographs (due to roof rainwater collection systems, permeable paving, vegetated roofs, etc.). An LID credit may be further supported by the fact that even when the effective impervious area of such a development is the same as other, conventional residential developments, other LID practices such as vegetation replacement typically result in reduced runoff from the property.

- ◆ **Dedicated open space.** Developments incorporate design techniques that concentrate residences or other buildings in a compact area of the development site (lot clustering) and provide open space and natural areas elsewhere, protected by an easement. Such techniques can reduce runoff, mitigate stormwater quality, and help maintain the amount of water recharging the City's aquifer.

Open space developments have many benefits in comparison to the conventional subdivisions that they replace: they can reduce impervious surface area (ISA), stormwater pollutants, construction costs, grading, and the loss of natural areas. In addition to the minimization of ISA, the preserved natural areas and tree canopy can significantly mitigate the stormwater runoff created by the buildings on site. Therefore, although affected by the slope characteristics of the property, the preserved portion of the site acts to reduce the effective impervious area of the development and provides a meaningful benefit to the public system when runoff is adequately dispersed.

Analysis:

When considering how to charge, or credit, different types of customers, it is important to remember that a stormwater rate is a fee for service, not a tax. As such, the level of a customer's charge must somewhat relate to that customer's proportionate share of the utility's costs. In terms of equity and legal defensibility, it is important to recognize the significance of that type of relationship when defining exemption or credit policies because such policies could potentially move a utility away from the rational linkage between service delivered and the amount of the fee.

A stormwater utility's service to its customers and the community it serves can be analyzed in two functional categories: controlling and reducing stormwater runoff (i.e. water quantity), and controlling and managing pollutants (i.e. water quality). The broader questions to address in establishing credits are (1) whether a rate payer help the utility reduce its costs (or not to incur additional costs) by providing certain mitigation measures in these two functional areas or not, and (2) if yes, how much of a cost savings is provided.

Comparatively, properties with on-site mitigation have a reduced effect on the public system than similar property lacking this mitigation. Therefore, it might be argued that to the extent that such facilities reduce costs to the City utility, they may warrant a rate credit.

However, it is also debatable that meeting the City's development standards reduces costs for the utility. Instead, it may simply keep the utility whole. As a result, granting a rate credit for such activities could actually reduce the amount of resources available for basic services to the remainder of the customer base. In fact, it may be argued that the cost of meeting City standards and constructing on-site mitigation should be considered a "cost of doing business," since on-site mitigation only partially neutralizes the impact of developing the property in the first place.

On the other hand, exceeding standards – that is, providing capacity in addition to that needed by developing (or developed) property – in theory does reduce cost to the utility by, in effect, reducing the net utility service area. How much of a credit to grant can then be sized according to the extent to which on-site controls exceed the standards.

Therefore, the two criteria to check for may be (1) effectiveness in reducing stormwater runoff and (2) whether these on-site systems are designed to handle greater amount stormwater than would be required as a condition of development approval. The additional capacity provided by the new development then may become the basis for the service charge credit amount.

It is true that property lines do not follow stormwater basin boundaries. Net impacts and/or benefits of a parcel align better with basin boundaries than property lines. However, estimating net impacts/benefits of each parcel, and developing a rate structure and credit policy around these estimates would be extremely difficult and very costly to administer. Additionally, it would be open to challenge since these estimates would be considered somewhat subjective, and difficult to explain to ratepayers.

Recommendation: Many of the stormwater program's costs are essentially "fixed" and do not decrease no matter what services customers provide on-site. As a first step, we recommend that the City determine the portion of program costs which can be reduced by the on-site activities of the customer base. We further recommend that the City classify the portion of those variable or use related costs as either attributable to managing water quantity or to managing water quality.

Once an allocation of program revenue requirements among fixed or base program costs, water quantity costs, and water quality costs has been made, their component shares of the stormwater utility charge can be determined. All customers would pay the base rate component. However, credits would be made available for the water quantity and quality components depending on on-site activities. (Customers with on-site features that result in reduced runoff – such as those that infiltrate or practice low-impact development – would be eligible for a rate credit that would vary in size based on the level of mitigation, not to exceed the sum of the quantity and quality components of the charge.)

The following recommendations assume that properties subject to stormwater rate credits would be meeting or exceeding the City's development requirements, and hence allowing the City to delay capital projects. As a result, the utility would be able to reduce its capital as well as operating costs by implementing the recommended credit policies.

Quantity Credits

Customers with on-site quantity controls, such as detention or infiltration facilities, provide a direct benefit to the utility by reducing peak flow and thereby reducing the necessary size of system pipes downstream.

In the case of customers that infiltrate their runoff, not only is peak flow reduced, but their total runoff is reduced or eliminated (to the extent there is capacity). Given this, we recommend that a full credit for the quantity-related portion of the utility bill be granted to customers that have capacity to infiltrate the current design storm size. Customers with less infiltration capacity than for the design storm size should receive a minimal quantity credit.

Detention facilities, on the other hand, do not prevent runoff from entering the public system. Instead, peak stormwater flows are simply reduced and extended over a longer duration. For that reason, customers that are able to detain to current standards should receive a quantity-related credit that is less than a full credit for this portion of the bill. Customers with less detention capacity than for the design storm size should receive a minimal credit for the quantity component of the bill.

Additionally, there are several development methods which incorporate features that mitigate stormwater runoff. Such features that reduce peak flows or prevent stormwater runoff from entering the public system include aspects of low impact developments, green building methods, and rainwater harvesting. On their own, such development features provide a quantity mitigation benefit that is typically less than dedicated detention facilities sized for the design storm. Accordingly, quantity-related mitigation should be eligible for a minimal credit against the quantity rate component. However, when paired with detention facilities sized for the design storm, customers should receive a full credit against the quantity rate component.

Note: For crediting purposes, we recommend that the eligibility of rainwater harvesting systems for credit be conditioned upon inspections to ensure regular use of the harvested water (due to the fact that, once collection cisterns are full, they no longer reduce runoff). Also, the system benefit provided by customers with quantity-mitigating development features is dependent upon proper maintenance of the on-site features, so we further recommend that they be subject to regular inspection in order to renew the credit every two years.

Customers that discharge their runoff directly into flow-exempt receiving waters where detention is not required (in Des Moines, these include Puget

Sound and Green/Duwamish River below RM 6 and above SR 18) perform another type of quantity mitigation. There are two types of such customers: those that utilize private systems to convey their runoff to receiving waters, and those that utilize the City's stormwater system, in whole or in part, to convey runoff to receiving waters. As customers of the first type are equivalent to customers with on-site detention facilities sized for the design storm, we recommend that they be granted the maximum detention credit for the quantity component of the utility fee. For customers of the second type, we recommend that a minimal credit for the quantity component be granted, to account for the use of and cost of maintaining the City infrastructure relied upon by the customer.

No credit or adjustment should be granted to customers without meaningful quantity mitigation capability.

Quality Credits

There are a number of factors, in addition to the installation of on-site quality controls, which relate to a customer's ability to manage the quality of their stormwater runoff. The most important of these are controls for on-site sources of pollution. Examples of source controls would be roofs and coverings for pollution-generating surfaces, equipment, and materials.

To meet the City's stormwater quality mitigation requirements, a customer must have on-site quality controls as well as source controls. Accordingly, a full credit for the quality-related portion of the utility bill should only be granted to customers that provide on-site quality mitigation and source controls that meet current standards.

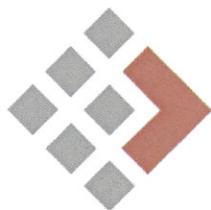
Even in those cases where full mitigation capability is not present, on-site quality control facilities and source control measures can still provide a benefit to the City's stormwater system. Accordingly, we recommend that a minimal credit to the quality portion of the stormwater utility bill be provided to customers that, while not meeting current requirements, do maintain a basic treatment capacity on-site and/or implement some source control measures.

No credit should be granted to customers that have no on-site quality controls or provide only nominal quality mitigation (such as a downturned elbow to control floatables).

Other Credits

Customers with individual NPDES stormwater permits should be eligible for the same rate credits as any other non-residential customer. No dedicated credit for simply possessing a permit should be established.

Please note that the percentage or number of impervious units that will obtain quantity, quality, and/or runoff reduction credits will be forecasted and incorporated into the current rate analysis to ensure adequate revenue generation under the proposed program.



Issue Paper #4: Stormwater Multifamily Rates February 1, 2013

- Issue:** The City of Des Moines Stormwater Utility currently charges its multifamily customers a water quality charge on a per dwelling unit basis and a water quantity charge on a per equivalent billing unit (EBU) basis. This is a mix between single family residential customers, which are charged both quality and quantity per dwelling unit, and commercial customers, which are charged both quality and quantity per EBU.
- The City is seeking feedback as to how other jurisdictions charge multifamily customers, if the current method is equitable, and what other methods are available.
- Alternatives:** There are two other rate structures that can fulfill the need for an appropriate and equitable multifamily stormwater rate.
- ◆ **Per Dwelling Unit.** One common basis for charging stormwater rates to multifamily customers is per dwelling unit. To account for the fact that condos and apartments are smaller than single family homes, multifamily dwelling units are charged a fraction of a full EBU.
 - ◆ **By Impervious Area.** Another common basis for charging stormwater rates to multifamily customers is by impervious area, which is reflected in the EBU calculation. Like for any other developed commercial parcel, multifamily dwelling units would only be charged for the actual amount of area that generates runoff into the stormwater system.
- Analysis:** The City's statutory authority for setting rates is found in RCW 36.89.080 and states:
- (1) Subject to subsections (2) and (3) of this section, any county legislative authority may provide by resolution for revenues by fixing rates and charges for the furnishing of service to those served or receiving benefits or to be served or to receive benefits from any storm water control facility or contributing to an increase of surface water runoff. In fixing rates and charges, the county legislative authority may in its discretion consider:
- (a) Services furnished or to be furnished;
 - (b) Benefits received or to be received;
 - (c) The character and use of land or its water runoff characteristics;
 - (d) The nonprofit public benefit status, as defined in RCW [24.03.490](#), of the land user;
 - (e) Income level of persons served or provided benefits under this chapter, including senior citizens and disabled persons; or

(f) Any other matters which present a reasonable difference as a ground for distinction.

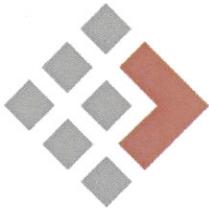
Impervious surface area is now widely accepted as a measure of contribution of runoff, and as such, serves as the basis for stormwater rates in the vast majority of stormwater utilities in the region. Most of those programs charge multi-family residential developed property based on the amount of impervious surface area, rather than the number of dwelling units for the simple fact that the number of dwelling units does not necessarily relate to the impervious footprint of the complex.

Depending on the configuration, multi-story multi-family residential complexes may generate no more runoff than large single story houses with comparable footprints, bringing the equity of a per dwelling unit approach into question for multi-family residential customers. Treating such customers as “commercial” for rate purposes will result in rate changes that could simplify the rate approach and be accounted for in the current rate study.

It is also worth noting that multi-family residential development is defined as commercial for other purposes.

In Washington Administrative Code WAC 458-20-250 addressing refuse-solid waste collection business taxes, paragraph (4)(ii) states, in part, “in the case of multiple housing units in a single structure such as apartments, condominiums, or duplexes, ..., the service is deemed commercial unless each occupier of a housing unit is individually provided can service and is individually billed for such service”.

Recommendation: We recommend that that City change their current multifamily rates to mirror the commercial rates and charge by EBU, calculated based on impervious area. If the City were to treat multifamily as commercial customers, the water quality rate would need to be increased in order to collect the same amount of revenue due to the fact that there are less EBUs than dwelling units in the current multifamily customer class. This could be easily accounted for in the current rate design study.



Issue Paper #5: Stormwater Public Institution Rates February 1, 2013

Issue: The City of Des Moines stormwater utility currently charges public institutions, including public schools, government buildings, colleges, parks, and sewer and water facilities, a non-profit or commercial rate per EBU.

The City has requested an evaluation to determine if the current public institution rates are the most appropriate or if they should be discounted or exempted.

Analysis: When considering how to charge different types of customers, it is important to remember that a stormwater rate is a fee for service, not a tax. As such, the level of a customer's charge must substantially relate to that customer's proportionate share of the utility's costs. A rate may be found legally valid if the funded services generally benefit those who pay the fee. There need not be a property-specific link between the fee paid and level of service delivered. In fact, case law (*Teter v. Clark County*) has supported that a reasonable effort must be made to link services delivered to fees charged, but that the linkage need only be indirect.

When a cost of service approach is used as the basis for fee evaluation, exemptions, discounts and credits should only be granted when the characteristics of a parcel or improvements to that property cause runoff to differ when compared to similar parcels.

Developed properties that are publicly owned still contribute runoff that places a cost burden on the utility system. If the City wishes to pursue a social policy to grant discounts or exemptions, a utility and its ratepayers should not bear the costs of that policy. To preserve the cost of service approach to rate design and avoid causing stormwater utility customers to subsidize a general City policy, the General Fund could possibly be used to fund the costs of public institution credits or exemptions.

Some jurisdictions do not charge publicly-owned land because there is a general sense that charging simply transfers money from one City fund to another. Administratively, this may be a valid perception; however, by not charging public lands, the City may not accurately and equitably allocate what can be viewed as an overhead cost borne to support the departments that use stormwater services because of their land holdings. Effectively, utility ratepayers would bear the costs of stormwater management utilized by other user-supported services or the general public.

The one common exception to this general approach has to do with

charging city streets. City streets, while impervious and generating runoff, also serve as part of the stormwater conveyance system. Cities often choose to exempt their streets in recognition of this fact.

Recommendation: We recommend that the City charge public property the same as any other customers. Credits, as we have laid out in Issue Paper #3, would also apply to all customer types, including schools. The City should, however, exempt or discount City streets because they serve as part of the stormwater conveyance system.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT:

Restoration of frozen Administrative Sergeant position

ATTACHMENTS:

- 1) Memorandum from Chief of Police George Delgado dated 05/12/13

FOR AGENDA OF: May 23, 2013

DEPT. OF ORIGIN: Police

DATE SUBMITTED: May 17, 2013

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *A*

Purpose and Recommendation

The purpose of this item is to request Council’s approval to restore the currently frozen position of Administrative Sergeant.

It is staff’s recommendation for Council to approve the restoration of the frozen position of Administrative Sergeant which will allow the Chief of Police to immediately fill this position with an internal promotion. Additionally, the Council will freeze a vacated police officer position.

SUGGESTED MOTIONS:

Motion 1: “I move to authorize the restoration of the currently frozen Administrative Sergeant position which will allow the Chief of Police to immediately fill this position through internal promotion and to freeze a vacated police officer position for the remainder of the 2013 budget.”

And

Motion 2: “I move to direct the Finance Director to make the proportionate budget adjustment within the budget divisions of the police department to provide funding for the Administrative Sergeant position.”

Background

During 2013, the Administrative Sergeant position was vacated due to a transfer of personnel within the police department. In an effort to assist the City with its ongoing budgetary struggles during this economic downturn, it was determined the police department would leave the position vacant. Many of the duties of the Administrative Sergeant were reassigned to the Professional Standards Sergeant and Commanders within the police department. The Administrative Sergeant position was left unfunded and frozen by executive amendment for the remainder of the 2013 budget.

Discussion

The police department has gone to great efforts to maximize its efficiencies, technical resources, and personnel. The police department has made numerous updates in policies, procedures and its staffing model. It has been determined by the Chief of Police that in order to maintain the current momentum and progress, it is imperative to have this position restored. The Administrative Sergeant position serves several vital roles within the police department to include risk management, policy updates and maintenance, departmental training, grant writing and administration, and quartermaster.

In addition, the department would like to institute additional programs and services necessary to enhance quality of life for our citizens and employees. The Administrative Sergeant position is critical to the successful development and implementation of these programs.

Lastly, many duties and assignments previously assigned to the Administrative Sergeant are currently not conducted or are being conducted with less than desirable frequency.

Below are examples of the potential separation of duties between the Administrative Sergeant and Professional Standards Sergeant:

- | Administrative Sergeant | Professional Standards Sergeant |
|--|---|
| <ul style="list-style-type: none"> • Training coordinator • Review all training curriculum • Maintain department training files • Training liaison with allied agencies and WSCJTC • Completes annual training audit required by WSCJTC • Department quartermaster • Maintains department policy manual • Conducts bi-annual policy manual updates • Supervision of the City Emergency Management Program • Develop, maintain, and update City Emergency Management Plan | <ul style="list-style-type: none"> • Background investigations of potential employees • Internal investigations • Conduct use of force reviews • Maintain all use of force reports and database • Coordinate with allied agency investigators when necessary • Use of force investigations • Represent DMPD at internal investigator meetings • Monitor racial and biased policing • Complete annual reports to Command Staff concerning use of force and racial and biased policing, • Conduct quarterly audits of the evidence room |

- Responds when Emergency Operation Center is activated
- Conducts emergency management training
- Attends emergency management related meetings
- Emergency management liaison with allied agencies
- Supervision of the Community Service Unit and all associated programs
- Grant writing and management
- Administrative coordinator for online report system
- Assists with development and implementation of operational plans for special events
- Case Management of all police reports to ensure the appropriate triaging of cases and proper intelligence gathering.
- Conduct quarterly audits of K9 control samples
- Security and maintenance of personnel files
- Supervision of the Police Training Officer Program
- Control and maintenance of access devices
- Supervise the School Resource Officer Program
- Maintenance and review of all citizen complaints
- Agency Accreditation maintenance
- Risk Management coordinator

Alternatives

1. Council can approve the Motions as written.
2. Council can approve the Administrative Sergeant position but provide for other sources of funding or promotion.
3. Council can decide to not allow for the restoration of this position and the freezing of the vacated police officer position.

Financial Impact

If approved as written, the financial impact on the department will be minimal. The annual first year cost of promoting an officer from MPO III position to sergeant is approximately \$3,655. This amount will be absorbed within the adopted 2013 police department budget.

Recommendation and Conclusion

The Police Department recommends the City Council approve this agenda item.

Concurrence

The Finance Department concurs.

DES MOINES POLICE DEPARTMENT

“PUTTING THE NEEDS OF THE COMMUNITY FIRST”

M E M O R A N D U M

DATE: May 7, 2013

TO: Tony Piasecki, City Manager

FROM: George M. Delgado, Chief of Police 

SUBJECT: **Unfreezing the DMPD Administrative Sergeant Position**

Background

In late 2012, a decision was made to consolidate the duties of the Professional Standards Sergeant and the Administrative Services Sergeant into one position. This move was in part the result of findings brought forward by the Matrix Group in 2010 and the Washington Sheriffs and Police Chief's (LEMAP) assessment team in 2012.

In addition, in late 2012, I ordered a major internal investigation of an officer based on actions later determined to be violations of department policy. This investigation uncovered a number of vulnerabilities within the agency. Those vulnerabilities were high liability areas centered on training and policy which exposed the City of Des Moines to significant liability. After arriving at a final disposition of the investigation, I discussed the details of the investigation with then Master Sergeant Bohl (now Commander). There appeared to be a correlation between the inefficiencies in the duties of the Administrative Services Sergeant and factors that led to the behaviors that became the focus of the major investigation conducted by then Master Sergeant Bohl.

In 2013, as a budget balancing strategy the City of Des Moines froze the Administrative Sergeant position. Per my direction, former Master Sergeant Bob Bohl began the task of auditing the duties of both his Professional Standards assignment and the Administrative Services position in an effort to streamline the essential duties necessary to support the mission of the Des Moines Police Department.

It became evident to Bohl that the Matrix investigation and the LEMAP assessment appropriately suggested the consolidation of duties between the Professional Standards and Administrative Sergeant positions based on information known to them at the time of their specific audits; however the responsibilities NOT being acted on were not adequately addressed by Matrix or LEMAP. More than that, I learned Des Moines Police Department personnel had not been given training in high liability areas such as unarmed defensive tactics, emergency vehicle operations, and other critical areas. During this time, it was also determine that only one officer in the agency possessed a valid first-aid certification. The first-aid certification of all other officers had expired. Also, a large percentage of the agency's personnel possessed expired

breathalyzer certification cards. It was clearly evident the lack of essential follow through and managerial oversight played a critical role in exposing the city to significant liability.

Essential Job Functions

With an ever increasing strain on our department budget and a growing structural deficit, establishing the “new way” of doing business by strengthening our infrastructure is our goal. Therefore, reestablishing the Administrative Sergeant position is the first practical step to reestablishing and maintaining legal and department/city policy compliance. The identified areas below are tasks that will be managed by the Administrative Sergeant.

Training

- Maintain departmental training records by reviewing personnel training files for content and accuracy, noting deficiencies and entering data.
- Maintain up-to-date knowledge of current training trends and available material to ensure compliance with mandated standards.
- Develop and maintain volunteer program.
- Department Instructor coordination.
- Lesson plan assessment and oversight.

Equipment

- Ensure inventory and maintenance of all department equipment.
- Responsible for the maintaining critical supplies not currently in use including firearms, police radios, and other equipment deemed to be of high value or critical in nature.
- Supply vendor coordination.
- Police Radio “rebanding” and other updates.
- Oversight of gas masks and other related equipment received through federal grants - A critical task not being done.
- Audit and oversight of firearms safe and equipment database – critical task not being done.

Policy Manual (Partnered w/ Professional Standards SGT)

- Maintain, review, and recommend changes to the Department Policy Manual.
- Conduct Lexipol policy refreshers and related training.

Emergency Management

- Provides day to day supervision of the City of Des Moines Emergency Management Program.
- Review and revise the City of Des Moines Emergency Management policies, plans and program. This includes but is not limited to the Comprehensive Emergency Management Plan and Hazard Mitigation Plan.
- Responsible to respond during an emergency to provide support and supervision as required in the Emergency Operations Center.
- Conduct emergency management training for Department and City staff as well as for citizen groups and other organizations.
- Represent the City and Department at emergency management related meetings, training/exercises.
- Liaison officer with South King Fire and Rescue on emergency management issues.

- Attend Region 3 meetings and training. Meetings are usually quarterly, however communication between stakeholders occurs weekly.
- Be the KCOEM contact for all City and emergency management issues.
- Regular attendance at KCOEM meetings.
- Coordinate NIMS compliance. (Note- 2013 will be five years since police personnel were originally certified. IC 100, 200, and 700 refreshers will soon need to be conducted.

Supervision of Community Service Unit

- Possesses a basic understanding of crime prevention techniques and programs in order to evaluate the effectiveness to the crime prevention function.
- Attend community meetings with the Community Service Officers.

Special Projects, Assignments, and other duties as assigned

- Responsible for seeking and writing grants on behalf of the department and maintains administrative responsibility for grants the department receives.
- Administrative coordinator for the department online reporting system.
- Oversees Department Case Management function to triage and vet all reports written and maintained by the department for effective crime analysis and intelligence purposes.
- Liaison officer with Valley Communication Center (the dispatch center) on day to day issues to include CAD (computer aided dispatch), and MobileCom development, training, and implementation.
- Secondary Public Information Officer

Cost

The difference between a top salary Master Police Officer and a first year Sergeant is minimal. According to the current collective bargaining contract, a Master Police Officer III earns \$90,912 (Step P27E) annually. A newly promoted Sergeant will earn \$93,660 (Step P29D) annually. The annual salary difference is \$2,748 plus an additional one-third added for roll up cost (uniforms and equipment) of \$907. This makes a total cost increase approximately \$3,655.

| Title | Pay Step | Annual Salary |
|-----------------------|-----------------|----------------------|
| Sergeant | P29D | \$93,660 |
| MPO III | P27E | \$90,912 |
| | | |
| Difference | | \$2,748 |
| Approx Roll Up Cost | | \$907 |
| | | |
| Total Increase | | \$3,655 |

The department will not backfill the officer position created by the unfreezing of the Sergeant's position. The police officer hired in March of 2012 will have completed initial training and will be assigned to the vacancy created by the sergeant promotion. This will result in all four patrol shifts operating with four officers and one sergeant (supervisor). It should be noted that the officer hired in March filled the vacancy created by the retirement of Commander Tucker.

Below are areas we've identified as immediate cost-cutting responsibilities. These cost savings measures have already been acted on.

- Pole cameras \$3694/yr
- South Station Phone Replacement and Internet Service \$5000.
- PowerDMS subscription cancelation \$2700 /yr

Another potential cost savings benefit for the Administrative Sergeant position is to have the supervisory responsibility of reestablishing and enhancing our volunteer program. Expanding the use of volunteers will be vital in our work in making our organization more efficient as well as eliminating our dependence on Iron Mountain for document storage. By using volunteers to scan documents and police records DMPD can potentially eliminate the \$10,000 paid to Iron Mountain on an annual basis.

Final Statements

The importance of reestablishing the Administrative Sergeant position is critical to the future of the Des Moines Police Department, and is in line with the goals and priorities of the Des Moines City Council and DMPD Strategic Plan. With Public Safety as its top priority, it is clear to me that our City Council does not desire to contract out law enforcement services to the King County Sheriff's Office or any other agency for that matter. Whether it's our goal is to contract Des Moines Police services to surrounding jurisdictions or to potentially establish regional partnerships that would allow us to lower costs by sharing essential law enforcement functions. The building of a solid and accredited police department is critically vital. Before we add additional sworn personnel to the ranks of our agency, it is essential we build a risk-averse agency. The building of a solid infrastructure is an imperative first step.