

AGENDA

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

November 19, 2015 – 7:00 p.m.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC

EXECUTIVE SESSION

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORT

Item 1: AUDIT EXIT CONFERENCE

CONSENT AGENDA

Page 1 Item 1: APPROVAL OF MINUTES

Motion is to approve the minutes from the October 29, 2015 Executive Session, the October 29, 2015 Council Presentation to Pacific Middle School Students and the October 29, 2015 Regular City Council meeting.

Page 11 Item 2: DRAFT ORDINANCE NO. 15-193; MUNICIPAL COURT SEAL

Motion 1a is to suspend Council Rule 26(a) to enact Draft Ordinance No. 15-193 on first reading.

Motion 1b is to enact Draft Ordinance No. 15-193 creating a municipal court seal for the Des Moines Municipal Court.

Page 15 Item 3: UPDATE ON CITY OF DES MOINES RIGHT-OF-WAY ACQUISITION PROCEDURES

Motion is to approve and authorize the Mayor to sign the City of Des Moines Right-of-Way Acquisition Procedures substantially in the same form as submitted.

Page 29 Item 4: INTERLOCAL AGREEMENT BETWEEN THE CITIES OF SEATAC, DES MOINES, COVINGTON, AND TUKWILA FOR PLANNING, FUNDING AND IMPLEMENTATION OF A JOINT MINOR HOME REPAIR PROGRAM

Motion is to authorize the City Manager to approve revised Exhibit A of the Interlocal Agreement between the Cities of SeaTac, Des Moines, Covington and Tukwila accepting \$30,000 for the Minor Home Repair Program substantially in the form as submitted.

Page 41 Item 5: KING COUNTY YOUTH SPORTS FACILITIES GRANT
Motion is to accept the 2016 King County Youth Sports Facilities Grant for the Parkside Park Renovation Project Sports Court in the amount of \$25,000 and authorize the City Manager to sign the Agreement.

Page 57 Item 6: INTERLOCAL AGREEMENT BETWEEN DES MOINES POOL METROPOLITAN PARK DISTRICT AND CITY OF DES MOINES FOR TECHNOLOGY SERVICES
Motion is to approve the Interlocal Agreement between the Des Moines Pool Metropolitan Park District and the City of Des Moines for the provision of Technology Services, whereby the Des Moines Pool Metropolitan Park District will pay the City of Des Moines the amount of \$1,200 per month, and authorize the City Manager to sign the Agreement substantially in the form as submitted.

OLD BUSINESS

Page 67 Item 1: 2016 UTILITY TAX RATES
Staff Presentation: Finance Director Dunyele Mason

Page 117 Item 2: 2016 OPERATING & CAPITAL BUDGETS
Staff Presentation: Finance Director Dunyele Mason

NEW BUSINESS

Page 125 Item 1: INTERGOVERNMENTAL POLICIES AND POSITIONS
Staff Presentation: City Manager Tony Piasecki

Page 139 Item 2: DRAFT ORDINANCE NO. 15-175; 2016 MARINA MOORAGE RATES FOR 2016
Staff Presentation: Harbormaster Joe Dusenbury

Page 151 Item 3: DRAFT RESOLUTION NO. 15-191; ACCEPTING FINDINGS OF FACT THAT AN EMERGENCY EXISTED
Staff Presentation: Planning, Building and Public Works Director Dan Brewer

NEXT MEETING DATE

December 3, 2015 Regular City Council Meeting

ADJOURNMENT

MINUTES

SPECIAL MEETING TO HOLD EXECUTIVE SESSION

October 29, 2015

CALL MEETING TO ORDER

The Special Meeting was called to order at 5:00 p.m. by Mayor Kaplan in Council Chambers.

ROLL CALL

Present were: Mayor Pro Tem Matt Pina; Councilmembers Jeremy Nutting, Melissa Musser, Luisa Bangs, Bob Sheckler and Vic Pennington; City Manager Tony Piasecki; Assistant City Manager Michael Matthias; City Attorney Pat Bosmans.

PURPOSE

The purpose of the Special Meeting was to hold an Executive Session to discuss potential litigation under RCW 42.30.110.

No formal action was taken.

The meeting was adjourned at 5:47 p.m.

Respectfully submitted,
Tony Piasecki
City Manager

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MINUTES

CITY COUNCIL PRESENTATION TO PACIFIC MIDDLE SCHOOL STUDENTS

October 29, 2015

The Council Presentation started at 6:01 p.m. in the Council Chambers.

STAFF PRESENT

Mayor Dave Kaplan; Councilmembers Luisa Bangs, Bob Sheckler and Vic Pennington; City Manager Tony Piasecki; Assistant City Manager Michael Matthias; Police Chief George Delgado; Commander Bob Bohl; Court Administrator Jennefer Johnson; Probation Office Melissa Patrick; Marina Maintenance Manager Scott Wilkins; Finance Director Dunyele Mason; City Clerk Bonnie Wilkins; Twelve Pacific Middle School Students; Leadership/Health Teacher Jennifer Muscolo.

Mayor Kaplan, Councilmembers and City Manager Piasecki gave an overview of Governmental Policies and students asked questions around Roberts Rules of Order. Council and Staff used visual aids to show students how to navigate the City of Des Moines web-site to search the Des Moines Municipal Code and how to find Council's Rules of Procedures and other Council related topics. Students were invited to stay for the Council meeting that evening.

No formal action was taken.

The presentation ended at 6:43 p.m.

Respectfully submitted,
Tony Piasecki
City Manager

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MINUTES

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

October 29, 2015 – 7:00 p.m.

CALL TO ORDER

Mayor Kaplan called the meeting to order at 6:59 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Mayor Kaplan.

ROLL CALL

Council present: Mayor Kaplan; Mayor Pro Tem Matt Pina; Councilmembers Jeremy Nutting, Melissa Musser, Luisa Bangs, Bob Sheckler and Vic Pennington.

Staff present: City Manager Tony Piasecki; City Attorney Pat Bosmans; Assistant City Manager/Economic Development Director Michael Matthias; Police Chief George Delgado; Commander Bob Bohl; Commander Barry Sellers; Marina Maintenance Manager Scott Wilkins; Probation Officer Melissa Patrick; Court Administrator Jennefer Johnson; Code Enforcement Officer Nancy Uhrich; Finance Director Donyele Mason; Parks, Recreation & Senior Services Director Patrice Thorell; Budget Manager Cecilia Pollock; Surface Water Management Utility Manager Loren Reinhold; Harbormaster Joe Dusenbury; Information System Administrator Chris Pauk; City Clerk Bonnie Wilkins

CORRESPONDENCE

- Letters from Midway Sewer District, Southwest Suburban Sewer District and Highline Water District regarding the Utility Tax on water and sewer services.
- Letter from Mr. Ono, owner of Ono's Nursery; change zoning rules to allow mixed use and raise building height from 55' to 85'.

Direction/Action

Motion made by Mayor Pro Tem Pina to remand the Ohno property information to the Finance and Economic Development Committee; seconded by Councilmember Pennington.

The motion passed 7-0.

Mayor Kaplan addressed the Woodmont Recovery Center fee waiver appeal.

Fee schedule being reviewed and to be addressed at a future meeting.

COMMENTS FROM THE PUBLIC

- Rick Johnson, 28624 Redondo Beach Drive; 2013 State audit findings.
- Gary Peterson, Jr.; Street racing in his neighborhood.
- Nancy Majors; was not present at time of Public Comment.
- Doreen Harper, 26625 16th Avenue S; Homeless Encampment Concerns.
- Bill Linscott, 22335 6th Avenue S; Marina development.
- Wayne Hudson, 26619 19th Avenue S; Woodmont Recovery Center.
- Sheila Brush; Woodmont Recovery Center.
- Wendy Leonard, 1417 S 24th Street; Happy to help in any way regarding utility taxes.
- Jeff O'Dell, 1904 S 222nd Street; abandoned house on 222nd and 19th Avenue S.

The following individuals oppose the proposed utility tax increase:

- Martin Metz; 1636 S 260th Street.
- John Rayback, 22022 11th Avenue S.
- Candace Urquhart, 25665 Marine View Drive.
- David Dedrickson, 24907 Marine View Drive S.
- Kathryn Enlow, 24907 Marine View Drive S.-Echoed comments of David Dedrickson.
- Wayne Hudson, 26619 19th Avenue S.
- Sheila Brush.
- Roger Wuthier, 2062 S 233rd.
- Veronica Freeman, 26104 21st Street Court.
- Thelma Vannoy, 22532 6th Avenue S.
- Jim Langston, 600 S 220th Street.
- Ken Kase, 3030 S 240th Street.
- Vince Koester, 21015 11th Avenue S.
- Ron Hall, 431 SW Ambaum Blvd.
- Nancy Johnson, 1716 S 234th Street.
- Sam Warner, 900 S 242nd.
- Bob Pond, 23116 30th Avenue S.
- John Docekal, 1406 S 250th Street.
- Harry Steinmetz, 917 S 258th Place.
- Cheryl Johnson.
- Kevin Isherwood, Redondo Beach Drive.
- Matt Everett, 23828 30th Avenue S.
- Mike Zulevic, 1114 S 244th Place.

BOARD AND COMMITTEE REPORTS/COUNCILMEMBER COMMENTS

Councilmember Pennington

- Thanked the community for attending the meeting.

Councilmember Sheckler

- No report.

Councilmember Bangs

- No report.

Mayor Pro Tem Pina

- Appreciated the suggestions received from the community.
- Thanked Pacific Middle School teacher and students for attending.
- Maps on the web-site.
- Farmer's Market:
 - Last day.
 - Chili cook off.
- Bayside Brunch November 1st:
 - Proceeds go to help pay for Senior Services and Youth Programs.
 - Saturday Night Live theme.
- Thanked the community for attending the meeting.

Councilmember Musser

- Municipal Facilities Committee meeting:
 - Parks, Recreation & Senior Services Master Plan.
- 239th Street Stairs:
 - Legal and Public Works to take a look at the settlement agreement.
 - Stairs need to be replaced.

Councilmember Nutting

- Thanked the public for attending the meeting.
- WATCH Dogs bake sale at Farmer's Market:
 - Raised over \$537.
- Farmer's Market chili cook off.

PRESIDING OFFICER'S REPORT

- Thanked the public for attending the meeting.
- Communication Plan.
- Audit report.
- Thanked public for the feedback.

ADMINISTRATION REPORT

- Directed Finance Director to follow-up with County Assessor regarding property tax 50% exemption rate.
- Revenue estimates on utilities.
- Revenues implemented by the City:
 - Made use of every tax allowable.

CONSENT AGENDA

- Item 1: APPROVAL OF MINUTES
Motion is to approve the minutes from the October 1, October 8 and October 15, 2015 Regular City Council meetings and the minutes from the October 1, 2015 City Council Executive Session.

Item 2: APPROVAL OF VOUCHERS

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

Total A/P Checks/Vouchers	#144643-144853	\$ 797,944.28
Electronic Wire Transfers	#612-616	\$ 159,191.83
Electronic Wire Transfers	#618-622	\$ 164,841.25
Payroll Checks	#18718-18724	\$ 8,822.20
Payroll Direct Deposit	#400001-400162	\$ 296,705.12
Payroll Checks	#18725-18727	\$ 3,733.71
Payroll Direct Deposit	#420001-420153	\$ 284,528.59
Total Certified Wire Transfers, Voids, A/P and Payroll Vouchers:		\$1,715,766.98

Item 3: 2015-2017 RECYCLING PROGRAM FUNDING

Motion is to authorize the City Manager to sign the 2015-2017 CPG Grant No. W2RCPG-1517-DeMDS-00033 between the City of Des Moines and the Washington State Department of Ecology.

Item 4: DRAFT RESOLUTION 15-179: ESTABLISHING THE COUNCIL'S INTENT TO ASSUME THE DES MOINES TRANSPORTATION BENEFIT DISTRICT, AND SETTING A PUBLIC HEARING DATE

Motion is to adopt Draft Resolution 15-179 establishing the City Council's intent to assume the Des Moines Transportation Benefit District, and setting a Public Hearing date for November 12, 2015 to Consider Draft Ordinance 15-179.

Item 5: GRANT ACCEPTANCE FOR PARKSIDE PARK RENOVATION PROJECT

Motion is to accept the King County CDBG Grant for the Parkside Park Renovation Project in the amount of \$395,000.00.

Direction/Action

Motion was made by Councilmember Nutting to approve the Consent Agenda; seconded by Mayor Pro Tem Pina.

Councilmember Nutting pulled item #1 from the Consent Agenda to amend the minutes from the October 1, 2015 regular Council meeting.

The motion to approve the remainder of the Consent Agenda passed 6-0.

Motion made by Councilmember Nutting to amend the minutes of the October 1, 2015 Council meeting to read as follows: "Motion made by Councilmember Nutting to have an outside, independent Land Use attorney prepare a legal opinion review and report back on the Woodmont Recovery Center; seconded by Councilmember Pennington. The motion passed 6-0"; seconded by Councilmember Musser.
The motion passed 6-0.

At 8:55 p.m. Councilmember Sheckler left the meeting.

PUBLIC HEARING/CONTINUED PUBLIC HEARING

Item 1: DRAFT ORDINANCE 15-183; 2016 OPERATING AND CAPITAL BUDGETS
Staff Presentation: Finance Director Dunyele Mason

At 9:06 p.m. Mayor Kaplan opened the public hearing.

Finance Director Mason gave a brief power point presentation to Council on the 2016 Operating and Capital Budgets.

The individual signed up to speak was not present. Mayor Kaplan asked if anyone wished to speak.

Nancy Johnson, Questioned the 8 to 18% sanitation increase not showing up on the general fund budget.

Mayor Kaplan asked 3 times if anyone else wished to speak on the budget. Seeing none, Mayor Kaplan asked Council they had any questions.

Mayor Kaplan closed the Public Hearing at 9:27 p.m.

Direction/Action

Motion made by Mayor Pro Tem Pina to pass Draft Ordinance No. 15-183 establishing the 2016 Operating and Capital Budgets to a second reading on November 12, 2015; seconded by Councilmember Musser.
The motion passed 6-0.

Motion made by Mayor Pro Tem Pina to remand the 2016 Operating and Capital budget back to the City Manager's Office for revision; seconded by Councilmember Musser.
The motion passed 6-0.

Mayor Kaplan took New Business Item #2 before New Business Item #1

NEW BUSINESS

Item 2: 2016 UTILITY TAX RATES
Staff Presentation: Finance Director Dunyele Mason

Direction/Action

Motion made by Mayor Kaplan to move Draft Ordinance 15-172 increasing the City's Surface Water Management utility tax by seven percent to the November 5, 2015 agenda to a second reading; seconded by Councilmember Nutting.
The motion passed 6-0.

City Manager Piasecki read Draft Ordinance 15-172 into the record.

Direction/Action

Motion made by Mayor Kaplan to move Draft Ordinance, 15-171 increasing the utility tax on solid waste utilities by ten percent, Draft Ordinance 15-173, creating and imposing a utility tax on sewer utilities in the amount of sixteen percent, Draft Ordinance 15-185, increasing the utility tax on cable utilities by two percent and Draft Ordinance 15-186, creating and imposing a utility tax on water utilities in the amount of sixteen percent to the November 12, 2015 agenda; seconded by Councilmember Musser.
The motion passed 6-0.

Direction/Action

Motion 1 made by Mayor Pro Tem Pina to adopt Draft Resolution No. 15-174 updating the business license registration fee schedule; seconded by Councilmember Musser.
The motion passed 6-0.

NEW BUSINESS

Item 1:

MARINA DEVELOPMENT UPDATE

Staff Presentation: Assistant City Manager/Economic Development Director Michael Matthias

Assistant City Manager/Economic Development Director Matthias and Harbormaster Dusenbury gave a power point presentation to Council.

No motion given.

Direction/Action

Motion made by Councilmember Nutting to extend the meeting an additional 5 minutes; seconded by Mayor Pro Tem Pina.
The motion passed 6-0.

NEXT MEETING DATE

November 5, 2015 Regular City Council Meeting

ADJOURNMENT

Motion made by Councilmember Nutting to adjourn; seconded by Mayor Pro Tem Pina.
The motion passed 6-0.

The meeting was adjourned at 10:04 p.m.

Respectfully Submitted,

Bonnie Wilkins, CMC
City Clerk

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Municipal Court Seal

1. Attachments: Draft Ordinance No. 15-193

FOR AGENDA OF: November 19, 2015

DEPT. OF ORIGIN: Municipal Court

DATE SUBMITTED: November 12, 2015

CLEARANCES:

- Legal VB
- Economic Development N/A
- Finance N/A
- Marina N/A
- Parks, Recreation & Senior Services N/A
- Planning, Building & Public Works N/A
- Police N/A
- Court [Signature]

APPROVED BY CITY MANAGER
FOR SUBMITTAL [Signature]

Purpose and Recommendation

The purpose of this agenda item is to create a municipal court seal for the Des Moines Municipal Court.

Suggested Motion

Motion 1a: "I move to suspend Council Rule 26(a) to enact Draft Ordinance No. 15-193 on first reading."

Motion 1b: "I move to enact Draft Ordinance No. 15-193 creating a municipal court seal for the Des Moines Municipal Court."

Background

It has recently come to the Court's attention that a municipal court seal is required by the state under RCW 3.50.115 which states:

The municipal court shall have a seal which shall be the vignette of George Washington, with the words "Seal of The Municipal Court of (name of city), State of Washington,"

surrounding the vignette. All process from the court runs throughout the state. The supreme court may determine by rule what process must be issued under seal.

Discussion

When the Municipal court was established a court seal was never included. This seal is required by the state in certain circumstances, for instance, the Department of Licensing will not release a person's vehicle unless they have an adjudication with the court seal.

Alternatives

There currently are no alternatives; this is a requirement from Department of Licensing.

Financial Impact

There is no financial impact

Recommendation or Conclusion

It is recommended the City Council enact Draft Ordinance No. 15-193 as written.

CITY ATTORNEY'S FIRST DRAFT 11/06/2015

DRAFT ORDINANCE NO. 15-193

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the Des Moines Municipal Court and adding and codifying a new section to chapter 2.28 DMMC to adopt a Court seal.

WHEREAS, chapter 3.50 RCW allows such cities to create and operate a municipal court, and

WHEREAS, RCW 3.50.115 provides that municipal courts shall have a municipal court seal, and

WHEREAS, RCW 3.50.115 states that the seal shall be the vignette of George Washington, with the words "Seal of The Municipal Court of (name of city), State of Washington," surrounding the vignette; now therefore,

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

Sec. 1. A new section is added to chapter 2.28 DMMC to read as follows:

Municipal court seal. The municipal court shall have a seal which shall be the vignette of George Washington, with words "Seal of the Municipal Court of Des Moines, State of Washington" surrounding the vignette.

Sec. 2. Codification. Section 1 shall be codified as a new section in chapter 2.28 DMMC entitled "Municipal court seal."

Sec. 3. Severability - Construction.

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

Ordinance No. _____
Page 2 of 2

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

Sec. 4. Effective date. This Ordinance shall take effect and be in full force thirty (30) days after its final passage by the Des Moines City Council.

PASSED BY the City Council of the City of Des Moines this _____ day of _____, 2015 and signed in authentication thereof this _____ day of _____, 2015.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Update of City of Des Moines Right-of-Way Acquisition Procedures

AGENDA OF: November 19, 2015

DEPT. OF ORIGIN: Planning, Building & Public Works

DATE SUBMITTED: November 9, 2015

ATTACHMENTS:

1. Right-of-Way Acquisition Procedures (proposed including appraisal waiver)
2. Right-of-Way Acquisition Procedures (Existing 6/14/2010)

CLEARANCES:

- Legal PG
- Finance am
- 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 agenda item is to authorize the Mayor to sign an update to the City’s Right-of-Way acquisition procedures (Attachment 1) consistent with the current WSDOT Local Agency Guidelines and 49 CFR 24 Uniform Relocation Assistance and Real Property Acquisition Act governing right-of-way Acquisition on all FHWA funded transportation projects in the State. The following motion will appear on the consent calendar:

Suggested Motion

Motion: “I move to approve and authorize the Mayor to sign the City of Des Moines Right-of-Way Acquisition Procedures substantially in the same form as submitted.”

Background:

For a transportation project to be eligible for FHWA federal funding, the project’s right-of-way must be acquired in accordance with the requirements of the State of Washington Right-of-Way Procedures Manual, Chapter 25, WSDOT Local Agency Guidelines. The City’s current procedures (Attachment 2) are similar, although the responsible departments now need to be updated and the procedures are to be signed by the Mayor of the City.

The procedures identified in Attachment 1 assure fair and equitable treatment of displaced persons and encourage and expedite acquisitions by negotiations consistent with RCW 8.26 and WAC 468-100. Included are procedures for waiving appraisals for properties under an estimated value of \$25,000. Before requesting authority to acquire right-of-way for FHWA funded projects, the City must have secured approval of right-of-way acquisition procedures from WSDOT.

The City intends to pursue Federal funding for future transportation improvements that will likely require acquisition of rights-of-way. Certification of these right-of-way procedures by the State of Washington will enable the City to be eligible for such funding.

Alternatives:

The City may choose to not update these procedures and/or seek FHWA sources of funding for transportation capital improvements. However, adoption of these guidelines are practical, fair and consistent with state guidelines regarding right-of-way property acquisitions using the statutory authority granted to cities in the State of Washington.

Financial Impact:

The financial impact of adopting these procedures will be assessed with each transportation project requiring acquisition of public right-of-way. The proposed procedures rely on the use of qualified consultants to negotiate and acquire property for federally funded projects.

Recommendation/Conclusion:

Staff recommends that Council approve the suggested motion.

Concurrence:

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

City of Des Moines, WA

Right of Way Procedures

The City of Des Moines, Washington, hereinafter referred to as "AGENCY", desiring to acquire Real Property in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act and applicable federal regulations (49 CFR Part 24) and state law (Ch. 8.26 RCW), and state regulations (Ch. 468-100 WAC) hereby adopts the following procedures to implement the above statutes and Washington Administrative Code. The AGENCY is responsible for the real property acquisition and relocation activities on projects administered by the AGENCY. To fulfill the above requirements the AGENCY will acquire right-of-way in accordance with the policies set forth in the Right of Way Manual M 26-01 and Local Agency Guidelines. The AGENCY has the following expertise and personnel capabilities to accomplish these functions:

1. The following relate to the AGENCY's request.
 - a. Below is a list of responsible AGENCY positions, for which the AGENCY has qualified staff to perform the specific right-of-way function(s). Attached is a listing of each individual on the AGENCY staff who currently fill those positions below, and a brief summary of their qualifications pertaining to the specific right-of-way function(s) for which they are listed. This list shall be updated whenever staffing changes occur. The AGENCY will be approved to acquire based upon staff qualifications.
 - i. PROGRAM ADMINISTRATION :

Oversee delivery of the R/W Program on federal aid projects for the agency. Ensures R/W functions are carried out in compliance with federal and state laws, regulations, policies and procedures.

Responsibilities/Expectations:

 - Ensures agency's approved R/W Procedures are current, including staff qualifications, and provides copies to consultants and agency staff;
 - Oversight of R/W consultants;
 - use of consultant contract approved by WSDOT (under construction)
 - management of ROW contracts
 - management of R/W files
 - reviews and approves actions and decisions recommended by consultants
 - Overall responsibility for decisions that are outside the purview of consultant functions
 - Sets Just Compensation prior to offers being made;
 - Approves administrative offer summaries per policy
 - Ensure agency has a relocation appeal process in place prior to starting relocation activities;
 - Oversight of Administrative Settlements;
 - Obligation authority for their agency;
 - Obtain permits (Non-Uniform Relocation Act (URA));
 - Ensures there is a separation of functions to avoid conflicts of interest.

Agency Position: Planning, Building and Public Works Director

(employee name & qualifications - see Attachment 1)

 ii. APPRAISAL

Prepare and deliver appraisals on federal aid projects for the agency. Ensures that appraisals are consistent and in compliance with state and federal laws, regulations, policies and procedures.

Responsibilities/Expectations:

- Use only qualified agency staff approved by WSDOT to perform appraisal work;
- Use appraiser from WSDOT's Approved Appraiser List if agency does not have qualified staff;
- Prepare Project Funding Estimates (PFE) or, when applicable, True Cost Estimates (TCE);
- Prepare Administrative Offer Summaries (AOS or Appraisal Waiver);
- Obtain specialist reports;
- Coordinate with engineering, program administration, acquisition, relocation, and/or property management as necessary.

Agency Position: Qualified Consultant

iii. APPRAISAL REVIEW:

Review appraisals on federal aid projects for the agency to make sure they are adequate, reliable, and have reasonable supporting data, and approve appraisal reports. Ensures appraisals are adequately supported and represent fair market value and applicable costs to cure and are completed in compliance with state and federal laws, regulations, policies and procedures.

Responsibilities/Expectations:

- Use only qualified agency staff approved by WSDOT to perform appraisal review work;
- Use review appraiser from WSDOT's Approved Appraiser List if agency does not have qualified staff;
- Ensures project wide consistency in approaches to value, use of market data and costs to cure;
- Coordinate with engineering, program administration, acquisition, relocation, and/or property management as necessary.

Agency Position: Qualified Consultant

iv. ACQUISITION:

Acquire, through negotiation with property owners, real property or real property interests (rights) on federal aid projects for the agency. Ensures acquisitions are completed in compliance with federal and state laws, regulations, and policies and procedures.

Responsibilities/Expectations:

- Use only qualified staff to perform acquisition activities for real property or real property interests, including donations;
- To avoid a conflict of interest, when the acquisition function prepares an AOS, only acquires property valued at \$10,000 or less;

- Provide and maintain a comprehensive written account of acquisition activities for each parcel;
- Prepare administrative settlement justification and obtain approval;
- Prepare Project Funding Estimates (PFE) or, when applicable, True Cost Estimates (TCE);
- Prepare Administrative Offer Summaries (AOS or Appraisal Waiver);
- Review title, and recommend and obtain approval for acceptance of encumbrances;
- Ensure acquisition documents are consistent with R/W plans, valuation, and title reports;
- Provide a negotiator disclaimer;
- Coordinate with engineering, program administration, appraisal, relocation, and/or property management as necessary;
- Maintain a complete, well organized parcel file for each acquisition.

Agency Position: Qualified Consultant

v. **RELOCATION:**

Provide relocation assistance to occupants of property considered displaced by a federally funded projects for the agency. Ensures relocations are completed in compliance with federal and state laws, regulations, policies and procedures.

Responsibilities/Expectations:

- Prepare and obtain approval of relocation plan prior to starting relocation activities;
- Confirm relocation appeal procedure is in place;
- Provide required notices and advisory services;
- Make calculations and provide recommendations for agency approving authority prior to making payment;
- Provide and maintain a comprehensive written account of relocation activities for each parcel;
- Coordinate with engineering, program administration, appraisal, acquisition, and/or property management as necessary;
- Maintain a complete, well organized parcel file for each displacement;
- Ensure occupants and personal property is removed from the ROW.

Agency Position: Qualified CONSULTANT

vi. **PROPERTY MANAGEMENT:**

Establish property management policies and procedures that will assure control and administration of ROW, excess lands, and improvements acquired on federal aid projects for the agency. Ensures property management activities are completed in compliance with federal and state laws, regulations, policies and procedures.

Responsibilities/Expectations:

- Account for use of proceeds from the sale/lease of property acquired with federal funds on other title 23 eligible activities;
- Keep R/W free of encroachments;
- Obtain WSDOT/FHWA approval for change in access control along interstate;

- Maintain property records;
- Coordinate with engineering, program administration, appraisal, acquisition, and/or property management as necessary;
- Maintain a complete, well organized parcel file for each displacement;
- Ensure occupants and personal property is removed from the R/W.

Agency Positions: Finance Director; Planning, Building and Public Works Director; Engineering Services Manager; SWM Utility Manager, City Attorney

(Employee names & qualifications – See Attachment 1)

- b. Any functions for which the AGENCY does not have qualified staff, the Agency will contract with another local agency with approved procedures, an outside contractor, or the Washington State Department of Transportation (WSDOT). An AGENCY that proposes to use outside contractors for any of the above functions will need to work closely with the WSDOT Local Agency Coordinator (LAC) and Local Programs to ensure all requirements are met. When the AGENCY proposes to have a staff person approved to negotiate who is not experienced in negotiation for FHWA funded projects, the LAC must be given a reasonable opportunity to review all offers and supporting data before they are presented to the property owners.
 - c. An AGENCY wishing to take advantage of an Appraisal Waiver (aka Administrative Offer Summary or AOS) procedure on properties valued up to \$25,000 or less should make their proposed waiver procedure a part of these procedures. The procedure outlined in LAG manual has already been approved using form LPA-003. The AGENCY may submit a procedure different than that shown and it will be reviewed and approved if it provides sufficient information to determine value.
 - d. Attachment 2 is a copy of the AGENCY’s administrative settlement procedure showing the approving authority(s) and the procedure involved in making administrative settlements.
2. All projects shall be available for review by the FHWA and WSDOT at any time and all project documents shall be retained and available for inspection during the plan development, right-of-way and construction stages, and for a three year period following acceptance of the projects by WSDOT.
 3. Approval of the AGENCY’s procedures by WSDOT may be rescinded at any time the AGENCY is found to no longer have qualified staff or is found to be in non-compliance with the regulations. The rescission may be applied to all or part of the functions approved.

Mayor

Date

Washington State Department of Transportation

Approved By:

Local Programs Right of Way Manager

Date

ATTACHMENT 1**AGENCY STAFF POSITIONS & QUALIFICATIONS**

City of Des Moines staff will be responsible for the Program Administration and Property Management functions. The following positions and individuals are identified below. Position descriptions and qualifications are available.

Planning, Building and Public Works Director: Daniel J. Brewer, P.E., P.T.O.E.

Engineering Services Manager: Brandon Carver, P.E., P.T.O.E.

SWM Utility Manager: Loren Reinhold, PE

Finance Director: Dunyele Mason, CPA

City Attorney: Pat Bosmans

ATTACHMENT 2
WAIVER OF APPRAISAL PROCEDURE

The City of Des Moines, Washington, hereinafter referred to as "AGENCY", desiring to acquire Real Property according to 23 CFR, Part 635, Subpart C and State directives, and desiring to take advantage of the \$25,000.00 appraisal waiver process approved by the Federal Highway Administration (FHWA) for Washington State, hereby agrees to follow the procedure approved for the Washington State Department of Transportation (WSDOT) as follows:

Rules

- A. The AGENCY may elect to waive the requirement for an appraisal if the acquisition is simple and the compensation estimate indicated on the Project Funding Estimate (PFE) is \$25,000.00 or less including cost-to cure items. A True Cost Estimate shall not be used with this procedure.
- B. The AGENCY must make the property owner(s) aware that an appraisal has not been completed on the property for offers \$10,000 or less.
- C. The AGENCY must make the property owner(s) aware that an appraisal has not been completed on the property for offers over \$10,000 and up to \$25,000, and that an appraisal will be prepared if requested by the property owner(s).
- D. Special care should be taken in the preparation of the waiver. As no review is mandated, the preparer needs to assure that the compensation is fair and that all the calculations are correct.

Procedures

- A. An Administrative Offer Summary (AOS) is prepared using data from the PFE.
- B. The AOS is submitted to the Planning, Building and Public Works Director for approval.
- C. The Planning, Building and Public Works Director signs the AOS authorizing a first offer to the property owner(s).

AGENCY

WSDOT APPROVED:

By: _____

Mayor, City of Des Moines

Local Programs Right of Way Manager



Washington State
Department of Transportation
Paula J. Hammond, P.E.
 Secretary of Transportation

Transportation Building
 310 Maple Park Avenue S.E.,
 P.O. Box 47300
 Olympia, WA 98504-7300

360-705-7000
 TTY: 1-800-833-6388
 www.wsdot.wa.gov

July 8, 2010

Mr. Grant L. Fredricks
 Director-Planning, Building and Public Works
 City of Des Moines
 21650 11th Avenue South
 Des Moines, Washington 98198-6317

JUL 23 2010
 LW/GF
 orig cy: DB (M)
 SR. LR

City of Des Moines
Right of Way Procedures

Dear Mr. Fredricks:

Recently, the WSDOT Headquarters, Real Estate Services Division, reviewed your agency's submittal of right of way procedures. Upon their review, the City of Des Moines right of way procedures are approved with the following requirements:

1. The city is approved to acquire with supervision from the region local agency coordinator. At a minimum the coordinator must review all parcel files prior to first offers being made to the property owner.
2. All appraisals, appraisal reviews, acquisitions and any relocation must be contracted for with qualified agencies or consultants and any relocation consultant must be monitored by the coordinator.

In addition the city is approved to use the FHWA approved waiver process of \$25,000.00 or less, including cost to cure items. If you have any questions regarding the provisions, please contact Tom Boyd, Northwest Region LA Coordinator, at (206) 440-4205, or Galen Wright, Real Estate Services, Olympia, at (360)705-7308.

Sincerely,

Ruth McIntyre
 Standards and Procedures Engineer
 Highways & Local Programs Division

RWM:ac
 Enclosure

cc: Galen Wright, Real Estate Services, MS 47338
 Ed Conyers, Northwest Region Local Programs, MS NB82-121 w/enclosure
 Tom Boyd, Northwest Region, MS NB82-118 w/enclosure

City of Des Moines Right-of-Way Procedures

AGENCY: City of Des Moines, WA

The City of Des Moines ("AGENCY"), desiring to acquire Real Property in accordance with the state Uniform Relocation Assistance and Real Property Acquisition Act (Ch. 8.26 RCW) and state regulations (Ch. 468-100 WAC) and applicable federal regulations, hereby adopts the following procedures to implement the above statutes and Washington Administrative Code. The **Planning, Building, and Public Works Department** ("Department") of the AGENCY is responsible for the real property acquisition and relocation activities on projects administered by the AGENCY. To fulfill the above requirements the "Department" will acquire right of-way in accordance with the policies set forth in the Washington State Department of Transportation Right of Way Manual and Local Agency Guidelines manual (M 36-63). The AGENCY has the following expertise and personnel capabilities to accomplish these functions:

1. Include the following as they relate to the AGENCY's request.
 - a. List the functions below for which the agency has qualified staff and the responsible position. Attach a list of the individuals on the AGENCY staff who currently fill those positions and a brief summary of their qualifications. This list will need to be updated whenever staffing changes occur. An AGENCY will be approved to acquire based upon staff qualifications.
 - (1) PROGRAM ADMINISTRATION
Agency Position: Planning, Building and Public Works Director
 - (2) APPRAISAL
Agency Position: Qualified Consultant
 - (3) APPRAISAL REVIEW
Agency Position: Qualified Consultant
 - (4) ACQUISITION
Agency Position: Qualified Consultant
 - (5) RELOCATION
Agency Position: Qualified Consultant

**SUBJECT TO REQUIREMENTS LISTED IN
RIGHT OF WAY PROCEDURES APPROVAL LETTER**

(6) PROPERTY MANAGEMENT

Agency Positions: Finance Director
Planning, Building and Public Works Director
City Attorney

- b. Any functions for which the Agency does not have staff will be contracted for with WSDOT, another local agency with approved procedures or an outside contractor. An AGENCY that proposes to use outside contractors for any of the above functions will need to work closely with the WSDOT Local Agency Coordinator and Highways and Local Programs to ensure all requirements are met. When the AGENCY proposes to have a staff person negotiate who is not experienced in negotiation for FHWA funded projects the Coordinator must be given a reasonable opportunity to review all offers and supporting data before they are presented to the property owners.
 - c. An AGENCY wishing to take advantage of an Appraisal Waiver process on properties valued up to \$25,000 or less should make their proposed waiver process a part of these procedures. The process outlined in LAG manual Appendix 25.146 has already been approved. The AGENCY may submit a process different than that shown and it will be reviewed and approved if it provides sufficient information to determine value.
 - d. Attach a copy of the Agency's administrative settlement policy showing the approving authority(s) and the process involved in making administrative settlements.
2. All projects shall be available for review by the FHWA and the state at any time and all project documents shall be retained and available for inspection during the plan development, right-of-way and construction stages and for a three year period following acceptance of the projects by WSDOT.
 3. Approval of the AGENCY's procedures by WSDOT may be rescinded at any time the Agency is found to no longer have qualified staff or is found to be in non-compliance with the regulations. The rescission may be applied to all or part of the functions approved.

CITY OF DES MOINES

Approved By:  6/14/10
Anthony A. Piasecki, City Manager Date

At the direction of the Des Moines
City Council taken at an open public
meeting on 6-10-10

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION

Approved By:  6/30/10
Real Estate Services Date

WAIVER OF APPRAISAL

The City of Des Moines desiring to acquire Real Property according to 23 CFR, Part 635, Subpart C and State directives and desiring to take advantage of the \$25,000.00 appraisal waiver process approved by the Federal Highway Administration for Washington State, hereby agrees to follow the procedure approved for the Washington State Department of Transportation as follows:

Rules

- A. The City of Des Moines may elect to waive the requirement for an appraisal if the acquisition is simple and the compensation estimate indicated on the PFE (Project Funding Estimate) is \$25,000.00 or less including cost-to cure items.
- B. The Agency must make the property owner(s) aware that an appraisal has not been done on the property and that one will be completed if they desire.
- C. Special care should be taken in the preparation of the waiver. As no review is mandated, the preparer needs to assure that the compensation is fair and that all the calculations are correct.

Procedures

- A. An Administrative Offer Summary (AOS) is prepared using data from the PFE.
- B. The AOS is submitted to the City Engineer for approval.
- C. The Planning, Building, and Public Works Director signs the AOS authorizing a first offer to the property owner(s).

APPROVED:



 Anthony A. Piasecki, City Manager
 City of Des Moines

6/14/10

 Date



 Real Estate Services
 Washington State Department
 of Transportation

6/30/10

 Date

At the direction of the Des Moines
 City Council taken at an open public
 meeting on 6-10-10.

ADMINISTRATIVE SETTLEMENT PROCEDURES

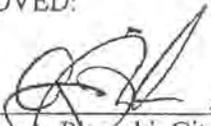
The City of Des Moines, Washington, shall to the greatest extent possible, expeditiously negotiate all fair market value offers for the acquisition of real property. However, the City recognizes the fact that differences of fair market value may occur with the property owner. These differences typically exceed the fair market value offered by the City. In such cases an Administrative Settlement may be necessary where, the City will continue to negotiate considering all information supporting just compensation in excess of fair market offers.

The City's negotiator will continue to work with the City staff and property owners towards a mutual and reasonable agreement of just compensation. All reasonable counter offers by the property owner are submitted to the City Engineer for review. If in agreement, the City Engineer will coordinate, with the assigned negotiator and other City staff, a letter of support towards an Administrative Settlement. Considerations in the letter may include, but not limited to, all available pertinent appraisals, range of testimony in a condemnation trial, construction schedules, prior court awards, trial costs (legal counsel) and the public interest.

The City Engineer will then forward and review the letter of support with the Planning, Building, and Public Works Director. At that time, the Planning, Building, and Public Works Director may accept, deny or request further review from the City Attorney's Office or other City staff.

Once the Administrative Settlement is accepted by the Planning, Building, and Public Works Director, the matter is then forwarded and presented in a form of a motion to the City Council for approval.

APPROVED:



 Anthony A. Plasecki, City Manager
 City of Des Moines



 Galen Wright
 Real Estate Services
 Washington State Department of
 Transportation

Date

6/14/10

Date

6/30/10

At the direction of the Des Moines
 City Council taken at an open public
 meeting on 6-10-10.

AGENCY STAFF POSITIONS & QUALIFICATIONS

City of Des Moines staff will be responsible for the Program Administration and Property Management functions. The following positions and individuals are identified below. Position descriptions and qualifications are available.

Planning, Building and Public Works Director: Grant Fredricks, PE

Assistant Director – Transportation Engineering: Daniel J. Brewer, PE

Assistant Director – Surface Water Management and Utilities: Loren Reinhold, PE

Finance Director: Paula Henderson

City Attorney: Pat Bosmans

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Interlocal Agreement Between the Cities of SeaTac, Des Moines, Covington, and Tukwila for Planning, Funding, and Implementation of a Joint Minor Home Repair Program.

ATTACHMENTS:

1. Revised Exhibit A
2. Interlocal Agreement between the Cities of SeaTac, Des Moines, Covington, and Tukwila for Planning, Funding, and Implementation of a Joint Minor Home Repair Program from December 1, 2015 through November 30, 2016.

FOR AGENDA OF: November 19, 2015

DEPT. OF ORIGIN: Planning, Building and Public Works

DATE SUBMITTED: November 12, 2015

CLEARANCES:

- [X] Legal VG
 [X] Finance Am
 [NA] Marina _____
 [NA] Parks, Recreation & Senior Services _____
 [X] Planning, Building & Public Works DJB
 [NA] Police _____
 [NA] Courts _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: AT

Purpose and Recommendation

The purpose of this item is to seek Council approval of revised Exhibit A (Attachment 1) to the existing Interlocal Agreement (Attachment 2) between the Cities of SeaTac, Des Moines, Covington, and Tukwila for planning, funding and implementation of a Joint Minor Home Repair (MHR) Program. The Agreement shall remain in effect in an ongoing basis so long as funds are available. Des Moines' updated share of the Community Development Block Grant funds provided by King County for the program is \$30,000 which covers repairs plus City personnel costs to administer the program. No City funds are used for the Program. The following motion will appear on the consent calendar:

Suggested Motion

Motion: "I move to authorize the City Manager to approve revised Exhibit A of the Interlocal Agreement between the Cities of SeaTac, Des Moines, Covington, and Tukwila accepting \$30,000 for the Minor Home Repair Program substantially in the form as submitted."

Background

The King County Department of Community and Human Services Community Services Division requested project proposals for consideration by the King County Community Development Block Grant

(CDBG) Consortium. Request for Proposal (RFP) applications were 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 considered low and moderate income as households earning under 80% of the area median income, as determined by HUD, adjusted by household size.

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.

Discussion

The Minor Home Repair program targets minor home repairs for low and moderate income homeowners in the City of Des Moines. The program is intended to assist homeowners who are having a difficult time maintaining their house. The program is a tool that the cities can use to both serve a human service need of maintaining a safe house, as well as address some safety-related code enforcement issues. The service also contributes to a more positive image of Des Moines single family neighborhoods. This program is being coordinated by the Permit Coordinator/Business License Clerk.

The City of Des Moines has been a recipient of these funds since 2006. Throughout that time, staff has met all requirements of King County for the proper expenditure of grant funds. With 2014 funds, the City’s share allowed 22 projects to be completed for 17 low to moderate income families. These projects provided replacement of two hot water tanks, gutter and roof cleaning, window glass replacement, front and back stair replacement for a mobile home, many plumbing repairs, and grab bars.

For 2015 funds, the Cities again partnered up and submitted a competitive joint application and were awarded \$130,000. The Des Moines’ share is \$30,125. The program will continue to be administered by the City of Tukwila, who will serve as the fiscal agent for the four cities, as well as handle the administration with King County. Each city will hire their own contractors, screen their clients, and make referrals. Tukwila will front the money to Des Moines, administer the paperwork, and request reimbursement from King County. The majority of the federal requirements are met by Tukwila as they administer the program and are responsible for the distribution of the funds. There are no changes to the signed 2013 agreement, which will remain in effect on an ongoing basis so long as funds are available.

Alternatives

The Council could choose not to approve revised Exhibit A of the Interlocal Agreement, and withdraw from the partnership. This would eliminate the funding for the minor home repair program, and eligible low to moderate income homeowners in the community would not receive funds for repair of their homes.

Financial Impact

Des Moines share of the Community Development Block Grant funds provided by King County for the program is \$30,000 which covers repairs plus City personnel costs to administer the program. If revised Exhibit A of the Interlocal Agreement is accepted, the City will incur administrative staff costs for administering the program, paying invoices, submitting reimbursement requests and receipting reimbursements from Tukwila. Tukwila will front the money to Des Moines, and then collect from King County.

Recommendation

Planning, Building, and Public Works, Finance and Legal Departments concur, and recommend approval of revised Exhibit A of the Interlocal Agreement.

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EXHIBIT A

Interlocal Between the Cities For Planning, Funding, and Implementation of a Joint Minor Home Repair Program

Contract Year 2015/2016

Name of Agencies	Participating Cities & Tentative Funding	
Qualified contractors	Tukwila - Lead City	\$30,000
	Des Moines	\$30,000
	SeaTac	\$30,000
	Covington	\$30,000
	Environmental Review	\$3,000
	Lead Based Paint	\$2,000
	Project Management	\$2,000
	Personnel	\$3,000
	TOTAL	\$130,000

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**INTERLOCAL AGREEMENT BETWEEN THE CITY OF SEATAC, DES
MOINES, COVINGTON, AND THE CITY OF TUKWILA FOR
PLANNING, FUNDING, AND IMPLEMENTATION OF A JOINT MINOR
HOME REPAIR PROGRAM**

THIS INTERLOCAL AGREEMENT ("Interlocal") is entered into pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act, by the City of SeaTac ("SeaTac"), the City of Des Moines ("Des Moines"), the City of Covington ("Covington"), and the City of Tukwila ("Tukwila"), hereinafter referred to as "City" or "Cities," to provide for planning, funding, and implementation of a minor home repair program.

WHEREAS, the Cities engage in activities which support human service providers in King County; and

WHEREAS, the Cities wish to make the most efficient use of their resources by cooperating to provide funding to support human service providers in south King County; and

WHEREAS, through the Interlocal Cooperation Act, Chapter 39.34 RCW, the Cities have the authority to engage in cooperative efforts that will result in more efficient use of government resources;

WHEREAS, the Cities are signatories to a preceding interlocal agreement for the planning, funding, and implementation of a joint minor home repair program dated February 29, 2012 (the "Former Agreement"); and

WHEREAS, one of the participants to the Former Agreement has recently terminated its participation in the Former Agreement and the Cities wish to enter into a new interlocal agreement for the planning, funding, and implementation of a joint minor home repair program from this point forward:

NOW, THEREFORE, and in consideration of the terms, conditions, and performances made herein, it is agreed as follows:

1. Purpose. The purpose of this Interlocal is to set up a cooperative arrangement between the Cities to consolidate the funding process and implementation of a minor home repair program. This Interlocal will increase the efficiency of administering the program while decreasing administrative costs.

2. Responsibilities.

A. Tukwila's Duties.

1) Contract and act as the fiscal and administrative agent with King County for the implementation of a Block Grant for a minor home repair program for Des Moines, Tukwila Covington, and SeaTac.

2) Maintain required documentation and prepare required reports for King County consistent with the County's requirements regarding the use of Community Development Block Grant funds.

3) Maintain accounts and records that properly reflect transactions related to this Interlocal.

4) Responsible for reimbursing participating cities and submitting required paperwork to King County.

5) Responsible for the implementation of the minor home repair program within Tukwila in accordance with terms specified in the Block Grant contract between Tukwila and King County.

6) Review and pay invoices for any services performed in Tukwila pursuant to this Interlocal.

7) Reimburse SeaTac, Covington, and Des Moines on an as received basis for any invoices received pursuant to this Interlocal.

B. SeaTac's Duties

1) Responsible for the implementation of the minor home repair program within SeaTac in accordance with terms specified in the Block Grant contract between Tukwila and King County.

2) Review and pay invoices for any services performed in SeaTac pursuant to this Interlocal.

3) Remit invoices to Tukwila for reimbursement.

C. Des Moines' Duties

1) Responsible for the implementation of the minor home repair program within Des Moines in accordance with terms specified in the Block Grant contract between Tukwila and King County.

2) Review and pay invoices for any services performed in Des Moines pursuant to this Interlocal.

3) Remit invoices to Tukwila for reimbursement.

D. Covington's Duties

1) Responsible for the implementation of the minor home repair program within Covington in accordance with terms specified in the Block Grant contract between Tukwila and King County.

2) Review and pay invoices for any services performed in Covington pursuant to this Interlocal.

3) Remit invoices to Tukwila for reimbursement.

E. Cities' Joint Duties

1) Subcontract with an agency/contractors that will perform qualified home repairs in Tukwila, SeaTac, Covington, and Des Moines in accordance with King County's Block Grant program and applicable city policies.

2) No City shall use more funds than have been annually allocated to it by King County for a minor home repair program. However, if a City is unable to spend its portion of the funds by the 3rd quarter of the year for which the funds were allocated, the Cities may mutually agree to shift those funds to another City that has an on-going demand for minor home repair. Fund allocation shall be as set forth in Exhibit A, which is attached hereto and incorporated herein by this reference. Exhibit A shall be amended annually and all subsequent amended Exhibit As shall automatically supersede the prior Exhibit A and be fully incorporated herein upon distribution of each amended Exhibit A to all of the Cities by the administrative agent.

3) Abide by additional requirements outlined in the agreement between Tukwila and King County for a minor home repair program, which is attached hereto as Exhibit B and incorporated herein by this reference. Exhibit B shall be amended annually and all subsequent amended Exhibit Bs shall automatically supersede the prior Exhibit B and be fully incorporated herein upon distribution of each amended Exhibit B to all of the Cities by the administrative agent.

4) The Cities agree to include the following language verbatim in every subcontract, provider agreement, or purchase agreement for services which relate to the subject matter of this Contract: "Subcontractor shall protect, defend, indemnify, and hold harmless King County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the negligent act or omissions of subcontractor, its officers, employees, and/or agents in connection with or in support of this Contract. Subcontractor expressly agrees and understands that King County is a third party beneficiary to this Contract and shall have the right to bring an action against subcontractor to enforce the provisions of this paragraph."

5) Duration. This Interlocal shall become effective when it is approved by the Cities and shall remain in effect on an ongoing basis so long as funds are available for the minor home repair program.

6) Termination. Any City may terminate this Interlocal without cause by giving the other Cities a thirty-day written notice. The terminating City shall remain fully responsible for meeting its funding responsibilities to date up to the point of termination and other obligations established by this Interlocal through the end of the calendar year in which such notice is given. The administrative agent is authorized to terminate the participation of any City that does not fulfill its obligations as set forth in this Agreement. Written notice of such termination shall be mailed to each City and shall become effective upon said mailing.

7) Notices. Notices to the Cities shall be sent to the following persons:

City	Contact
SeaTac	Human Services Manager, currently Colleen Brandt-Schluter 4800 S. 188 th Street, SeaTac, WA 98188 206-973-4815; cbschluter@ci.seatac.wa.us
Des Moines	Tina Hickey 21630 11 th Ave S, Suite D Des Moines, WA 98198-6398 206-870-6558; Thickey@desmoineswa.gov
Covington	Personnel Division/Human Services, currently Victoria Throm 16720 SE 271 st Street, Ste. 100 Covington, WA 98042 253-480-2411; vthrom@covingtonwa.gov
Tukwila	Human Services Manager, currently Evelyn Boykan 6200 Southcenter Blvd, Tukwila, WA 98188 206-433-7180; evie.boykan@tukwilaWA.gov

8) Indemnification. Each City agrees to indemnify the other City from any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs arising out of claims by third parties for breach of contract, property damage, and bodily injury, including death, caused solely by the negligence or willful misconduct of such City, the City's employees, affiliated corporations, officers, and lower tier subcontractors in connection with this Interlocal.

Each City hereby waives its immunity under Title 51 of the Revised Code of Washington for claims of any type brought by any City agent or employee against the other City. This waiver is specifically negotiated by the parties and a portion of the City's payment hereunder is expressly made the consideration for this waiver.

9) Insurance. Each City shall procure and maintain in full force throughout the duration of the Interlocal comprehensive general liability insurance with a minimum coverage of \$1,000,000.00 per occurrence/aggregate for personal injury and property damage. In the event that a City is a member of a pool of self-insured cities, the City shall provide proof of such membership in lieu of the insurance requirement above. Such self-insurance shall provide coverage equal to or greater than that required of non-self insurance pool member Cities.

10) Applicable Law; Venue; Attorney's Fees. This Interlocal shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Interlocal, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorney's fees and costs of suit.

11) Counterparts. This document may be executed in any number of counterparts, each of which shall be considered an original.

12) Amendment or Modification. This Interlocal may be amended or modified in writing with the mutual consent of the Cities. Amendments or modifications to this Interlocal shall not require the approval of the Cities' legislative bodies.

13) Former Agreement Terminated and Superseded. The Former Agreement between the Cities is hereby terminated and superseded by this Interlocal.

IN WITNESS WHEREOF, the undersigned have entered into this Interlocal as of this 2nd day of December, 2012.

CITY OF SEATAC

By: Todd Cutts
Todd Cutts, City Manager

Date: 11/14/13

Attest: _____
[Printed Name]
Title: _____

Approved As To Form:

Mark S. Johnson, Sr.
Mark S. Johnson, Sr. Assistant City Attorney

CITY OF TUKWILA

By: Jim Haggerton
Jim Haggerton, Mayor

Date: 12-2-13

Attest: Christy O'Flaherty
[Printed Name] Christy O'Flaherty
Title: City Clerk

Approved As To Form:

Shelley M. Kerslake
Shelley M. Kerslake, City Attorney

CITY OF DES MOINES

By: Anthony A. Piasecki
Anthony A. Piasecki, City Manager

Date: 11/1/13

Attest: Bonnie Swilkins
[Printed Name] Bonnie Swilkins
Title: City Clerk

Approved As To Form:

Tim George
Tim George, Assistant City Attorney

CITY OF COVINGTON

By: Derek Matheson
Derek Matheson, City Manager

Date: 10/31/13

Attest: Sharon Scott
[Printed Name] Sharon Scott
Title: City Clerk

Approved As To Form:

Sara Springer
Sara Springer, City Attorney

EXHIBIT A

Interlocal Between the Cities For Planning, Funding, and Implementation of a Joint Minor Home Repair Program

Contract Year 2013/2014

Name of Agencies	Participating Cities & Tentative Funding	
Qualified contractors	Tukwila - Lead City	\$28,000
	Des Moines	\$28,000
	SeaTac	\$28,000
	Covington	\$28,000
	Environmental Review	\$2,000
	Lead Based Paint	4,000
	Project Management	6,000
	Miscellaneous	1,000
	TOTAL	\$125,000

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: King County Youth Sports Facilities Grant

ATTACHMENTS:

1. Draft Agreement- Parkside Park Sports Court

FOR AGENDA OF: 11/19/2015

DEPT. OF ORIGIN: Parks, Recreation and Senior Services

DATE SUBMITTED: 11/12/2015

CLEARANCES:

Legal NG

Finance NA

Marina N/A

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 purpose of this agenda item is to request that the City Council accept the King County Youth Sports Facilities Grant for the Parkside Park Sports Court Project.

Suggested Motion

Motion: "I move to accept the 2016 King County Youth Sports Facilities Grant for the Parkside Park Renovation Project Sports Court in the amount of \$25,000 and authorize the City Manager to sign the Agreement."

Background:

In June of 2015, the City prepared an application for the King County Youth Sports Facilities Grant program for the Parkside Park Renovation Project. Staff was then notified on October 1, 2015 that the grant request in the amount of \$25,000 for the funding to renovation the Parks' Sports Court was funded.

Discussion:

City Council approved the contract with CDBG to begin design of the Parkside Park Renovation Project in October. The renovation of the Sports Court and the addition of play equipment at Parkside Park is a required element of CDBG grant funding for this project. The \$25,000 King County Youth Sports Facilities Grant award is matched by the CDBG Grant, is supplemental to the \$395,000 CDBG Grant funding and does not require additional City matching funds.

Alternatives:

None Provided.

Financial Impact:

Funding sources for this renovation project will be realized through the King County CDBG Program Grant and the King County Youth Sports Facilities Grant. The Department of Ecology (DOE) funds will pay for arsenic removal at the site. A breakdown of funding consists of the following:

\$395,000	King County CDBG Grant
\$25,000	King County Youth Sports Facilities Grant
\$119,499	Department of Ecology (DOE)
<hr/>	
\$539,499	TOTAL PROJECT FUNDING

Recommendation/Conclusion:

Staff recommends that Council approve the suggested motion.

Concurrence:

The Planning, Building and Public Works, Finance, Parks, Recreation and Senior Services, and Legal Departments concur.

Alternatives:

None Provided

Financial Impact:

The Des Moines Field House Park Tennis Court Renovation will utilize grants as the majority of the project funding. This project was approved by City Council in the 2015-2020 CIP.



YOUTH SPORTS FACILITIES GRANT CONTRACT – 2016

Department/Division Natural Resources and Parks / Parks Division

Agency: Des Moines Parks & Recreation

Project Title: Parkside Park Sports Court

Contract Amount: \$25,000 Fund Code: 1638

Contract Period From: November 1, 2015 To December 31, 2017

Contract Number: 5808740

THIS CONTRACT is entered into by KING COUNTY (the “County”), and Des Moines Parks & Recreation (the “Agency”), whose address is 1000 South 220 Street, Des Moines, WA 98198 ,

WHEREAS, King County is the manager of the Youth Sports Facilities Grant (YSFG) Program;

WHEREAS, the Agency is either a public agency or a non-profit organization whose land or facility will provide recreational or athletic opportunities primarily to youth under 21 years of age;

WHEREAS, King County has selected the identified agency to be awarded a Youth Sports Facilities Grant to assist in capital improvements for increased recreational opportunities;

WHEREAS, the Agency and/or landowner whose property will receive these improvements will develop, program, operate, and maintain the facility to address a recreation need in King County;

WHEREAS, King County has the authority under KC Ordinance 10454 to enter into agreements for the use of King County funds by public agencies and/or non-profit organizations to provide a service to the public,

NOW THEREFORE, in consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

1. **SCOPE OF SERVICES**

The Agency shall provide services and comply with the requirements set forth hereinafter and in the following attached exhibits, which are incorporated herein by reference:

<input checked="" type="checkbox"/>	Scope of Services	Attached hereto as Exhibit I
<input checked="" type="checkbox"/>	Budget	Attached hereto as Exhibit II
<input checked="" type="checkbox"/>	Invoice Voucher	Attached hereto as Exhibit III
<input checked="" type="checkbox"/>	Reporting	Attached hereto as Exhibit IV
<input checked="" type="checkbox"/>	Design Documents	Attached hereto as Exhibit V
<input checked="" type="checkbox"/>	Insurance Certificate	Attached hereto as Exhibit VI
<input checked="" type="checkbox"/>	W-9	Attached hereto as Exhibit VII

2. **TERM OF CONTRACT**

This Contract shall commence on the 1st day of November, 2015, and shall expire on the 31st day of December, 2017, unless extended or terminated earlier, pursuant to the terms and conditions of the Contract.

3. **PREMISES**

This grant project is located at: Parkside Park and referred to herein as "the Premises."

4. **PARTIES**

All communication, notices, coordination, and other tenets of this Contract shall be managed by:

On behalf of King County:

Butch Lovelace, YSFG Program Manager
 King County Department of Natural Resources and Parks
 201 South Jackson Street, Suite 700
 Seattle, WA 98104-3855
 Email: butch.lovelace@kingcounty.gov
 Phone: 206.477.4577

On behalf of:

Patrice Thorell
 Des Moines Parks & Recreation
 1000 South 220 Street
 Des Moines, WA 98198
 pthorell@desmoineswa.gov
 (206) 870-6529

5. COMPENSATION AND METHOD OF PAYMENT

- A. The County shall reimburse the Agency for satisfactory completion of the services and requirements specified in this Contract after the agency submits an invoice and all accompanying reports as specified in the attached exhibits. The County will initiate authorization for payment after approval of corrected invoices and reports. The County shall make payment to the Agency not more than 30 days after a complete and accurate invoice is received.
- B. The Agency shall submit its final invoice and all outstanding reports within 15 days of the date this Contract expires or is terminated. If the Agency's final invoice and reports are not submitted by the day specified in this subsection, the County will be relieved of all liability for payment to the Agency of the amounts set forth in said invoice or any subsequent invoice.

6. OPERATING BUDGET

When a budget is attached hereto as exhibit II, the Agency shall apply the funds received from the County under this Contract in accordance with said budget. If, at any time during the Term of this Contract, the Agency expects that the cumulative amount of transfers among the budget categories, i.e. Project Tasks, may exceed 10% of the Contract amount, then the Agency shall request an amendment to this Contract. Supporting documents necessary to explain fully the nature and purpose of the amendment must accompany each request for an amendment. County approval of any such amendment shall not be unreasonably withheld.

7. COMMUNICATION

The Agency shall recognize King County Parks as a fiscal sponsor for the grant project in the following manner:

- A. Plaque: At the time of project completion or dedication, whichever comes first, the Agency shall install on or near the facility a plaque provided by the County that notes King County as a fiscal sponsor.
- B. Events: The Agency shall invite and recognize King County Parks at all events promoting the project during construction, and at the final project dedication.
- C. Community relations: The Agency shall recognize King County Parks as a fiscal sponsor in all social media, websites, brochures, banners, posters, press releases, and other promotional material related to the Project.

8. PUBLIC ACCESS; PRIORITY OF USE; SCHEDULING

The Agency shall to the greatest extent reasonably possible make the project available for use by the general public without imposing unreasonable requirements for public use. The Agency shall to the greatest extent reasonably possible give priority of use to persons under the age of twenty-one. Fees for use of the project shall be no greater than those generally charged by public operators of similar facilities in King County. The period of time that the Agency must provide public access and priority of use is based on the level of County funding as set forth below. If the facility is removed from public recreational use before the end of the specified period, then the Agency shall reimburse the County's funding on a pro rata basis, determined by dividing the number of years of lost public use by the total years of required dedication, multiplied by the total County grant amount.

By way of example only, if the County makes a \$10,000 grant to Agency X, then the agency's project must be dedicated to public use and priority of use by youth for 5 years. If Agency X eliminates public access to the project after 3 years, such that 2 years of public access and youth priority are lost, then Agency X must repay the County \$4,000 ($2/5 * 10,000 = \$4,000$).

Range of County Grant	Required Period of Dedicated Public Use/Youth Priority
0-\$14,999	5
\$15,000-\$29,999	8
\$30,000-\$49,999	12
\$50,000-\$75,000	15

If the completed project is subject to scheduling or reservation for use, then the Agency shall post the use schedule and the Agency's scheduling or reservation policies, practices, and information in a highly visible location near the project and/or on their website; and the Agency shall permit the public to schedule or reserve use of the completed project consistent with the requirements of this section 8.

Agency's duties under this section 8 will survive the expiration or earlier termination of this contract.

9. GREEN BUILDING

King County is committed to promoting and using green building practices in construction projects. Though not required, King County strongly encourages practices that conserve resources, use recycled content materials, maximize energy efficiency, and otherwise consider environmental, economic and social benefits in the design and construction of a building project.

10. INTERNAL CONTROL AND ACCOUNTING SYSTEM

The Agency shall establish and maintain a system of accounting and internal controls which complies with applicable, generally accepted accounting principles, and governmental accounting and financial reporting standards in accordance with Revised Code of Washington (RCW) Chapter 40.14.

11. MAINTENANCE OF RECORDS

- A. The Agency shall maintain accounts and records, including personnel, property, financial, and programmatic records and other such records as may be deemed necessary by the County to ensure proper accounting for all Contract funds and compliance with this Contract.
- B. These records shall be maintained for a period of six (6) years after the expiration or earlier termination of this Contract unless permission to destroy them is granted by the Office of the Archivist in accordance with Revised Code of Washington (RCW) Chapter 40.14.
- C. The Agency shall inform the County in writing of the location, if different from the Agency address listed on page one of this Contract, of the aforesaid books, records, documents, and other evidence and shall notify the County in writing of any changes in location within ten (10) working days of any such relocation.

12. RIGHT TO INSPECT

King County reserves the right to review and approve the performance of Agency with regard to this Contract, and, at its sole discretion, to inspect or audit the Agency's records regarding this Contract and the Project upon reasonable notice during normal business hours.

13. COMPLIANCE WITH ALL LAWS AND REGULATIONS

The Agency, in cooperation and agreement with the owners of the Premises, shall comply with all applicable laws, ordinances and regulations in using funds provided by the County, including, without limitation, those relating to providing a safe working environment to employees and, specifically, the requirements of the Washington Industrial Safety and Health Act (WISHA); and, to the extent applicable, those related to "public works," payment of prevailing wages, and competitive bidding of contracts. The Agency specifically agrees to comply and pay all costs associated with achieving such compliance without notice from King County; and further agrees that King County, does not waive this section by giving notice of demand for compliance in any instance. The Agency shall indemnify and defend the County should it be sued or made the subject of an administrative investigation or hearing for a violation of such laws related to this Contract.

14. CORRECTIVE ACTION

- A. If the County determines that a breach of contract has occurred or does not approve of the Agency's performance, it will give the Agency written notification of unacceptable performance. The Agency will then take corrective action within a reasonable period of time, as may be defined by King County in its sole discretion in its written notification to the Agency.
- B. The County may withhold any payment owed the Agency until the County is satisfied that corrective action has been taken or completed.

15. TERMINATION

- A. The County may terminate this Contract in whole or in part, with or without cause, at any time during the Term of this Contract, by providing the Agency ten (10) days advance written notice of the termination.
- B. If the termination results from acts or omissions of the Agency, including but not limited to misappropriation, nonperformance of required services, or fiscal mismanagement, the Agency shall return to the County immediately any funds, misappropriated or unexpended, which have been paid to the Agency by the County.
- C. Any King County obligations under this Contract beyond the current appropriation year are conditioned upon the County Council's appropriation of sufficient funds to support such obligations. If the Council does not approve such appropriation, then this Contract will terminate automatically at the close of the current appropriation year.

16. FUTURE SUPPORT; UTILITIES AND SERVICE

The County makes no commitment to support the services contracted for herein and assumes no obligation for future support of the activity contracted for herein except as expressly set forth in this Contract. The Agency understands, acknowledges, and agrees that the County shall not be liable to pay for or to provide any utilities or services in connection with the construction, operation, maintenance, or use of the project contemplated herein.

17. HOLD HARMLESS AND INDEMNIFICATION

The Agency agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless King County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to any use of or occurrence on the Project that is the subject of this Contract, or the Agency's exercise of rights and privileges granted by this Contract, except to the extent of the County's sole negligence. The Agency's obligations under this section shall include:

- A. The duty to promptly accept tender of defense and provide defense to the County at the Agency's own expense;
- B. Indemnification of claims made by the Agency's employees or agents; and
- C. Waiver of the Agency's immunity under the industrial insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify King County, which waiver has been mutually negotiated by the parties.

In the event it is necessary for the County to incur attorney's fees, legal expenses or other costs to enforce the provisions of this section, all such fees, expenses and costs shall be recoverable from the Agency.

In the event it is determined that RCW 4.24.115 applies to this Contract, the Agency agrees to protect, defend, indemnify and save the County, its officers, officials, employees and agents from any and all claims, demands, suits, penalties, losses damages judgments, or costs of any kind whatsoever for bodily injury to persons or damage to property (hereinafter "claims"), arising out of or in any way resulting from the Agency's officers, employees, agents and/or subcontractors of all tiers, acts or omissions, performance or failure to perform the rights and privileges granted under

this Contract, to the maximum extent permitted by law or as defined by RCW 4.24.115, as now enacted or hereafter amended.

A hold harmless provision to protect King County similar to this provision shall be included in all Contractor or Subcontractor Agreements entered into by Agency in conjunction with this Contract.

Agency's duties under this section 17 will survive the expiration or earlier termination of this contract.

18. INSURANCE

- A. Liability Insurance Requirements. Notwithstanding any other provision within this Contract, the Agency shall procure and maintain the following Minimum Limits of Insurance and shall require their contractors to procure and maintain:
1. Commercial General Liability. (to include Products-Completed Operations) insurance against claims for injuries to persons or damages to property that may arise from or in connection with activities under this Contract. General liability insurance shall be as broad as that provided by Commercial General Liability "occurrence" form CG0001 (Ed. 11/85).

The insurance limits shall be no less than One Million dollars (\$1,000,000) combined single limit per occurrence and Two million dollars (\$ 2,000,000) in the aggregate for bodily injury and property damage
 2. Automobile Liability. Insurance Services form number CA 00 01 (Ed. 1/80) any auto. If the grant includes the use of automobiles, the Limit of Liability shall be no less than One Million dollars (\$ 1,000,000) per occurrence.
 3. Workers Compensation/Stop Gap. If the recipient or its contractors has employees, parties shall provide Statutory Workers Compensation coverage and Stop Gap Liability for a limit no less than One Million dollars (\$1,000,000)
 4. Professional Liability. If the grant includes the use of Professional Services, a Per Claim/Aggregate Limit of \$ 1,000,000. shall be provided.
- B. If the grant involves the construction of a capital project or involves the purchase of equipment greater than \$ 5,000.00 in value, the Agency shall provide "All Risk" Builders Risk or Property" coverage for the full replacement value of the project/property built/purchased. King County shall be listed as a Loss payee as our interests may appear.
- C. King County and its officers, officials, employees and agents shall be covered as additional insured with respect to liability arising out of activities performed by the Agency and its contractors. Additional Insured status shall include Products-Completed Operations.
- D. To the extent of the Agency's or its contractor's negligence, their insurance respectively shall be primary insurance with respect to the County, its officers, employees and agents. Any insurance or self-insurance maintained by the County, and its officers, officials, employees or agents shall not be subjected to contribution in favor of the Agency or its contractors insurance and shall not benefit their in any way.

The Agency's and its contractors' insurance shall apply separately to each insured against whom a claim is made or a lawsuit is brought, subject to the limits of the insurer's liability.

- E. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after thirty (30) days' prior written notice has been given to and change in coverage accepted by King County.
- F. The insurance provider must be licensed to do business in the State of Washington and maintain a Best's rating of no less than A VIII. The Agency must provide a Certificate of Insurance and Additional Insured Endorsement to the (Exhibit VII), and upon written request of the County, provide a duplicate of the policy as evidence of insurance protection. The Agency shall be responsible for the maintenance of their contractors' insurance documentation.
- G. If the Agency is a Municipal Corporation or an agency of the State of Washington and is self-insured for any of the above insurance requirements, a certification of self-insurance shall be attached hereto and be incorporated by reference and shall constitute compliance with this section.
- H. The Agency's duties under this section 18 shall survive the expiration or earlier termination of this Agreement. The Agency understands, acknowledges and agrees that for the relevant period of public use set forth in section 8, the Agency shall maintain insurance and name the County as an additional insured, all of which shall be consistent with the requirements of this section 18.

19. NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

A. Nondiscrimination in Employment

During performance of this Contract, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

B. Equal Employment Opportunity Efforts

The Contractor will undertake, and require all Subcontractors to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. Equal employment opportunity efforts shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Contractor agrees to post, and to require Subcontractors to post in conspicuous places available to employees and applicants for employment notices setting forth this nondiscrimination clause. In accordance with KCC 12.16.010.J, "equal employment opportunity efforts" shall mean active efforts to ensure equal opportunity in employment that is free from all forms of discrimination.

Ref: KCC 12.16.020.

C. Equal Benefits to Employees with Domestic Partners

Pursuant to Ordinance 14823, King County's "Equal Benefits" (EB) ordinance, and related administrative rules adopted by the County Executive, as a condition of award of a contract valued at \$25,000 or more, the Contractor agrees that it shall not discriminate in the provision of employee benefits between employees with spouses, and employees with domestic partners during the performance of this Contract. Failure to comply with this provision shall be considered a material breach of this Contract, and may subject the Contractor to administrative sanctions and remedies for breach.

D. Nondiscrimination in Subcontracting Practices.

During the term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person because of their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

E. Compliance with Laws and Regulations.

The Contractor and all Subcontractors shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, Chapter 49.60 RCW, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987. KCC chapters 12.16, 12.17 and 12.18 are incorporated herein by reference and the requirements in these code sections shall specifically apply to this Contract. The Contractor and all Subcontractors shall further comply fully with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.

F. Small Contractors and Suppliers Policy.

Policy. It is King County policy that Small Contractors and Suppliers (SCS) have equitable opportunities to participate in the performance of goods and services contracts issued by King County, and that contractors and subcontractors shall afford equal opportunity in employment while providing supplies and services for and to King County.

Inquiries and Information Regarding King County Certified SCS Firms. Direct inquiries on how to apply for SCS certification, or obtain a list of King County Certified Firms to the King County Business Development and Contract Compliance (BDCC) office by telephone at 206-263-9734. Information about becoming a King County Certified SCS Firm, as well as a Directory of King County Certified Firms is available at: <http://www.kingcounty.gov/bdcc>.

Definitions. The following definitions shall apply throughout this Section.

1. "Administrator" means the Director of Finance.
2. "Certified SCS Firm" means a business that has applied for participation in King County's Contracting Opportunities Program, and has been certified as an SCS by the King County BDCC office.

3. "Small Contractor or Supplier" or "(SCS)" means that a business and the person or persons who own and control it are in a financial condition, which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Contracting Opportunities Program is based on a dollar ceiling for standard business classifications that is set at fifty percent (50%) of the Federal Small Business Administration (SBA) small business size standards using the North American Industrial Classification System (NAICS), and an Owners' Personal Net Worth less than \$750K dollars.
- G. Compliance with Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and the American with Disabilities Act of 1990 as amended (ADA).

Pursuant to Title II of the ADA, and Section 504, King County must not discriminate against people with disabilities in providing services, programs or activities even if those services, programs or activities are carried out by contractors. The Contractor agrees that it shall provide all programs, services, and activities to County employees or members of the public under this Contract in the same manner as King county is obligated to under Title II of the ADA, and Section 504 and shall not deny participation of the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with this Section 7.1.H shall be a material breach of, and grounds for the immediate termination of, this Contract.

The Contractor agrees to provide to persons with disabilities access to programs, activities and services provided under the Contract, as required by the disability access laws as defined by KCC 12.16.

The Contractor shall not discriminate against persons with disabilities in providing the Work. In any subcontracts for the programs, activities and services under their Contract, the Contractor shall include the requirement that the Subcontractor provide to persons with disabilities access to programs, activities and services provided under the Contract, as required by the disability access laws as defined by KCC 12.16; that the Subcontractor shall not discriminate against persons with disabilities in providing the Work under the Contract; and that the Subcontractor shall provide that the County is a third party beneficiary to that required provision.

- H. Sanctions for Violations - Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of Contract, for which the Contractor may be subject to damages, withholding payment and any other sanctions provided for by Contract and by applicable law.

21. CONFLICT OF INTEREST

KCC Chapter 3.04 (Employee Code of Ethics) is incorporated by reference as if fully set forth hence, and the Agency agrees to abide by all conditions of said chapter. Failure by the Agency to comply with any requirement of said KCC Chapter shall be a material breach of contract.

22. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

23. PROJECT MAINTENANCE; EQUIPMENT PURCHASE, MAINTENANCE, AND OWNERSHIP

- A. As between the County and the Agency, the Agency shall be responsible to operate and maintain the completed project at its own sole expense and risk. The Agency shall maintain the completed project in good working condition consistent with applicable standards and guidelines. The Agency understands, acknowledges, and agrees that the County is not responsible to operate or to maintain the project in any way.
- B. The Agency shall be responsible for all property purchased pursuant to this Contract, including the proper care and maintenance of any equipment.
- C. The Agency shall establish and maintain inventory records and transaction documents (purchase requisitions, packing slips, invoices, receipts) of equipment and materials purchased with Contract funds.
- D. The Agency's duties under this section 23 shall survive the expiration of this Agreement.

24. NOTICES

Whenever this Contract provides for notice to be provided by one party to another, such notice shall be:

- A. In writing; and
- B. Directed to the person specified in Section 4 of this Contract.
- C. Any such notice shall be deemed to have been given on the date of delivery, if mailed, on the third (3rd) business day following the date of mailing; or, if sent by fax, on the first (1st) business day following the day of delivery thereof by fax. Notice sent solely by e-mail shall not be a sufficient form of notice under this Contract.
- D. Either party may change its address, fax number or the name of the person indicated as the recipient by notice to the other in the manner aforesaid. In the event of interruption or threatened interruption in postal service, such notice shall be delivered addressed as aforesaid or sent by fax.

25. ASSIGNMENT

The Agency shall not assign any portion of rights and obligations under this Contract or transfer or assign any claim arising pursuant to this Contract without the written consent of the County. The Agency must seek such consent in writing not less than fifteen (15) days prior to the date of any proposed assignment.

26. CONTRACT AMENDMENTS

Either party may request changes to this Contract. Proposed changes that are mutually agreed upon shall be incorporated by written amendments to this Contract.

27. **WAIVER OF DEFAULT**

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such through written approval by the County, which shall be attached to the original Contract.

28. **TAXES**

The Agency agrees to pay on a current basis all taxes or assessments levied on its activities and property, including, without limitation, any leasehold excise tax due under RCW Chapter 82.29A; PROVIDED, however, that nothing contained herein will modify the right of the Agency to contest any such tax, and the Agency will not be deemed to be in default as long as it will, in good faith, be contesting the validity or amount of any such taxes.

29. **WASHINGTON LAW CONTROLLING; WHERE ACTIONS BROUGHT**

This Contract is made in and will be in accordance with the laws of the State of Washington, which will be controlling in any dispute that arises hereunder. Actions pertaining to this Contract will be brought in King County Superior Court, King County, Washington.

30. **PARAGRAPH HEADINGS**

The paragraph headings contained herein are only for convenience and reference and are not intended to be a part of this Contract or in any manner to define, limit, or describe the scope or intent of this Contract or the particular paragraphs to which they refer.

31. **PUBLIC DOCUMENT**

This Contract will be considered a public document and will be available for inspection and copying by the public.

32. **LEGAL RELATIONS**

Nothing contained herein will make, or be deemed to make, the County and the Agency a partner of one another, and this Contract will not be construed as creating a partnership or joint venture. Nothing in this Contract will create, or be deemed to create, any right, duty or obligation in any person or entity not a party to it.

33. **SINGULAR AND PLURAL**

Wherever the context will so require, the singular will include the plural and plural will include the singular.

34. PERMITS AND LICENSES

The Agency will obtain and maintain, at its own and sole costs and expense, all necessary permits, licenses and approvals required for the Project.

35. INTERPRETATION OF COUNTY RULES AND REGULATIONS

If there is any question regarding the interpretation of any County rule or regulation, the County decision will govern and will be binding upon the Agency.

36. POLICE POWERS OF THE COUNTY

Nothing contained in this Contract will diminish, or be deemed to diminish, the governmental or police powers of the County.

37. ENTIRE AGREEMENT

This Contract, including its attachments, constitutes the entire Contract between the County and the Agency. It supersedes all other agreements and understandings between them, whether written, oral or otherwise.

KING COUNTY

AGENCY: _____

FOR

King County Executive

Signature

Date

NAME (Please type or print), Title

Date

Lovelace, Butch

From: Lovelace, Butch
Sent: Monday, October 26, 2015 10:35 AM
To: Lovelace, Butch
Subject: 2016 YSFG Contract
Attachments: Exhibit II-Budget and Match Template.xls; Exhibit I-Scope of Services.doc; Exhibit IV-Reporting.doc; Exhibit V-Design Documents.doc; Exhibit VI-Certificate of Insurance.doc; Exhibit III-Invoice Voucher.doc

Dear Youth Sports Facilities Grant Recipient:

Congratulations on your YSFG award. Contracts were mailed to you today for your signature. Please sign and return both (2) copies along with the following exhibits. The exhibits below are being provided under this email. Once signed on our end, I will return an original contract with a notice to proceed.

- | | | |
|-------------------------------|-------------|--|
| 1. Scope of Services | Exhibit I | complete and return |
| 2. Budget
the application) | Exhibit II | complete and return (use/edit the one submitted with |
| 3. Invoice Voucher | Exhibit III | hold for reimbursements |
| 4. Reporting | Exhibit IV | hold for your information |
| 5. Design Documents | Exhibit V | instruction for your design documents in exhibit |
| 6. Insurance Certificate | Exhibit VI | instruction for your coverage in exhibit |
| 7. W-9 | | you can ignore, I already have it on file. |

King County Parks is pleased to be working with you on your project and we look forward to celebrating its dedication in 2016! Please do not incur any costs against the grant until you receive a signed contract and notice to proceed. Please do not hesitate to contact me if you have any questions.

Butch Lovelace ~ Program Manager ~ **King County Parks** ~ 206.477.4577 ~ [Parks Plog](#)

Discussion

After evaluating the Pool District Board's current IT infrastructure and future needs it was determined that the City's IT staff had the available capacity to handle the additional workload without significant impact to current service levels.

Financial Impact

The agreement provides for \$1,200 per month to cover up to 8 hours per month of technology service. Additional hours and hours for services provided outside of regular business hours are additional. The revenue from this agreement will go to the computer operations fund to offset costs.

Alternatives

The Council could decide not to approve the Agreement.

Recommendation or Conclusion

Staff recommends Council approve the suggested motions.

Concurrence

The Finance Department concurs with this recommendation.

TECHNOLOGY SERVICES AGREEMENT

This Agreement is entered into between THE CITY OF DES MOINES, a municipal corporation, hereafter referred to as "CITY", and THE DES MOINES POOL METROPOLITAN PARK DISTRICT, a municipal corporation, hereafter referred to as "District."

RECITALS

1. The City's Information Technology Department has the necessary personnel and skills to provide electronic information management and communication system administrator services for the District.
2. The District has the need for such services.
3. This agreement is entered into under the authority of and in conformity with chapter 39.34 RCW, the Interlocal Cooperation Act.

AGREEMENT

1. **Services.** The City shall provide the District with the services specified in **Exhibit A**. The City Manager or designee and the District General Manager or designee may negotiate changes, amendments, and modifications to Exhibit A if mutually agreed to in writing.
2. **Payment.** The Cost of the services is set forth in **Exhibit A** as modified from time to time pursuant to Paragraph 1. The City shall provide the District with a monthly invoice identifying the services provided and charges incurred. The District shall pay such invoices within 30 days of receipt.
3. **District Hardware Requirements.** The District will purchase a server and software with the advice and assistance of City to insure that the server and software meets the needs of the District and is compatible with the City's Information Technology Department's requirements.
4. **Term.** This agreement shall be effective on mutual execution and shall continue until either party provides the other party with 90 days advance written notice.
5. **Liability.** Each of the parties shall, at all times, be solely responsible for the acts or the failure to act of its personnel that occur or arise in any way out of the performance of this contract by its personnel only and to indemnify and hold the other party and its personnel and officials harmless from all costs, expenses, losses and damages, including cost of defense, incurred as a result of any acts or omissions of the party's personnel relating to the performance of this contract. This indemnity and hold harmless shall include any claim made against either party by an employee of the party, even if the party is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW. This limited waiver of immunity has been mutually negotiated.

6. **Property Ownership.** This Agreement does not provide for jointly owned property. All property presently owned or hereafter acquired by either party shall remain the property of the acquiring party in the event of the termination of this agreement.

7. **Equipment Marking.** The District shall distinctly mark all equipment and personal property used, housed or managed by the City under the terms of this agreement.

8. **Miscellaneous:**

8.1. **Administration.** This Agreement shall be administered by the City Manager or designee and the District General Manager or Designee.

8.2. **Notices.** All notices, requests, demands and other communications required by this agreement shall be in writing and, except as expressly provided elsewhere in this agreement, shall be deemed to have been given at the time of delivery if personally delivered or at the time of mailing if mailed by first class, postage pre-paid and addressed to the party at its address as stated in this agreement or at such address as any party may designate at any time in writing.

8.3. **Severability.** If any provision of this agreement or its application is held invalid, the remainder of the agreement or the application of the remainder of the agreement shall not be affected.

8.4. **Modification.** This agreement represents the entire agreement between the parties. No change, termination or attempted waiver of any of the provisions of this agreement shall be binding on either of the parties unless executed in writing by authorized representatives of each of the parties. The agreement shall not be modified, supplemented or otherwise affected by the course of dealing between the parties.

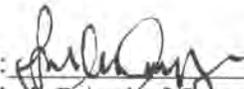
8.5. **Benefits.** This agreement is entered into for the benefit of the parties to this agreement only and shall confer no benefits, direct or implied, on any third persons.

8.6. **Non-Exclusive Agreement.** The parties to this agreement shall not be precluded from entering into similar agreements with other municipal corporations.

8.7. **Filing/Web Site. Filing/Web Site.** This Agreement shall either be filed with the County Auditor or by listing on either of the party's websites in accordance with RCW 39.34.040.

**DES MOINES POOL METROPOLITAN
PARK DISTRICT**

CITY OF DES MOINES

By: 

, Chair Board of Commissioners

By: _____
Tony Piasecki, City Manager

DATE: November 3rd, 2015

DATE: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:



Brian Snure,
Attorney for District

APPROVED AS TO FORM:

City Attorney

NOTICES TO BE SENT TO:

22015 Marine View Dr S
Des Moines, WA 98148
P.O. Box 98711

NOTICES TO BE SENT TO:

P.O. Box 98

EXHIBIT A SERVICES

City will manage, update and maintain the operability of District's electronic information management and communication hardware and software.

- Five Lenovo ThinkPad tablets with keyboards
- One Lenovo ThinkPad laptop computer
- One Lenovo all-in-one desktop computer
- One Epson WF 4530 all-in-one printer, scanner, fax
- Sophos firewall and wireless router
- Microsoft portal management and security
- Microsoft Office 365 interface

City will manage and enforce District's IT policy attached hereto as Exhibit B.

COST OF SERVICES

Monthly Fee. The District will pay the City \$1,200 per month for the Services. The monthly fee includes up to eight hours of City staff time per month.

Hourly Fees. In the event the District requires services beyond eight hours per month the District shall pay the City the following hourly rates:

\$150 per hour for services rendered during regular business hours of 8:00 AM through 4:30 PM, Monday through Friday.

\$200 per hour for services provided outside of the regular business hours. The District must specifically request that services be provided outside of regular business hours for this rate to apply.

EXHIBIT B

DES MOINES POOL METROPOLITAN PARK DISTRICT ADMINISTRATIVE DIRECTIVE

INFORMATION TECHNOLOGY POLICY

PREAMBLE

The Des Moines Pool Metropolitan Park District (District) Board of Commissioners (Board) will utilize enterprise-wide business management systems utilizing information technology in the course of conducting District business. The purpose of this policy is to establish District communications and data management policies and procedures.

1. Safeguard the District's records and systems used to manage those records according to Washington state public records retention regulations
2. Provide efficient and effective responses to the public's request for information in compliance with Washington's Public Records Act
3. Recognize and utilize current technology as the most cost effective method to collect, analyze, manage and retain data
4. Establish acceptable and appropriate use of District information technology assets.

DEFINITIONS

Information technology system – includes all IT assets, such as hardware, software, networks, computers and computing devices, communication systems, files including email, processes, internet connectivity, telephone, voice mail and multifunction devices that print, fax and/or scan.

Cloud – data storage and retention provided by an outside entity that is safe and secure and easily accessed through the World Wide Web by staff and commissioners.

Malware – malicious software designed to corrupt and/or steal District records and/or create havoc in the daily use of information technology in the course of doing business.

Staff – Either employees or contractors whose services are paid for by the District.

Records – All information, knowledge or communication preserved in writing by any method.

Public Record – includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared owned, used or retained by any state of local agency regardless of physical form or characteristics (42.56 RCW).

RECORDS RETENTION

Electronic records are bound by the same provisions of paper documents as set forth in chapter 42.56 RCW.

Electronic records are to be retained in electronic format and remain usable, searchable, retrievable and authentic for the length of the designated retention period.

Electronic records designated as “archival” are to be retained in their original format along with hardware and software required to read the data unless the data can be migrated to a new system. Once the record has been migrated to a new format, the “archival” may be considered a secondary copy and disposed of as directed by chapter 42.56 RCW.

The District is to maintain chain of custody of records including employment of sufficient security procedures to prevent changes to the record.

If encryption on electronic records is utilized, the District is to maintain the means to decrypt the record for the life of the records.

Website content is to be retained per required retention schedules. Each web page shall contain an individual page identifier for ease of retrieval.

E-mails created and received by District staff and commissioners are public records per chapter 42.56 RCW and are subject to the same rules of retention as hard copy records.

PUBLIC REQUEST FOR RECORDS

Use of electronic records in meeting the public’s requests for records will be consistent with Public Records Act requirements.

TECHNOLOGY AS FUNDAMENTAL FRAMEWORK FOR BUSINESS SYSTEMS

Given that District decisions are based on facts and data, information technology is the least costly and most efficient method to collect, analyze and present data.

USE OF DISTRICT INFORMATION TECHNOLOGY ASSETS

District information technology assets are to be used for District business only. By using District resources the employee, contractor or commissioner consents to disclosing the contents of any file, information or communications created on, stored on, transmitted, received and/or exchanged via the District’s information technology system.

There is no right to privacy in the use of the District’s information technology system. By using District resources the staff or commissioner consents to monitoring, recording or reviewing the use of the District’s IT resources and the content of files and records.

Users are expected to act lawfully, ethically, professionally and courteously at all times when using District IT resources.

Users who are granted access to data are responsible for its protection. A computing device, hardware and/or software will be assigned to individual staff and commissioners who will be held responsible to take adequate measures to prevent damage, theft, or loss of the device, software, data and hardware.

Sending, receiving or sharing non-business files from outside the District's IT system is prohibited. Using District assets for personal use is prohibited.

Given the portable nature of staff and commissioner assigned computing devices, staff and commissioners are expected to use those devices when conducting District business at any location.

Use of Personal Devices – The District recognizes that staff and commissioners need the flexibility and ease of using personal cell phones or smart phones, especially since the District does not provide cell or smart phones to staff and commissioners. The use of personal computers, laptops or tablets for District business is prohibited as each staff member and commissioner is assigned a District-owned computing device for District business. Personal cell phones or computing devices that contain any District business may be subject to inspection if needed to respond to a Public Records Act request for documents.

Users, recognizing that the District's IT system relies on shared data, are required to follow District standards, processes and procedures to ensure security, accuracy, consistency and reliability in the entry and use of data.

The District does utilize social media, Facebook and/or Twitter accounts in the course of doing business. Staff and commissioners are prohibited from using personal social media on District assets.

Guest access to District wireless network

- Access to the District's office wireless network for guests will be via a separate user ID and password than that which is used by staff and commissioners.

Security

Anti-malware and virus prevention (endpoint security)

- Anti-malware software and signature auto-update features are part of the District's IT system requirements.
- District IT systems are configured to not auto-run content from any removable media.
- The District's IT systems are configured so that an automatic anti-malware scan is performed when any removable media is inserted.
- To protect the District's data, anti-malware and anti-spyware software is utilized to defend against malicious threats by content filtering for all file types at the perimeter of the District's system.

Data backup

- System wide data backup is performed daily/weekly via an automated system managed by the District's IT administration management company.

Password policy

Personal passwords must adhere to the following requirements for "strong" passwords:

- Eight to 12 characters including letters, numbers, symbols and capital letters
- Must be changed every 90 days
- Should not be a dictionary word, commonly recognized or guessed words, any part of a person's name, birthdate or contain personal information.

- Before deploying new District devices or software, all “default” passwords must be changed immediately to a “strong” and personal password

SYSTEM ADMINISTRATION AND SUPPORT

The Board shall appoint an Information Technology Commissioner from among their own number and shall appoint an alternate who may be a member of the board or a member of the District staff.

To provide the District with expert, state-of-the-art information technology support, system maintenance and user support, the function will be outsourced to a qualified company who shall act as System Administrator.

The District’s system administrator will assure that the District is provided with a formal, documented troubleshooting and security incident response plan.

Staff and commissioners are responsible to initiate as soon as detected an “Issues Report” per the troubleshooting and security incidence process.

The Information Technology Commissioner and/or her/his alternate are the only officials who may make other software, hardware and technology tools available. Under no circumstances will staff and/or commissioners load personal software on District assets.

TRAINING

It is the responsibility of staff and commissioners to be knowledgeable about the use of the District’s information technology hardware, software and data management processes and the rules and regulations of such use. District records are to be created and maintained in a shared database and will require adherence to standard processes to maintain a reliable and accurate business management system.

All users of District IT system will require training regarding security of data, awareness of dangers from outside intrusions, and understanding of the parameters of using District resources. Annually, all users are required to review IT policy and procedures to assess understanding and identify areas needing additional training.

DESTRUCTION OF DISCARDED HARDWARE

The System Administrator and/or the Information Technology Commissioner shall insure that all retired, replaced or otherwise disposed of memory storage media shall be physically destroyed. This policy shall be rigorously followed, especially if any such hardware is in any way employed for information provided through the District’s contract for fingerprint based records with the Washington State Patrol.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: 2016 Utility Tax Rates

FOR AGENDA OF: November 19, 2015

ATTACHMENTS:

1. Substitute Draft Ordinance No. 15-173 – Sewer Rates
2. Substitute Draft Ordinance No. 15-186 – Water Rates
3. Agenda & Information Packet used in November 4, 2015 City meeting with Water and Sewer District Commissioners.

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: November 13, 2015

CLEARANCES:

- [X] Legal PO
 [X] Finance DM
 [] Marina _____
 [] Parks, Recreation & Senior Services _____
 [] Planning, Building & Public Works _____
 [] Police _____
 [] Courts _____

APPROVED BY CITY MANAGER
 FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of the agenda item is for the City Council to adopt: 1) Substitute Draft Ordinances 15-173 creating and imposing a sewer utility tax rate of 16%; and 2) Substitute Draft Ordinances 15-186 creating and imposing a water utility tax rate of 16%.

Suggested Motions

Motion 1a: “I move to consider Substitute Draft Ordinance 15-173 and to suspend Rule 26(a) in order to enact Draft Ordinance 15-173 on first reading.”

Motion 1b: “I move to enact Substitute Draft Ordinance 15-173 creating and imposing a utility tax on sewer utilities in the amount of sixteen percent.”

Motion 2a: “I move to consider Substitute Draft Ordinance 15-186 and to suspend Rule 26(a) in order to enact Draft Ordinance 15-186 on first reading.”

Motion 2b: “I move to enact Substitute Draft Ordinance 15-186 creating and imposing a utility tax on water utilities in the amount of sixteen percent.”

Background

The City of Des Moines has faced challenging budget deficits, particularly in the General and Street Funds, for many years, stretching back to the passage of I-695 in 1999. The City has used a variety of strategies to balance the budget over the years, including positions cuts, use of one-time revenues, instituting new revenues, furloughs, employees voluntarily reducing their Cost of Living Adjustments, changes to benefit programs, reorganizations, etc.

The budget situation for 2016 is significant and depends on one-time development revenues related to several large projects. The state of our reserves and the prospects for 2017 and beyond are bleak. Without significant new revenues or massive cuts in expenses, our reserves will be completely drained before the end of 2017 and the City will no longer be able to provide services at current levels. While the City has been very aggressive with economic development efforts—including changing our development codes and streamlining our development processes—we are just now seeing the fruits of our labors. Those developments that are either under construction now or look to be under construction within the next year will bring in new revenues. This new revenue has been conservatively estimated and built into our budget forecasts through 2020 but it is not enough to get us to a sustainable budget.

Staff was also directed to look for every revenue opportunity that might be available for the Council to implement. Possible revenue increases that came forward were increases to business license fees, increases to our parks and recreation fees, increases to our current utilities taxes (on storm water, cable TV, and solid waste), and implementation of a utility tax on water and sanitary sewer services. Applying our utility tax to water and sanitary sewer services is a new revenue option.

Discussion

Based on public input and discussion the implementation of water and sewer utility taxes were carried over from the November 5, 2015 meeting to the November 12, 2015 agenda for Council consideration and then, carried over again to the November 19, 2015 meeting for further discussion and deliberation.

After the public input at the October 29, 2015 council meeting, City Council directed staff to set up a meeting with the Water and Sewer Districts to see if there was a way to find a “win-win” and avoid the Commissioners from filing a lawsuit.

Staff arranged the meeting for November 4, 2015 and invited representatives from the four water and sewer districts (“Districts”). Attached is a copy of the power point used to facilitate the discussion. The meeting approach was to start off with a discussion of the “what”, “why” and the legal basis for each organization’s position to make sure we clearly understood what the other was saying and that all facts were transparent and available to the other organization.

The City staff provided specific references to state law and court cases on several issues. Staff also included a copy of an article co-authored by the Districts’ own attorney on May 1, 2013 which explains with the change in the law the Water Districts “remain free (but not compelled)” to enter into “*an agreement*” (not them suddenly deciding on their own to send the City a bill requiring payment) to shift the cost recovery of fire suppression services to general governmental sources. Also included was a copy of the state law regarding the issue RCW 70.315. Staff believes the Water Districts *no longer have a legal basis to compel the City* to pay for fire services and is therefore an empty threat.

The next thing included in the information packet for the Districts was a copy of the city's current Utility Occupation Tax codes. The water and sewer utility taxes are proposed to be added to this section of the code alongside all the other currently taxed utility services (electricity, cable, solid waste, telephone and natural gas). Thus water and sewer services would thereby be subject to all the *same* definitions of gross income, tax filing and payment processes, rights of appeal, non-compliance penalties, tax payer records, confidentiality, etc., as the other utility providers (electricity, cable, solid waste, telephone and natural gas). The existing Utility and Occupation Tax code has an exemption for gross income which is prohibited from taxation under existing law. This exemption would cover exempting the fire suppression revenue from the water utility's gross revenue calculation.

The Districts' have offered a franchise payment in lieu of the utility tax which would contain a 6% maximum for the length of the 25 year agreement. Staff inquired as to whether there was any room to consider removing the 6% maximum from the agreement and the answer was "no". Staff asked if there was any room to increase the 6% maximum and the answer was "no" again. Staff also asked if the City Council continued with implementing the utility tax (rather than a franchise payment in lieu of tax) but dropped the utility tax rate down to 6% if the Districts would agree not to sue. The response from the Commissioner representing both Highline Water District and Midway Sewer District was the utility tax is illegal and unacceptable at any level and therefore they would sue if *any* utility tax was imposed. Thus the city was left with the choice: Agree to the franchise agreement with the 25 year 6% cap or be sued.

Financial Impact

The fiscal impacts as part of the 2016 City Manager Preliminary Budget for water and sewer at 16% tax increase is to provide \$1,085,125 to the General Fund and \$361,709 to the Street Paving Fund (dedicated to repaving residential streets as there is currently no source of funding for this purpose).

Conclusion

City staff met in good faith with the Districts to try and discover a "win-win" solution. The Districts indicated the utility tax was an illegal tax and if imposed, would feel compelled to file a lawsuit. Based on the review of state law and a 2014 court case that upheld a city's right to tax a Public Utility District, City staff believes expanding its current public utility tax code to cover gross income from water and sewer services provided within the city *has already been tested in court* and found to be legal.

By accepting franchise agreement for payment in lieu of tax the City Council and the Des Moines' citizens would give up their rights, responsibilities and public due process to determine the "appropriate" level of public services provided and levels of taxation to pay for those services.

Recommendation

It is staff's recommendation council utilize the legal form for raising new resources through a utility tax rather than a franchise agreement; with Council's understanding the Water and Sewer District Commissions are threatening a law suit in response.

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CITY ATTORNEY'S FIRST DRAFT 11/04/2015

DRAFT SUBSTITUTE ORDINANCE NO. 15-173

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to revenue and finance, and adding a new subsection (7) to DMMC 3.68.060 to create and impose a sewer utility tax at the rate of sixteen percent per year.

WHEREAS, Article VII, Section 9 of the Washington State Constitution states:

"The legislature may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of property benefited. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes and such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same",

and

WHEREAS, in addition, the Washington State Constitution at Article XI, Section 12, states

"The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purpose",

and

WHEREAS, in RCW 35A.11.020, the Legislature has given municipalities "all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440, 48.14.020, and 48.14.080." The statutes provided do not expressly prohibit the taxation of sewer district services, and

WHEREAS, RCW 35A.82.020 provides that:

Ordinance No. _____
Page 2 of 5

"[a] code city may exercise the authority authorized by general law for any class of city to license and revoke the same for cause, to regulate, make inspections and to impose excises for regulation or revenue in regard to all places and kinds of business, production, commerce, entertainment, exhibition, and upon all occupations, trades and professions and any other lawful activity",

and

WHEREAS, in *City of Wenatchee v. Chelan County Public Utility District No. 1*, 181 Wn. App 326 (2014) Division 3 of the Court of Appeals, declared that the utility tax levied by the City of Wenatchee on Chelan County PUD for the sale of domestic water within the City's limits was a proper tax on activities that were proprietary in nature and that the City has the authority to levy and collect the tax from Chelan County Public Utility District No. 1, and

WHEREAS, the following courts have found that the sale of utilities is a proprietary function in *Russell v. City of Grandview*, 39 Wn.2d 551, 236 P.2d 1061 (1951), *Public Util. Dist. No. 1 of Pend Oreille County v. Town of Newport*, 38 Wn.2d 221, 228 P.2d 766 (1951), and *City of Moses Lake v. United States*, 430 F.Supp.2d 1164 (2006), and

WHEREAS, the City of Wenatchee imposed taxes on water utilities at 16% and sewer utilities at 16% in 2011, and

WHEREAS, a sewer utility district operates in its proprietary capacity when selling sewer utility services to its ratepayers, and

WHEREAS, a sewer utility district when operating in its proprietary capacity does not enjoy governmental immunity, and

WHEREAS, RCW 35A.82.020 grants code cities broad general authority to impose excise taxes for regulation or revenue, unless expressly preempted, and

WHEREAS, the Legislature could have included in chapter 35A.82 RCW language precluding code cities from taxing other

Ordinance No. _____
 Page 3 of 5

municipality entities under RCW 35A.82.020, but refrained from doing so, and

WHEREAS, the proprietary activities of a municipality, like the business activities of private parties, are subject to taxation, (see generally the 2014 AWC Cities, Tax and User Fee Survey for tax rates for sewer statewide as reported and redacted to include only water and sewer rates), and

WHEREAS, the operation of a sewer utility serving billed customers is a proprietary function, and

WHEREAS, public utilities that pay a utility tax are exempt from the Business and Occupation Tax under DMMC 3.84.110(1), and

WHEREAS, the City Council has determined that there will be a deficit balance in the City's General Fund and Street Fund in 2016, and

WHEREAS, the basic City service levels would be greatly reduced without an additional source of revenue, and

WHEREAS, the City Council has determined that the public interest is best served by implementing utility taxes on sewer utility rates, effective January 1, 2016, and

WHEREAS, on October 8, 2015, by consensus, the City Council directed staff to bring forth ordinances necessary to enact the revenue recommendations presented in the City Manager's Budget to the City Council to be considered at the meeting on October 29, 2015, and

WHEREAS, the City Council finds that this Draft Ordinance is reasonable and necessary for the preservation of the public health and welfare; now therefore,

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

Sec. 1. A new subsection (7) is added to DMMC 3.68.060 DMMC to read as follows:

Ordinance No. _____
 Page 4 of 5

Imposition of sewer utility tax. Effective January 1, 2016, there is hereby created and levied a tax in the amount of sixteen percent (16%) per year, chargeable monthly, against and upon the gross income derived from the sewer utilities operating in the City. This section shall not apply to any sewer utility that precludes the levying of a utility tax pursuant to a franchise or interlocal agreement. The sixteen percent (16%) tax shall be allocated as follows: twelve percent (12%) shall be allocated into the Des Moines General Fund and four percent (4%) shall be allocated to the Street Pavement Fund.

Sec. 2. Severability - Construction.

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

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

Sec. 3. Effective date. This Ordinance shall take effect and be in full force five (5) days after its final passage by the Des Moines City Council.

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2015 and signed in authentication thereof this ____ day of _____, 2015.

M A Y O R

APPROVED AS TO FORM:

City Attorney

Ordinance No. _____
Page 5 of 5

ATTEST:

City Clerk

Published: _____

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CITY ATTORNEY'S FIRST DRAFT 11/04/2015

DRAFT SUBSTITUTE ORDINANCE NO. 15-186

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to revenue and finance, and adding a new subsection (8) to DMMC 3.68.060 to create and impose a water utility tax at the rate of sixteen percent per year.

WHEREAS, Article VII, Section 9 of the Washington State Constitution states:

"The legislature may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of property benefited. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes and such taxes shall be uniform in respect to persons and property within the jurisdiction of the body levying the same",

and

WHEREAS, in addition, the Washington State Constitution at Article XI, Section 12, states

"The legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants or property thereof for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such purpose,"

and

WHEREAS, in RCW 35A.11.020, the Legislature has given municipalities "all powers of taxation for local purposes except those which are expressly preempted by the state as provided in RCW 66.08.120, 82.36.440, 48.14.020, and 48.14.080." The statutes provided do not expressly prohibit the taxation of sewer district services, and

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"[a] code city may exercise the authority authorized by general law for any class of city to license and revoke the same for cause, to regulate, make inspections and to impose excises for regulation or revenue in regard to all places and kinds of business, production, commerce, entertainment, exhibition, and upon all occupations, trades and professions and any other lawful activity",

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WHEREAS, in *City of Wenatchee v. Chelan County Public Utility District No. 1*, 181 Wn. App 326 (2014) Division 3 of the Court of Appeals, declared that the utility tax levied by the City of Wenatchee on Chelan County PUD for the sale of domestic water within the City's limits was a proper tax on activities that were proprietary in nature and that the City has the authority to levy and collect the tax from Chelan County Public Utility District No. 1, and

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WHEREAS, RCW 35A.82.020 grants code cities broad general authority to impose excise taxes for regulation or revenue, unless expressly preempted, and

WHEREAS, the Legislature could have included in chapter 35A.82 RCW language precluding code cities from taxing other

Ordinance No. _____
Page 3 of 5

municipality entities under RCW 35A.82.020, but refrained from doing so, and

WHEREAS, in the 2013 Regular Session of the Legislature, SHB 1512, (codified at chapter 70.315 RCW), was enacted to clarify the duties and obligations of municipalities water purveyors and fire suppression water services, and

WHEREAS, the City is neither a water purveyor nor does it provide fire suppression water services as the City is served by a number of water, sewer and fire districts, and

WHEREAS, a municipality may contract with a water purveyor for the provision of fire suppression water facilities, services, or both, but is not obligated to do either pursuant to RCW 70.315.040, and

WHEREAS, the proprietary activities of a municipal entity, like the business activities of private parties, are subject to taxation, (see generally the *2014 AWC Cities, Tax and User Fee Survey* for tax rates for water statewide as reported and redacted to include only water and sewer rates), and

WHEREAS, the operation of a water utility serving billed customers is a proprietary function, and

WHEREAS, public utilities that pay utility tax are currently exempt from the Business and Occupation Tax under DMMC 3.84.110(1), and

WHEREAS, the City Council has determined that there will be a deficit balance in the City's General Fund and Street Fund in 2016, and

WHEREAS, the basic City service levels would be greatly reduced without an additional source of revenue, and

WHEREAS, the City Council has determined that the public interest is best served by implementing utility taxes on water utility rates, effective January 1, 2016, and

WHEREAS, on October 8, 2015, by consensus, the City Council directed staff to bring forth ordinances necessary to

Ordinance No. _____
 Page 4 of 5

enact the revenue recommendations presented in the City Manager's Budget to the City Council to be considered at the meeting on October 29, 2015, and

WHEREAS, the City Council finds that this Draft Ordinance is reasonable and necessary for the preservation of the public health and welfare; now therefore,

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

Sec.1. A new subsection (8) is added to DMMC 3.68.060 to read as follows:

Imposition of water utility tax. Effective January 1, 2016, there is hereby created and levied a tax in the amount of sixteen percent (16%) per year, chargeable monthly, against and upon the gross income derived from the water utilities operating in the City. This section shall not apply to any water utility that precludes the levying of a utility tax pursuant to a franchise or interlocal agreement. The sixteen percent (16%) tax shall be allocated as follows: twelve percent (12%) shall be allocated into the Des Moines General Fund and four percent (4%) shall be allocated to the Street Pavement Fund.

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Ordinance No. _____
Page 5 of 5

PASSED BY the City Council of the City of Des Moines this _____ day of _____, 2015 and signed in authentication thereof this _____ day of _____, 2015.

M A Y O R

APPROVED AS TO FORM:

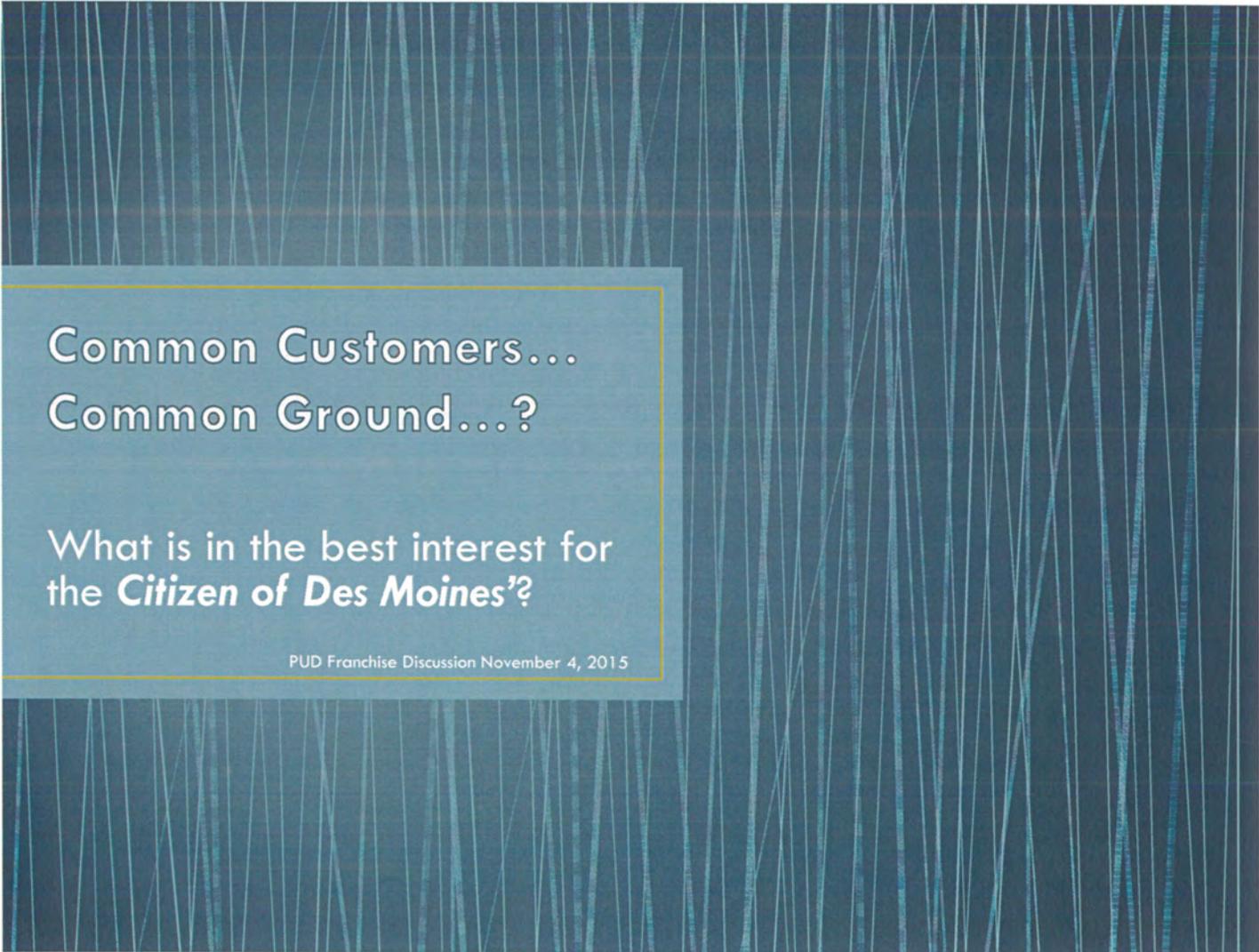
City Attorney

ATTEST:

City Clerk

Published: _____

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Common Customers...
Common Ground...?

What is in the best interest for
the *Citizen of Des Moines*'?

PUD Franchise Discussion November 4, 2015

Agenda

1. Common understanding of PUD proposals and ramifications.
2. Common understanding of City's reason for implementing Utility Tax.
3. Common understanding of City's position and options.
4. Implementation concerns and timelines.
5. Common understanding of what folks Agree on and what folks Agree to Disagree on.
6. Defining next steps and timelines.

City Citizens = PUD Customers

- Each customer is a taxpayer as well as a rate payer.
- A law suit by the PUDs results in the customer both paying to sue and paying to defend itself. *The citizen pays twice.*
- It is critical we do our best to understand the reality and constraints on both types of organizations.
- Then its time to Agree or to Agree to Disagree.

PUDs' Proposals

- Enter into a long term franchise agreement containing several key elements:
 - City reimbursement for certain ROW relocations.
 - City reduction to standard permit fees and rules.
 - City foregoes certain legal rights
 - RCW 35.13A.040 Right to assume utility
 - RCW 35.13A.060 Right to agree to let another city assume utility service inside DM city limits
 - *City of Wenatchee vs. PUD* Right to assess utility tax.
 - In exchange, PUD provides payment:
 - Annual \$500 admin fee
 - 1% initial franchise payment; max 2% annual increase; 6% total max; 25 years.
 - If court declares invalid; then PUD doesn't pay; City pays total refund and total court costs to defend the PUD for entering into the Franchise agreement.

If the City Doesn't Agree...

(Update this slide based on conversation)

- PUD files lawsuit to contest utility tax.
- Water PUD initiates billing of Fire Protection services to City.

City's Understanding of Current Law

- Current law allows City to assess utility tax
 - *Wenatchee v. Chelan County PUD (2014)*
 - *PUD can appeal to Supreme Court but has burden of proof to overturn existing law.*
- *Current law allows but does NOT REQUIRE City to enter into agreement to pay for Fire Suppression services. (RCW 70.315)*
 - *RCW 70.315.030 Allows water customers to pay fire services*
 - *RCW 70.315.040 Allows but does not require cities to pay for fire services*

Why sue the City?

- *Is this approach (and cost) really in the Citizen of Des Moines' best interest given the money from the utility tax is returned to the citizen in the form of governmental service (e.g. getting the "bad guys" off the streets, providing supervised care for children and the elderly, preserving the public's investment in road infrastructure, etc.)?*
 - *Rate Payer/Tax Payer: Same person. Their money comes back to them...*
- *Neighboring cities' citizens/rate payers pay water & sewer utility tax.*
 - *Kent, Auburn, Renton, etc.*
- *PUD's can help the rate payer by implementing rate increases over time (using reserves).*
- *"Franchise payment" or "utility tax": same PUD effort to calculate and remit. Current law supports "utility tax" method.*
 - *Different utilities have different rates based on cost of service. Differing costs of service is the same reason different cities need different tax rates.*

PUD Reasons to Sue the City

(Update this slide based on conversation)

It is understandable that no one wants to pay a tax or to pay more in taxes. However costs go up for everyone; including the City. Only so many costs can be controlled over time and eventually revenues must be raised to sustain an individual, business or organization. So why would the PUD want to spend rate payer and tax payer dollars creating a law suit?

1. ?????
2. ?????

City of Des Moines' Responsibilities

- Cities' missions' are broad by nature; and also includes the PUDs' mission.
- The City is responsible for a *wide variety of services* to serve and provide for the safety, health and welfare of its citizens. Ensuring quality utility services (water, sewer, electricity, garbage, phones, etc.) are available to citizens is part of the City's mission and responsibilities.
- The City cannot charge fees for all its services. Unlike PUD's, by nature and design, cities are largely funded by taxes.
- With a limited budget, City Council is responsible for listening, evaluating and choosing a path to balance a multitude of citizen services to meet public needs.
- The City CARES. It supports low income and vulnerable citizens in many ways. It uses tax money in order to enhance our community safety net.

City of Des Moines' Responsibilities

- Similar to PUDs, the City also has a fiduciary responsibility for maintaining the public's investment in infrastructure.
 - The funding for the existing road pavement preservation program is \$50,000 per year.
 - Compare to the \$5 million (rate funded) annually spent by Highline Water PUD and \$3 million (rate funded) by Midway Sewer PUD infrastructure program.
 - The PUDs don't ask the customers how much or if they want to pay for infrastructure. They send bills and if not paid the PUD turns off water or assesses property liens to enforce payment.
- The total number of patrol officers has been cut over the years leading to lower levels of response to citizen's requests for protection resulting in citizen frustration and fear. 2008 Police Dept 64.5 FTE; 2015 Police Dept 42.8 FTE, i.e. a third fewer positions (a 33% reduction)
- A few of the other areas with cuts comparing 2008 to 2015:
 - Building division from 9 FTE to 6 FTE (33% reduction)
 - Parks maintenance from 7.45 FTE to 4.15 FTE (44% reduction)

City of Des Moines Revenue Challenges

- Property tax levies are for the most part limited to 1% increase per year. Some years have had decreases. As a point of reference, how many times in the last 15 years has the PUD found it necessary to raise rates >1%?
- PUDs have unions, but City police unions have special bargaining protection due to the unique safety aspect of their jobs. Police expenditures are about 45% of the total General Fund expenditures. There are two unions working without settled contracts right now.
- The serious financial condition of the City is not due to poor management; to the contrary, it is a tribute to the leadership and management that the City has been able to continue most essential city services despite serious, sustained, limitations on new revenues; but it has done so by consuming reserves in addition to cutting costs.
- The State Auditors (SAO) issued a finding due to continued financial deficits and depletion of city cash reserves. As recommended by SAO the City is in process of creating a long-term financial plan to address the City's financial sustainability and viability. New utility taxes are part of that solution.

The Utility Tax

- It is City Council's responsibility to the public to implement a sustainable financial plan. To maintain current levels of service and meet fiduciary responsibilities to maintain public infrastructure, a utility tax on water and sewer services is the only significant, remaining source of new revenues for the City.
- Taxes are necessary to fund services for City citizens (PUD customers). Cities implement taxes allowed by law. Other cities and the state both tax water and sewer utilities. Utility taxes are both lawful and much needed to provide the services expected by our citizens.
- While some low income households will continue to struggle paying their utility bill, many more will be able to find a way to pay the extra \$5 or \$10 per month. Or if the PUD uses the customer's reserve balance to help the customers by passing the PUD recommend increases of 1% in the first year and 2% per year thereafter then PUD customers would only need to pay \$2 or \$3 per month more instead. **The PUD Commissioner's can use the cash customers have already paid and have on hand (i.e. \$22 million Midway Sewer PUD and \$16 million Highline Water PUD) to phase in rate increases. *By contrast the City's ending reserve was only 0.6 million.***
- The City leaves PUD rate setting to the PUD. The City can not afford to have the PUDs dictate what constitutes an allowable tax rate and revenue source for the City. ***PUD customers need help the city can not offer; but the PUD can help if it so chooses.***

City Franchise Agreement

- The City can continue discussing a long term franchise agreement containing key elements such as:
 - Provide right for PUD's to operate inside City limits.
 - Provide for use of City's ROW for PUD's infrastructure so PUD's do not have to purchase costly private ROW access.
 - Provide Coordination of long term planning to minimize need to relocate utilities.
- The City is not interested in including such elements as:
 - Giving up or limiting its legal right of taxation.
 - Giving up or limiting its legal right to establish a City Utility to serve its citizens as an alternative to multiple PUDs providing services within City limits.

Lakehaven Franchise Agreement

- All the PUDs were offered agreements at the same time as Lakehaven PUD back in 2011. Agreements were reached with 2 of the 5 PUDS: Lakehaven Water/Sewer District and KC Water District #54. The other PUDs declined the City's offers.
- The legal landscape has changed since the Lakehaven franchise agreement was signed . Legislation over-turned court cases and helped define and clarify rights and obligations of both utilities and cities. While the City is contractually obligated to Lakehaven PUD under the former rules; it is free to choose a new path now.

Utility Tax – Separate from a Franchise Agreement

- Assess utility tax and rate based on 2016 Operating and Capital Budgets' public process. Weigh public's input (and sometimes conflicting desires) regarding levels of service, fiduciary infrastructure responsibilities and desire to limit tax increases.
- Assist PUD's in implementing the new utility tax:
 - Clarify and discuss definitions of legally "taxable" income.
 - Discuss implementation challenges and provide reasonable time to create tax collection/remittance process.
 - Consider providing technical implementation assistance in billing code design, long term rate setting and technology.

City Response to PUD Lawsuit – #1 Join with Other Cities

- If a wasteful and costly lawsuit is filed to argue with existing law at both ratepayer and taxpayer expense, it indicates the PUD (which covers multiple cities) is no longer interested in what is best for City of Des Moines citizens.
- The right to implement a utility tax affects all cities. Thus recommend to City Council the City form a coalition with other cities to defend the lawsuit. Cities have successfully formed such legal coalitions for many reasons in the past. This would have a state-wide impact so many cities have a vested interest in the outcome.

City Response to PUD Lawsuit–

#2. Assume PUDs inside City limits

- In addition to defending the law suit the City can also consider using its legal right at the appropriate time to create a combined City of Des Moines Utility. Growth Management law encourages the elimination of Special Districts.
 - Stronger City Customer focus, identity and accountability.
 - **Des Moines Citizens, Des Moines Customers.** PUDs' focus is on its own mission rather than what is best for the citizens of eight different, individual cities/communities served.
 - Example – Filing a costly, wasteful lawsuit in an attempt to overturn existing law.
 - Example - PUDs are trying to force different cities to one franchise rate regardless the different community needs and desires.
 - Example - PUDs are threatening undo customer hardship by telling customers they will include the full utility tax in one year rather than helping customers by using the multimillion dollar, unrestricted cash already paid by those customers to cushion and the spread impact over several years. PUDs used “shock” rather than customer “best interest” approach.

Response to PUD Lawsuit # 2 (continued)

- Conduct rate study to provide residents with 6 year rate plan; 3 year rate guarantee (transparency).
- Provides city operating efficiencies.
 - Central Customer Service unit. Combine various city billings e.g. water, sewer, business license, alarm permits, etc.
- Provides better public communication at no additional cost.
 - Newsletter/updates along with utility bill. No extra postage.

Summary of City's Position

- Utility tax is considered the legally appropriate and preferred format to raise revenues that benefit all citizens. Franchise agreements are for a different purpose.
- The City's budget discussions and citizen participation is considered the appropriate method to accomplish the very difficult and controversial task of determining the level of citizen taxation (i.e. tax rate). Entering into a Franchise agreement to accept a taxation rate set by the PUDs, under threat of penalty of a lawsuit by the PUDs, is not considered an acceptable, open, political process.
- A lawsuit by the PUD's to attempt to overturn existing law would be a terrible waste of taxpayer and ratepayer money.
- Rather than a lawsuit, the PUD and the City should work together to mitigate the impact on citizens. The city could consider lowering the initial tax rate and the PUD could consider passing through a max of 6% rate increase.

Agree and Agree to Disagree...

- Agree:

- 1

- 2

- 3

- Agree to Disagree:

- 1

- 2

Next Steps and Timelines

- Report back to City Council Nov 5? Nov 12?
- Next meeting? Agenda?

MRSC

Water Utilities and Fire Hydrants: Legislative Update

On this Page Hide

May 1, 2013 by FCS GROUP

Category: Fire Protection , Water Utilities , Finance Advisor

By Ed Cebon, FCS GROUP, and John W. Milne, Inslee Best Doezie & Ryder, P.S.*

The State Legislature has passed legislation (SHB 1512; SSB 5605,) that focuses on "solving" the problem created by the *Lane v. City of Seattle* decision. This act provides specific guidance and options for water utilities on how to legally recover fire protection costs from retail customers and governments.

Background

In *Lane v. City of Seattle*, the state Supreme Court determined that public fire protection was a governmental service that could not be recovered through water rates. The decision also validated alternate cost recovery consisting of charging general purpose governments for this public service based on their mandate for such service through land use regulation. The decision did not clarify how this would work in situations differing from the considered case.

In a subsequent decision, *City of Tacoma v. City of Bonney Lake, et al*, the Supreme Court provided further guidance regarding circumstances when such cost responsibility could or could not be shifted to those general governments, particularly as related to franchise agreements. This decision also fell short of resolving the matter and created apparent inconsistencies in the "rules of the road."

The New Law

This current legislation intends to create a framework for recovering public fire protection costs, aka fire hydrant costs, and provide options for local governments to adapt to specific circumstances.

Specific features of the act include:

1. Water utilities are now (arguably once again) authorized to recover public fire protection costs from rates through traditional cost-of-service allocation concepts. Ratepayers can be charged for this service.
2. Water utilities are also authorized to contract with general governments to provide fire protection and are authorized (but not required) to recover related costs through such agreements.
3. Liability protection for water utilities providing public fire protection, which has been recognized through prior court cases, is clearly established and affirmed for both general and special purpose governments; further, water utilities which are not municipal corporations are given liability protection if their water system plan includes reference to hydrant maintenance measures.

What This Means for Utilities and General Purpose Governments

What this means looking forward can be summarized as follows:

1. **The status quo is just fine** - Whether currently in rates, interfund or intergovernmental charges, recovery of public fire protection costs can continue. There may be some appropriate enabling steps, if not already in place, that would be appropriate and prudent. For example, a third party general government could only be charged via an executed agreement providing for such compensation.
2. **Changing your approach is also just fine** - If you made changes in response to one or both decisions, you can go back to your prior rate-based approach if you so desire. Similarly, if you wish to move forward with agreements that shift your cost recovery to general governmental sources, you remain free (but not compelled) to do so.
3. **Take care** - Whether action or inaction is chosen, this remains a visible and potential volatile topic. Careful decision-making is advised, with adequate attention to rate and legal analysis to support the decisions and outcomes chosen.
4. **Other things to add to the list** - Make sure that future water system plans address hydrant maintenance. Recognize that billing general governments requires an agreement that defines service and compensation.
5. **One foot in** - Finally, recognize that partial or mixed approaches may warrant extra attention or care as it relates to water rates and how costs are recovered from customers. For example, rates could, and perhaps should, appropriately differ depending on whether public fire protection costs are being separately recovered through general government charges. There are several ways that this differential could be reflected and enacted.

Chapter 70.315 RCW

WATER PURVEYORS — FIRE SUPPRESSION WATER FACILITIES

Chapter Listing

RCW Sections

- 70.315.010 Findings and declaration of purpose.
- 70.315.020 Definitions.
- 70.315.030 Cost allocation and recovery.
- 70.315.040 Contracts to provide for facilities and services.
- 70.315.050 Payment by counties.
- 70.315.060 Liability protection for fire suppression water facilities and services.
- 70.315.900 Liberal construction.
- 70.315.901 Powers conferred by chapter are supplemental.
- 70.315.902 Ratification of prior acts.

70.315.010

Findings and declaration of purpose.

(1) The legislature finds that historically governmental and nongovernmental water purveyors have played two key public service roles: Providing safe drinking water and providing water for fire protection. This dual function approach is a deeply embedded and state-regulated feature of water system planning, engineering, operation, and maintenance. This dual function enables purveyors to provide these critical public services in a cost-effective way that protects public health and safety, promotes economic development, and supports appropriate land use planning.

(2) The legislature finds that the provision of integrated, dual function water facilities and services benefits all customers of a purveyor, similar to other benefits provided to water system customers in response to regulation regarding safe drinking water such as treatment and water quality monitoring.

(3) The legislature finds that water purveyors plan, construct, acquire, operate, and maintain fire suppression water facilities in response to regulatory requirements, including without limitation the public water system coordination act, RCW 70.116.080, the design of public water systems and water system operations requirements, chapter 246-290 WAC, Parts 3 and 5, the state building code, chapter 19.27 RCW, and the international fire code. The availability of infrastructure and water to fight fires allows for the development and habitability of property, increases property values, and benefits customers and property through lower casualty insurance rates.

(4) The legislature finds that recent Washington supreme court decisions, including *Lane v.*

City of Seattle, 164 Wn.2d 875 (2008), and *City of Tacoma v. City of Bonney Lake, et al.*, 173 Wn.2d 584 (2012), have created uncertainty and confusion as to the role, responsibilities, cost allocation, and recovery authority of water purveyors. If left unresolved, the absence of legal clarity will adversely affect the availability and condition of fire suppression infrastructure necessary to protect life and property.

(5) It is the legislature's intent to determine appropriate methods of organizing public services and the authority of water purveyors with respect to critical public services. The legislature further intends this chapter to clarify the authority of water purveyors to provide fire suppression water facilities and services and to recover the costs for those facilities and services. The legislature also intends to provide liability protections appropriate for water purveyors engaged in this vital public service.

[2013 c 127 § 1.]

70.315.020

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Fire suppression water facilities" means water supply transmission and distribution facilities, interties, pipes, valves, control systems, lines, storage, pumps, fire hydrants, and other facilities, or any part thereof, used or usable for the delivery of water for fire suppression purposes.

(2) "Fire suppression water services" or "services" means operation and maintenance of fire suppression water facilities and the delivery of water for fire suppression purposes.

(3) "Municipal corporation" means any city, town, county, water-sewer district, port district, public utility district, irrigation district, and any other municipal corporation, quasi-municipal corporation, or political subdivision of the state.

(4) "Purveyor" has the same meaning as set forth in RCW 70.116.030(4).

[2013 c 127 § 2.]

70.315.030

Cost allocation and recovery.

A purveyor may allocate and recover the costs of fire suppression water facilities and services from all customers as costs of complying with state laws and regulations, or from customers based on service to, benefits conferred upon, and burdens and impacts caused by various classes of customers, or both.

[2013 c 127 § 3.]

70.315.040

Contracts to provide for facilities and services.

A city, town, or county may contract with purveyors for the provision of fire suppression water facilities, services, or both. The contract may take the form of a franchise agreement, an interlocal agreement pursuant to chapter 39.34 RCW, or an agreement under other contracting authority, and may provide for funding or cost recovery of fire suppression water facilities, services, or both, as the parties may agree.

[2013 c 127 § 4.]

70.315.050

Payment by counties.

A county is not required to pay for fire suppression water facilities or services except: (1) As a customer of a purveyor; (2) in areas where a county is acting as a purveyor; or (3) where a county has agreed to do so consistent with RCW 70.315.040.

[2013 c 127 § 5.]

70.315.060

Liability protection for fire suppression water facilities and services.

(1) A purveyor that is a municipal corporation is not liable for any damages that arise out of a fire event and relate to the operation, maintenance, and provision of fire suppression water facilities and services that are located within or outside its corporate boundaries.

(2) A purveyor that is not a municipal corporation is not liable for any damages that arise out of a fire event and relate to the operation, maintenance, and provision of fire suppression water facilities and services if the purveyor has a description of fire hydrant maintenance

measures. The description of fire hydrant maintenance measures must be kept on file by the water purveyor and be available to the public, and may be included within the purveyor's most recently approved water system plan or small water system management program.

(3) Consistent with RCW 36.55.060, with respect to counties and notwithstanding the provisions of subsections (1) and (2) of this section, agreements or franchises may, as the parties mutually agree, include indemnification, hold harmless, or other risk management provisions under which purveyors indemnify and hold harmless cities, towns, and counties against damages arising from fire suppression activities during fire events. Such provisions are unaffected by subsections (1) and (2) of this section.

[2013 c 127 § 6.]

70.315.900

Liberal construction.

This chapter is exempted from the rule of strict construction and must be liberally construed to give full effect to the objectives and purposes for which it was enacted.

[2013 c 127 § 7.]

70.315.901

Powers conferred by chapter are supplemental.

(1) The powers and authority conferred by this chapter are supplemental to powers and authority conferred by other law, and nothing contained in this chapter may be construed as limiting any other powers or authority of any municipal corporation or other entity under applicable law.

(2) As to water companies that are regulated by the utilities and transportation commission under Title 80 RCW, nothing in this chapter is intended to change or limit the authority or jurisdiction of the utilities and transportation commission.

[2013 c 127 § 8.]

70.315.902

Ratification of prior acts.

To the extent that they provide for or address funding, cost allocation, and recovery of fire suppression water facilities and services, all ordinances, resolutions, and contracts adopted, entered, implemented, or performed prior to July 28, 2013, are hereby validated, ratified, and confirmed. This chapter must not affect or impair any ordinance, resolution, or contract lawfully entered into prior to July 28, 2013.

[2013 c 127 § 9.]

Chapter 3.68 UTILITY OCCUPATION TAX

Sections

- 3.68.010 Exercise of license revenue power.
- 3.68.020 Intent and construction.
- 3.68.030 Utility occupation tax.
- 3.68.040 Definitions.
- 3.68.050 Utility occupation license.
- 3.68.060 Occupations subject to tax – Amount.
- 3.68.070 Exemption.
- 3.68.080 License tax year.
- 3.68.090 Exceptions and deductions.
- 3.68.100 Monthly installments.
- 3.68.110 Taxpayer's records.
- 3.68.120 Applications and returns confidential.
- 3.68.130 Failure to make returns or to pay the tax in full.
- 3.68.140 Penalty for delinquent payment.
- 3.68.150 Overpayment of tax.
- 3.68.160 Noncompliance – Penalty.
- 3.68.170 Appeal to hearing examiner.
- 3.68.180 Finance director to make rules.
- 3.68.190 False returns – Penalty.

3.68.010 Exercise of license revenue power.

The provisions of this chapter shall be deemed an exercise of the power of the city to license for revenue. [Ord. 1144 § 63(11), 1995; Ord. 916 § 1, 1991. Formerly 3.61.010.]

3.68.020 Intent and construction.

It is the intent of this chapter that the tax imposed be applied to the widest scope of activities of such businesses as is permitted under state and federal law, and the chapter shall be so construed. [Ord. 1144 § 63(11), 1995; Ord. 916 § 2, 1991. Formerly 3.61.020.]

3.68.030 Utility occupation tax.

The business and occupation tax provided for in this chapter shall be known as the "utility occupation tax." [Ord. 1144 § 63(11), 1995; Ord. 916 § 3, 1991. Formerly 3.61.030.]

3.68.040 Definitions.

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

(2) "Cellular telephone service" is a two-way voice and data telephone/communications system based in whole or substantially in part on wireless radio communications and which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular

mobile service. The definition of cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes a purpose similar to cellular mobile service.

(3) *Repealed by Ord. 1144.*

(4) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, excluding receipts or proceeds from the use or sale of tangible property and real property or any interest therein, proceeds from the sale of notes, bonds, mortgages, or other evidence of indebtedness, or stock and the like, receipts from rentals and the operations incidental to the performance of the particular public service or transportation business, and with a deduction on the amount of credit losses and uncollectibles actually sustained. [Ord. 1144 § 63(11), 1995; Ord. 1118 § 1, 1995; Ord. 916 § 4, 1991. Formerly 3.61.040.]

3.68.050 Utility occupation license.

No person shall engage in or carry on a business, occupation, or act or privilege for which DMMC 3.68.060 imposes a tax without first having obtained, and being the holder of a license known as a "utility occupation license." Each person shall promptly apply to the finance director for a license upon the form the finance director shall prepare and provide, giving such information as the finance director shall determine reasonably necessary to enable the finance director to administer and enforce this chapter; and upon acceptance of such application, the finance director shall thereupon issue such a license to the applicant. A utility occupation license is personal and nontransferable. [Ord. 1144 § 63 (11), 1995; Ord. 993 § 5, 1992; Ord. 916 § 5, 1991. Formerly 3.61.050.]

3.68.060 Occupations subject to tax – Amount.

There is levied upon, and shall be collected from a person because of certain business activities engaged in or carried on in the City, license fees or occupation taxes in the amount to be determined by the application of rates given against gross income as follows:

(1) Upon a person engaged in or carrying on the business of selling or furnishing electric energy, a fee or tax equal to six percent of the total gross income from such business in the City during the period for which the license fee or tax is due;

(2) Upon a person engaged in or carrying on the business of selling, furnishing, or transmitting natural gas for domestic, business, or industrial consumption, a fee or tax equal to six percent of the total gross income from such business in the City during the period for which the license fee or tax is due;

(3) Upon a person engaged in or carrying on the business of selling or furnishing telephone service, a fee or tax equal to six percent of the total gross income from such business in the City during the period for which a license or tax is due;

(4) Upon a person engaged in or carrying on the business of solid waste collection, a fee or tax equal to eight percent of the total gross income from such business in the City during the period for which the license fee or tax is due.

(a) Sunset Provision. Unless renewed by City Council action, Ord. No. 1610 shall automatically expire and terminate five years after its effective date;

(5) Upon a person engaged in or carrying on the business of transmitting television or audio services by cable or wire, a fee or tax equal to eight percent of the total gross income from such business in the City during the period for which the fee or tax is due.

(a) Sunset Provision. Unless renewed by City Council action, Ord. No. 1609 shall automatically expire and terminate five years after its effective date;

(6) Upon a person engaged in or carrying on the business of selling or furnishing cellular telephone service, a fee or tax equal to six percent of the total gross income from such business in the City during the period for which a license or tax is due, subject to the following additions:

(a) Service Address. Payments by a customer for the telephone service from telephones without a fixed location shall be allocated among taxing jurisdictions to the location of the customer's principal service address during the period for which the tax applies.

(b) Presumption. There is a presumption that the service address a customer supplies to the taxpayer is current and accurate, unless the taxpayer has actual knowledge to the contrary.

(c) Roaming Phones. When the service is provided while a subscriber is roaming outside the subscriber's normal cellular network area, the gross income shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or to the location of the main cellular switching office that switched the call.

(d) Dispute Resolution. If there is a dispute between or among the City and another city or cities as to the service address of a customer who is receiving cellular telephone services and the dispute is not resolved by negotiation among the parties, then the dispute shall be resolved by the City and the other city or cities by submitting the issue for settlement to the Association of Washington Cities (AWC). Once taxes on the disputed revenues have been paid to one of the contesting cities, the cellular telephone service company shall have no further liability with respect to additional taxes, penalties, or interest on the disputed revenues so long as it promptly changes its billing records for future revenues to comport with the settlement facilitated by AWC. [Ord. 1610 §§ 1, 2, 2014; Ord. 1609 §§ 1, 2, 2014; Ord. 1249 § 1, 2000; Ord. 1144 § 63(11), 1995; Ord. 1118 § 2, 1995; Ord. 1023 § 1, 1993. Prior: Ord. 1005 §§ 1, 2, 1993; Ord. 1004 § 1, 1993; Ord. 916 § 6, 1991. Formerly 3.61.060.]

3.68.070 Exemption.

The tax levied in this chapter is in lieu of an excise, privilege, or occupational tax under this code with respect to activities specifically within the provisions of this chapter. Nothing in this chapter shall be construed to exempt persons taxable under the provisions of this chapter from tax under this code with respect to activities other than those specifically within the provisions of this chapter. [Ord. 1144 § 63(11), 1995; Ord. 916 § 7, 1991. Formerly 3.61.070.]

3.68.080 License tax year.

All utility occupation licenses and the fee for the tax therefor shall be for the tax year for which issued and shall expire at the end of the tax year. The tax year shall commence January 1st and shall end on December 31st. [Ord. 1144 § 63(11), 1995; Ord. 916 § 8, 1991. Formerly 3.61.080.]

3.68.090 Exceptions and deductions.

There is excepted and deducted from the total gross income upon which the license fee or tax is computed, the following:

(1) So much of the total gross income as is derived from business which the city is prohibited from taxing under the Constitution or laws of the United States, and the constitution or laws of any state; and

(2) The utility occupations tax which is levied pursuant to DMMC 3.68.060. [Ord. 1144 § 63(11), 1995; Ord. 974 § 2, 1992; Ord. 916 § 9, 1991. Formerly 3.61.090.]

3.68.100 Monthly installments.

The tax imposed by DMMC 3.68.060 shall be due and payable in monthly installments, and remittance therefor shall be made on or before the last day of the month following the end of the monthly period in which the tax is accrued. On or before said due date, the taxpayer shall file with the finance director a written return upon such form and setting forth such information as the finance director shall reasonably require, together with the payment of the amount. [Ord. 1144 § 63(11), 1995; Ord. 916 § 10, 1991. Formerly 3.61.100.]

3.68.110 Taxpayer's records.

Each taxpayer shall keep records reflecting the amount of the taxpayer's gross income on sales and services within the city, and such records shall be open at all reasonable times to the inspection of the finance director, or the finance director's duly authorized subordinates for verification of said tax returns or for the filing of the tax of a taxpayer who fails to make such return. [Ord. 1144 § 63(11), 1995; Ord. 916 § 11, 1991. Formerly 3.61.110.]

3.68.120 Applications and returns confidential.

The applications, statements, or returns made to the finance director pursuant to this chapter shall not be made public, nor shall they be subject to the inspection of a person except the city manager, city attorney, finance director, or authorized agent and to members of the city council; and it is unlawful for a person to make public or to inform any other person as to the contents of or any information contained in or to permit inspection of an application or return; provided, however, that the foregoing shall not be construed to prohibit the finance director from making known or revealing facts or information contained in a return to a taxpayer or disclosed in an investigation or examination of the taxpayer's books and records to the State Department of Revenue, for official purposes, but only if the statutes of the state grant substantially similar privileges to the proper officers of the city. [Ord. 1144 § 63(11), 1995; Ord. 916 § 12, 1991. Formerly 3.61.120.]

3.68.130 Failure to make returns or to pay the tax in full.

If a taxpayer fails, neglects, or refuses to make his return as and when required in this chapter the finance director is authorized to determine the amount of the tax payable, and by mail to notify such taxpayer of the amount so determined. The amount so fixed shall thereupon be the tax and be immediately due and payable, together with penalty and interest. Delinquent taxes, including any penalty, are subject to an interest charge of 12 percent per year on the unpaid balance from the date the taxes became due as provided in DMMC 3.68.100. [Ord. 1144 § 63(11), 1995; Ord. 916 § 13, 1991. Formerly 3.61.130.]

3.68.140 Penalty for delinquent payment.

If a person subject to this tax fails to pay any tax required by this chapter within 15 days after the due date thereof, there shall be added to such tax a penalty of 10 percent of the amount of such tax, and any tax due under this chapter that is unpaid and all penalties thereon shall constitute a debt to the city and may be collected by court proceedings, which remedy shall be in addition to all other remedies. [Ord. 1144 § 63(11), 1995; Ord. 916 § 14, 1991. Formerly 3.61.140.]

3.68.150 Overpayment of tax.

Money paid to the city through error, or otherwise not in payment of the tax imposed by this chapter, or in excess of such tax, shall, upon the request of the taxpayer, be credited against any tax due or to become due from such taxpayer hereunder, or, upon the taxpayer ceasing to do business in the city, be refunded to the taxpayer. [Ord. 1144 § 63(11), 1995; Ord. 916 § 15, 1991. Formerly 3.61.150.]

3.68.160 Noncompliance – Penalty.

(1) No person subject to this chapter shall fail or refuse to apply for a utility occupation license or to make tax returns or to pay tax when due, or to make a false statement or representation in or in connection with any such application for a utility occupation license or tax return, or to otherwise violate or refuse to comply with this chapter.

(2) A violation of or failure to comply with this section is a class 1 civil infraction.

(3) Each day upon which a violation occurs constitutes a separate violation. [Ord. 1144 § 63(11), 1995; Ord. 1009 § 31, 1993; Ord. 916 § 16, 1991. Formerly 3.61.160.]

3.68.170 Appeal to hearing examiner.

A taxpayer aggrieved by the amount of the fee or tax determined by the finance director to be due under the provisions of this chapter may appeal such determination to the hearing examiner in accordance with the provisions of the hearing examiner code. [Ord. 1144 § 63(11), 1995; Ord. 916 § 17, 1991. Formerly 3.61.170.]

3.68.180 Finance director to make rules.

The finance director, under the direction of the city manager, shall have the power, and it shall be the duty of the finance director, from time to time, to adopt, publish, and enforce rules and regulations not inconsistent with this chapter or with the law for the purpose of carrying out the provisions thereof, and it is unlawful and a criminal offense to violate or fail to comply with such rule or regulation. [Ord. 1144 § 63(11), 1995; Ord. 916 § 18, 1991. Formerly 3.61.180.]

3.68.190 False returns – Penalty.

(1) No person subject to this chapter shall fail or refuse to make application or return for a license or to pay the fee or tax or installment thereof when due, or for a person to make a false or fraudulent application or return or a false statement or representation in, or in connection with such application or return, or to aid or abet another in an attempt to evade payment of the fee or tax, or any part thereof, or to testify falsely upon an investigation of the correctness of a return upon the hearing of an appeal, or in any manner hinder or delay the city or its officers in carrying out the provisions of this chapter.

(2) A violation of or failure to comply with this section is a class 1 civil infraction. [Ord. 1144 § 63(11), 1995; Ord. 1009 § 32, 1993; Ord. 916 § 19, 1991. Formerly 3.61.190.]

**The Des Moines Municipal Code is current through
Ordinance 1618-A, passed March 12, 2015.**

Disclaimer: The City Clerk's Office has the official version of the Des Moines Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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CITY ATTORNEY'S FIRST DRAFT 10/21/2015

DRAFT ORDINANCE NO. 15-183

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON adopting the final operating and capital budgets for the City of Des Moines, Washington, for the fiscal year ending December 31, ~~2015~~2016, in summary form, ratifying and confirming revenues and expenditures previously implemented for fiscal year ~~2014~~2015, as such revenues and expenditures form the basis for development of the budget for fiscal year ~~2015~~2016, approving revenues and expenditures for fiscal year ~~2015~~2016, and temporarily suspending the effect of any ordinance, code provision or other City requirement with which the fund adjustments and transfers proposed by the City Manager for the ~~2014-2015~~ budget might be inconsistent.

WHEREAS, the City Manager for the City of Des Moines has prepared and submitted ~~a~~the preliminary operating and capital budgets for the fiscal year ending December 31, ~~2015-2016~~ to the City Council and has filed ~~this~~these budgets with the ~~Finance Director~~City Clerk, and

WHEREAS, the City Council finds that the City Manager's proposed budgets for fiscal year ~~2015-2016~~ reflects revenues and expenditures that are intended to ensure provision of vital municipal services at acceptable levels, and

WHEREAS, the City Council finds that the City Manager's proposed operating and capital budgets for fiscal year ~~2015-2016~~ appropriately relies upon anticipated year-end balances derived from revenues and expenditures previously approved and authorized by the City Council as part of the City's budget for fiscal year ~~2014~~2015, and

WHEREAS, the City Council finds that the fund adjustments and transfers proposed by the City Manager for fiscal year ~~2014~~2015 are necessary and in the public's interest, and

WHEREAS, by motion regularly passed, the Des Moines City Council scheduled ~~a~~the final public hearing for _____, November 29, 20142015, to take public comment with respect to the proposed ~~2015-2016~~ operating and capital budgets, and

WHEREAS, notice of the public hearing was given to the public in accordance with law and ~~a~~the final public hearing was

Ordinance No. _____
Page 2 of 4

held on the _____12th day of _____, ~~November, 2014~~2015, and all persons wishing to be heard were heard; now therefore,

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

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

Sec. 2. Based on the findings adopted herein, the City Council temporarily suspends the effect of any ordinance, code provision or other City requirement with which the fund adjustments and transfers proposed by the City Manager for the ~~2011-2016~~ budget might be inconsistent.

Sec. 3. The fund adjustments and transfers proposed by the City Manager for fiscal year ~~2014~~2015, which are incorporated in the preliminary budget for fiscal year ~~2015~~2016, are hereby authorized and approved by the City Council.

Sec. 4. Because the City's operating and capital budgets for fiscal year ~~2015-2016~~ ~~relies-rely~~ upon anticipated year-end fund balances or shortages derived from revenues collected and expenditures incurred in fiscal year ~~2014~~2015, the City Council hereby ratifies and confirms all revenues, from whatever source derived, and expenditures incurred by the City to the extent such revenues and expenditures are in accordance with the City's budget for fiscal year ~~2014-2015~~ or any subsequent budget amendments formally approved by the City Council.

Sec. 5. The City Council hereby adopts, affirms and approves any and all revenues, from whatever source derived, and expenditures as referenced in the attached operating and capital budgets for fiscal year ~~2015~~2016.

Sec. 6. The final operating budget for the City of Des Moines' fiscal year ~~2015-2016~~ is hereby adopted and approved in summary form as set forth in the attached Appendix "A", which is by this reference incorporated herein. The final capital budget for the City of Des Moines' fiscal year 2016 is hereby adopted and

ATTACHMENT 1

Ordinance No. _____
Page 3 of 4

approved in summary form as set forth in the attached Appendix "B", which is by this reference incorporated herein.

Sec 7. Severability - Construction.

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

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

Sec 8. Effective date. This Ordinance shall take effect and be in full force (5) five days after its final passage, approval and publication in accordance with law by the Des Moines City Council.

PASSED BY the City Council of the City of Des Moines this _____12th day of _____, November, 2014-2015 and signed in authentication thereof this _____ day of _____, 2014.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

ATTACHMENT 1

Ordinance No. _____
Page 4 of 4

| _____
City Clerk

Published: _____

ATTACHMENT 1

APPENDIX A 2016 OPERATING BUDGET

<u>FUND</u>	<u>EXPENDITURE</u>	<u>REVENUE</u>
GENERAL FUND.....	\$ 21,601,470	\$ 21,601,470
STREETS	1,616,821	1,616,821
STREET PAVEMENT	376,710	376,710
POLICE DRUG SEIZURE	32,434	32,434
HOTEL-MOTEL TAX	115,927	115,927
REDONDO ZONE	87,084	87,084
PBPW AUTOMATION FEE	122,000	122,000
ABATEMENT	1,992	1,992
AUTOMATED SPEED ENFORCE (ASE)	419,236	419,236
TRANSPORTATION BENEFIT DISTRICT	947,916	947,916
DEBT SERVICE	450,662	450,662
CONSTRUCTION	16,380,363	16,380,363
MARINA	6,876,993	6,876,993
SURFACE WATER MANAGEMENT	7,528,716	7,528,716
EQUIPMENT RENTAL OPERATIONS	645,971	645,971
EQUIPMENT RENTAL REPLACEMENT	2,290,084	2,290,084
FACILITY REPAIR & REPLACEMENT.....	142,537	142,537
COMPUTER OPERATIONS.....	508,299	508,299
COMPUTER REPLACEMENT.....	527,973	527,973
SELF INSURANCE.....	928,077	928,077
UNEMPLOYMENT INSURANCE.....	381,252	381,252
GRAND TOTAL ALL FUNDS	<u>\$ 61,982,517</u>	<u>\$ 61,982,517</u>

APPENDIX B – CAPITAL BUDGET

<u>Project #</u>	<u>Status</u>	<u>Project Name</u>	
101.205.016	New	Annual Sidewalk Program 2016	20,000
101.305.040	New	Annual Guardrail Plan	25,000
		TOTAL FUND 101 STREETS O&M 2016	45,000
102.102.040	New	Arterial Street Paving	455,000
		TOTAL FUND 102 ARTERIAL PAVE 2016	455,000
103.103.040	New	Residential Street Paving	362,600
		TOTAL FUND 103 RESIDENT PAVE 2016	362,600
310.056.045	New	DMBP Sun Home Lodge Rehab	605,000
310.057.045	Continuing	Field House Tennis Court	25,000
310.061.045	Continuing	DMBP Picnic Shelter/Restrooms	623,000
310.062.045	Continuing	Parkside Playground	416,129
310.065.045	Continuing	Parkside Soil Remediation	120,700
310.514.024	Continuing	Financial System Replacement	252,000
		TOTAL FUND 310 MCI CIP 2016	2,041,829
319.300.040	Continuing	24th Ave South Improvements	8,500,196
319.326.040	Continuing	SW Bridge Seismic Retrofit	4,526,604
319.332.040	Continuing	S 216th St - Segment 1A	6,885,343
319.336.040	Continuing	S 224th Street Improvements	614,615
319.345.040	Continuing	Barnes Creek Trail/SR 509 ROW	1,064,012
319.471.040	Continuing	16th Ave S Improve - Segment 5A	310,539
319.606.040	Continuing	Midway Elem SRTS	395,656
319.609.040	New	Arterial Traffic Calming	15,000
319.611.070	New	Redondo Paid Parking	150,000
319.614.040	Continuing	S 268th Street Sidewalks	585,800
319.615.040	Continuing	Redondo Board Walk Repair	4,082,870
		TOTAL FUND 319 TRANSPORT CIP 2016	27,130,635
403.451.070	New	Dock Electrical Replacement	60,000
403.453.070	New	Gate Security System	40,000
		TOTAL FUND 403 MARINA CIP 2016	100,000
451.804.040	Continuing	Barnes Creek/KDM Culvert Replacement	1,878,014
451.815.040	Continuing	24th Ave Pipeline Replace/Upgrade	262,700
451.821.040	Continuing	L Massey Creek	1,908,518
		TOTAL FUND 451 SWM CIP 2016	4,049,232
506.016.045	Continuing	Activity Center Floor Repair	20,000
506.704.040	New	Council Chambers Lighting	25,000
506.705.040	New	LED Exterior Lighting	34,000
		TOTAL FUND 506 FACILITY REPAIR CIP 2016	79,000
		TOTAL 2016 CAPITAL BUDGET	34,263,296

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:
Intergovernmental Policies and Positions

ATTACHMENTS:

1. 2015 Intergovernmental Policies and Positions
2. Association of Washington Cities 2016 Legislative Session City Priorities
3. 2016 Draft Legislative and Policy Positions for Southwest King County – Soundside Alliance and the Highline Forum

FOR AGENDA OF: November 19, 2015

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: November 13, 2015

CLEARANCES:

[] _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to allow the City Council to review and adopt the City's Intergovernmental Policies and Positions for 2016.

Suggested Motion

"I move to adopt the 2016 Intergovernmental Policies and Positions as submitted."

Alternative Motion

"I move to adopt the 2016 Intergovernmental Policies and Position as submitted and as amended by the City Council."

Background

The City Council first adopted a set of intergovernmental policies and positions in 1998, to let the public and our state and national legislative delegations know the official positions of the City of Des Moines on a variety of issues and subjects. Having adopted positions also allows staff to accurately relate the City's positions when discussing issues with other elected officials, in particular our state senators and representatives. Since these positions were first adopted, the City Council has reviewed and, if needed, amended and updated them on an annual basis. The last review of these positions was in December 2014.

Discussion

The 2016 State Legislative session will begin mid-January and the U.S. Congress will begin its work in Washington, D.C. in early January. It is, therefore, appropriate for Council to review its intergovernmental policies and positions as these legislative bodies start to meet. Attached for Council's convenience are the policies and positions adopted for 2015 (Attachment 1) to use as a starting point for discussion on what the City's 2016 policies and positions should be. Also attached for Council's information is the Association of Washington Cities' (AWC) 2016 Legislative Session City Priorities (Attachment 2), and the Soundside Alliance (formerly Southwest King County Economic Development Initiative, SKCEDI) and Highline Forum Draft 2016 Legislative and Policy Positions for Southwest King County (Attachment 3).

Alternatives

Council may chose to make changes to the current intergovernmental relations policies and positions or leave them as they are for 2015.

Financial Impact

None.

Recommendation

Staff recommends that Council, at minimum, add a position regarding liquor revenues and tax increment financing.

Concurrence

None.

City of Des Moines
2015 Intergovernmental Policies and Positions

A. State of Washington Intergovernmental Positions

1. Des Moines supports legislation that distributes a portion of the local sales taxes on a per capita basis to more fairly distribute sales taxes paid by our residents in an effort to provide services that promote social equity
2. The City supports investigations into whether or not Streamlined Sales Taxes are being properly collected and remitted to cities into which purchased items are delivered.
3. Des Moines supports added state funding to meet local and regional transportation maintenance and capacity needs and supports providing cities and counties additional councilmanic revenue authority to fund local transportation needs.
4. The City supports a state law changing the City's aquatic land lease to much less as the Marina provides access to the water through the fishing pier and the breakwater protects the base of the pier as well as the boat moorage.
5. The City supports restoring state-shared liquor revenues to 2011 levels.
6. The City supports legislative review of the Growth Management Act in an effort to restore local control.
7. Des Moines supports legislation that treats City leases of DNR aquatic lands equal to Port leases and opposes legislation that increases the City's current lease rate.
8. Des Moines supports Association of Washington Cities' (AWC) position that the State of Washington should fund and clarify new city responsibilities from the recent changes to laws regarding and taxation of marijuana.
9. Des Moines supports restoration of and additional funding for the planning acquisition, restoration and development of recreational and boating facilities and wildlife habitat.
10. The City opposes legislation which reduces the authority of cities to assume special purpose districts.
11. The City supports additional state funding for local criminal justice needs and training.
12. The City supports proposals that will help cities manage public records requests.

13. The City supports the restoration of historic levels of Public Works Trust Fund and Transportation Improvement Board funds and re-authorization of funding for the Community Economic Revitalization Board (CERB) and the Local Infrastructure Financing Tool (LIFT) program for local government infrastructure projects.
14. The City supports tort reform that reduces municipal liability and exposures.
15. The City opposes legislation that preempts local zoning control.
16. The City opposes personnel and labor relations legislation which diminishes its management rights or mandates additional unfunded programs and benefits. (This policy also applies at the federal level.) Des Moines supports legislation providing civil immunity from reference checks.
17. The City supports legislation which would abolish the 1889-1890 right-of-way vacation by operation of law statutes.
18. The City supports legislation that requires either sponsors of essential public facilities or jurisdictions in which EPF's are located to fully mitigate environmental, social, and economic impacts of the EPF in neighboring impacted jurisdictions.
19. The City opposes legislation that would reduce municipal control over city streets and rights-of-way.
20. The City supports legislation to elect Port commissioners by district.
21. The City opposes mandatory requirements for affordable housing, housing growth, and residential density targets.
22. The City supports legislation clarifying the right of cities to exercise use and zoning powers with respect to gambling activities, including the power to adopt moratoria, interim zoning controls, and prohibit gambling activities.
23. The City supports legislation to increase the local share of municipal court fines and forfeits.
24. The City supports legislation to allocate any surplus LEOFF I pension funds to local government to assist in meeting LEOFF I medical and long term care obligations.
25. The City supports legislation establishing a state process for siting an additional major airport at a location at least 15 miles from SeaTac International Airport and other essential public facilities of a regional nature.

26. The City supports legislation returning to Des Moines at no cost and with no conditions any portions of the SR-509 right-of-way south of South 216th Street not used for traffic improvements.
27. The City supports legislation and legal appeals that overrule Washington Utilities and Transportation Commission decisions regarding city rights-of-way and Puget Sound Energy. Cities should not be required to purchase private easements for utilities and rules regarding utility relocates and undergrounding should be re-enacted.
28. The City supports retention of full local authority to operate municipal courts. Additionally, the City supports the position that cities may contract with another city to provide municipal court services and opposes legislation that would erode or eliminate this ability.
29. The City supports flexible use of Real Estate Excise Taxes.
30. The City opposes any legislation which directly or indirectly aids in the expansion of Sea-Tac International Airport or the lengthening of any of its runways. (This policy also applies at regional and federal levels.)
31. The City supports State tax policies that assist cities in meeting infrastructure needs for new development in airport noise impacted areas.
32. The City supports amendments to binding interest arbitration criteria that require arbitrators to have a minimum level of experience and training, particularly in public finances, and allows arbitrators to consider a city's ability to pay when making arbitration rulings.
33. The City opposes the State's proposal to streamline the collection of B&O taxes and issuance of business licenses unless the new processes are revenue neutral to cities.
34. The City supports legislation that creates a true tax increment financing mechanism.
35. Des Moines supports full state funding for Shoreline Management Plan updates.
36. Des Moines supports continued implementation of court mandated K-12 funding reforms to provide adequate and equitable educational opportunities that prepare all students for college, career, and citizenship, support the unique demographic needs of Southwest King County and the state's long-term economic vitality, and do so without negatively impacting existing funding levels for higher education or health and human services programs.
37. The City supports legislation that allows all cities to impose a moorage fee and not incur any liability.

B. Federal Intergovernmental Positions

1. Des Moines supports passage of the Maritime Goods Movement Act (S. 1509) to keep the Ports of Seattle and Tacoma competitive with west coast Canadian ports and east coast U.S ports by changing how the Harbor Maintenance Tax is assessed and what projects/activities it funds.
2. Airport – The City supports the Port of Seattle in conducting a comprehensive Part 150 study that is in complete compliance with all applicable federal laws and regulations and encourages expansion of the noise mitigation program to provide insulation to all buildings within the noise contours that trigger such action for single-family homes. The City supports construction of a Ground Run-up Enclosure but only if the hours ground run-ups are allowed are not expanded. See Policy A.30.
3. Personnel – see Policy A.15.
4. The City supports continued Community Development Block Grant funding.
5. The City opposes legislation that nationalizes cable television and telecommunications franchising, reduces or eliminates cities' ability to manage their rights-of-way, or reduces or eliminates cities' ability to impose franchise fees and utility taxes.
6. The City supports increasing federal funding of emergency preparedness for local first responders

C. Metropolitan King County Intergovernmental Positions

1. The City supports continued King County funding of regional human service needs from current or future county revenues. Des Moines should remain a provider of local human services.
2. Any King County budget or service reductions should treat residents of incorporated and unincorporated areas equally.
3. King County Metro should provide the following transit services to Des Moines residents.
 - a. Existing routes.
 - b. Metro should restore service lost to cutbacks since 2000.
 - c. Provide looped service to the Woodmont and Redondo areas of Des Moines.
 - d. Provide Dial-a-Ride service to the citizens of Des Moines.

- e. Continue to fund the Access transit program.
 - f. Continue to fund the Senior Services Des Moines/Normandy Park Shuttle
4. If the Legislature authorizes King County Metro to councilmanically enact a revenue stream to fund transit, the Metro should restore and enhance services in Des Moines
 5. The City supports development of the Lake to Sound Trail System in south King County.
 6. The City will participate in the WRIA9 water quality improvement process. Any changes in or new sources of revenue from Des Moines residents to support projects should be subject to City Council review and authorization.
 7. The City of Des Moines supports other suburban cities in their negotiations to have King County fund infrastructure improvements in unincorporated areas prior to annexation. New unincorporated developments should provide urban level improvements such as adequate right-of-way, curb, gutter, underground utilities, etc.
 8. King County should respect previous agreements regarding regional governance.

D. Interjurisdictional and Regional Intergovernmental Positions

1. The City supports a phased approach to the extension of SR-509. Phase I should guarantee completion of the route from I-5 to SR509 and include the following features: the I-5 collector/distributor lanes, a grade-separated interchange at South 200th Street, the planned South Access with interchange to SeaTac International Airport and provisions for 24th/28th Avenues to continue uninterrupted beneath or over SR-509.
2. The City supports a light rail alignment on the State Route 509 alignment and the west margin of Interstate 5 as the light rail corridor through Pacific Ridge.
3. Des Moines supports clear, transparent, planning efforts on the part of Sound Transit that create positive, cooperative relationships and result in all stakeholders having in depth knowledge of all potential Sound Transit plans, studies, and projects such that they can provide Sound Transit with timely and thoughtful input.
4. The City supports construction of a bridge over I-5 in the vicinity of South 240th Street.

5. The City supports completion of the higher speed south access route from the SR-509 extension to the south end of the airport, to be funded by the Port of Seattle.
6. Des Moines supports the development and implementation of a comprehensive regional and state Emergency Management, Response, and Communication System.
7. The City supports the construction of the 28th-24th arterial as a separate business access roadway and opposes any interim use of this route for airport south access.
8. The City supports straightening the Kent-Des Moines boundary on Highway 99 south of Kent-Des Moines Road so that Highway 99 would be the dividing boundary between the two cities.
9. The City generally supports local, state, and regional efforts to proactively improve salmon habitat to avoid imposition of more restrictive and less flexible federal standards and efforts to continually improve and upgrade surface water capital facilities.
10. The City supports and encourages local water districts to engage in regional and local efforts to ensure adequate future water through conservation and development of new supplies.
11. The City supports retention of local control over its roads.
12. The City supports interlocal agreements with its neighboring cities to coordinate the collection of traffic impact fees and imposition of appropriate environmental mitigation for development projects near our respective boundaries.
13. The City supports continued coordination with utility and other special districts to plan for capital improvements within the City limits.
14. The City opposes any proposal extending Kent's cross-valley connector (South 228th Street) any further west than the south bound I-5/SR 509 proposed right-of-way.

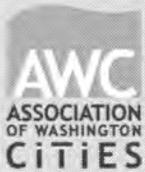
General Policies

1. Any new, law, regulation, or requirement from the county, state, or federal levels should be matched with ongoing secure sources of revenue sufficient to fund the mandate.

2. Decisions affecting Des Moines are best made at the local level. Therefore, county, state and federal legislation or mandates should not erode or curtail local authority.
3. The City opposes any federal, state or regional actions which reduce the fiscal capacity of the City to provide services to its citizens.

Adopted by the
Des Moines City Council
At an open public meeting
January 2, 2014

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2016 Legislative Session

City Priorities

Washington's 281 cities and towns are where most residents live, learn, work, and play. Working together, we need to make a concerted and assertive effort to ensure every legislator knows that the state is only as strong as its cities and towns.

Infrastructure

Halt the diversion from critical infrastructure programs to help cities grow and prosper

City infrastructure systems are a critical part of a larger network that serves and benefits the entire state. Diversion from programs that support basic local infrastructure means that communities cannot affordably maintain and secure new infrastructure. We need to reboot, and potentially reformulate this partnership. The state's abandonment of these programs cannot be the only option.

Fiscal Sustainability

Ensure sufficient and flexible revenue for essential city services

The current method of funding city services is fundamentally broken. Many available revenue options are either constricted, restricted, or unpredictable. Cities need stable revenue streams to provide essential services such as public safety, infrastructure, and environmental protection to our growing population.

Emergency Responsiveness

Help cities prepare for and address impacts of natural disasters and other emergencies

As a result of recent experiences with devastating wildfires, landslides, and other emergencies, cities need better ways to address emergency management. Examples include greater ability to coordinate response and enhance communication in emergencies, and the authority to ban fireworks sales and use during dangerous conditions.

Public Records

Strengthen the Public Records Act in response to changing technology and burdensome requests

Cities support open and transparent government and continue to seek the best ways to meet this commitment. Unfortunately, there are a growing number of requestors who monopolize resources with broad, voluminous, commercially-driven, or retaliatory requests that do not provide a public benefit proportionate to the taxpayer dollars needed to fulfill these requests. Cities need additional tools to resolve conflicts outside the courtroom and the authority to charge a reasonable fee for electronic and commercial requests. We also need to address the impact changing technology has on public records.

Human Services, Homelessness and Affordable Housing

Enhance the provision of much needed human service programs to address issues that drive increased homelessness and public safety costs

Cities believe that investment in the state's human services network is necessary. Greater access to mental health and substance abuse services is essential. Cities throughout the state are grappling with affordable housing shortages and homelessness. Together with the state, counties, and other partners, we need to develop strategies to address housing shortages and homelessness in cities of all sizes and locations.

Contact:

Dave Williams

Director of Government Relations
davew@awcnet.org • 360.753.4137

Association of Washington Cities • 1076 Franklin St SE, Olympia, WA 98501 • 1.800.562.8981 • awcnet.org



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2016 Legislative & Policy Positions for Southwest King County

The combined memberships of the Soundside Alliance and the Highline Forum endorse 11 legislative and policy positions for 2016.

The Soundside Alliance and Highline Forum strongly support:

Education:

- Targeted funding that enhances existing support for high need/high demand capacity for student success at community and technical colleges, including English language learners.
- Funding for the renovation and expansion of Highline College's Allied Health and Life Sciences Building that broaden the college's education and training opportunities and enable business and economic growth.
- Continued implementation of court mandated K-12 funding reforms to provide adequate and equitable educational opportunities that prepare all students for college, career and citizenship, support the unique demographic needs of Southwest King County and the state's long-term economic vitality, and do so without negatively impacting existing funding levels for higher education or health and human services programs.

Transportation & Infrastructure:

- Legislative efforts ensuring the full funding and timely completion of the SR 509 project.
- Restored and increased funding for infrastructure programs that provide vital resources to local jurisdictions for job creating projects: the Community Economic Revitalization Board (CERB), the Public Works Assistance Account (PWAA), the Transportation Improvement Board (TIB), the Regional Mobility Grant Program, and the Model Toxic Control Account (MTCA).
- Significant Sound Transit investments in Southwest King County through the ST 3 package to be presented to voters in November 2016, including new and expanded light rail, bus rapid transit and regional express bus service. These investments should address current needs, meet Sound Transit's adopted criteria, help meet future transportation demands, and foster economic opportunity.

General Government:

- Additional state funding for public defense services in order to meet the requirements of the Court-adopted public defense standards and caseloads.
- Reforming the Public Records Act to reduce the burden and impacts on public agencies while continuing to maintain an open and transparent government and access to public records.
- Addressing authority for code enforcement activities including but not limited to statewide bank-owned home registries and nuisance abatement reimbursement.
- Initiatives that provide state funding for mental health services, addiction services, and resources to respond to homelessness.
- Preserving mitigation funding for cities impacted by the streamlined sales tax and support for an investigative effort on whether or not Streamlined Sales Taxes are being properly collected and remitted to cities into which purchased items are delivered.

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A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Marina Moorage Rates for 2016

FOR AGENDA OF: November 19, 2015

ATTACHMENTS:

DEPT. OF ORIGIN: Marina

1. Draft Ordinance No. 15-175 with Appendix "A"

DATE SUBMITTED: November 9, 2015

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *AK*

Purpose and Recommendation

The purpose of this agenda item is to ask the Council to approve the proposed rate increases and categories for moorage in the Marina for 2016.

Motion 1a: "I move to suspend Rule 26(a) to enact Draft Ordinance No. 15-175 on first reading."

Motion 1b: " I move to enact Draft Ordinance No. 15-175 to update Marina moorage rates for 2016."

Background

The Des Moines Municipal Code requires that the City Council approve general moorage rate increases that exceed the Consumer Price Index, (CPI), posted for the month of August prior to the year the new rates will take effect. The Council changes moorage rates by ordinance and the last Marina Rate Ordinance was adopted in 2013.

Discussion

This year the staff is recommending that most of the general moorage rates be increased by the amount of the CPI specified in the last Marina Rate Ordinance, but staff is also recommending changes to some

of the moorage programs and the addition of a new program. The effect of the changes and the new rates will be to increase some rates more than the posted CPI specified in the ordinance. The recommended changes are:

- Currently the seasonal moorage rates for the 20, 24 and 28 foot moorages are applied to the length of the vessel, to the nearest foot. Because of the large number of boaters who use seasonal moorage, it has become very time consuming to try to verify the measurement of each boat here during the boating season. Staff recommends that the Seasonal Moorage Schedules be collapsed to three “lengths”, 20-23 foot, 24-27 foot and 28-31 feet and the rates for each “length” group be set at the maximum length for that group. This would eliminate the need for measuring the small boats in seasonal moorage. The staff would still have to watch for “over-length” boats in the slips but that would be much less time consuming. The pre-payment discount for the seasonal moorage rates would remain the same at 15%. The additional revenue generated by this change is estimated to be between \$5,000 & \$6,000 per year.
- Staff recommends that the pre-payment discounts for the annual rate packages for 20 and 24 foot slips be lowered from 25% to 22.5% for 2016. The increase in revenue from this change is estimated to be \$3,000 to \$4,000 per year.

Staff is recommending the following new rate plan for the 28 foot moorages:

- This year, the number of vacancies in the 28 foot moorages was the same or more than the 24 foot rates. Staff recommends creating an annual rate package for 28 foot open and covered moorages with a pre-pay discount of 10%. Staff believes that the vacancy rate in the 28 foot moorages justifies an annual rate package. The revenue impacts from this addition to the schedules are unknown. If enough tenants take advantage of the program, total revenues may even go down. The addition of annual pre-payment discounts for the 20 and 24 foot slips resulted in revenue increases so staff believes it is worth trying at this time. Staff does not have a revenue estimate for this change.

Financial Impact

All of the options that are recommended will have financial impacts, summarized below.

General rate increase of 1.8% based on CPI	\$41,000
Collapsing the rate structure for seasonals	\$ 5,000
Lowering discount rate on annual packages	\$ 3,000
New annual rate for 28 foot moorages	Unknown at this time.

Staff is also recommending some increase in other rates and tariffs that the City Manager has the authority to set and/or approve. The staff estimates that the impact of those recommended changes will be to increase revenues about \$12,500 in 2016. Staff expects that Marina revenues will increase about \$60,000 next year if all the recommended changes and additions are approved.

Conclusion & Recommendation

Staff recommends that the Council approve Draft Ordinance No. 15-175, implementing the recommended increases and changes to the Marina general moorage rates.

CITY ATTORNEY'S FIRST DRAFT 10/15/2015

DRAFT ORDINANCE NO. 15-175

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, relating to the monthly, seasonal, and annual moorage rates, amending DMMC 15.04.480 by adopting a new rate schedule and categories, adding a prepayment rate for 28 foot slips, reducing the prepayment discount for 20 and 24 foot slips, and setting an effective date of January 1, 2016.

WHEREAS, in December of 2009, the Des Moines City Council adopted Ordinance No. 1472 which set Marina Moorage Rates for 2010 and succeeding years, and

WHEREAS, Ordinance No. 1472 established Marina Moorage rates for years succeeding 2011 by indexing the 2010 rates to the Consumer Price Index, All Urban Consumers, Seattle-Tacoma-Bremerton, Washington Area, (commonly known as the "CPI"), and

WHEREAS, Ordinance No. 1503 established a discount for the prepayment of seasonal moorage subject to conditions, and

WHEREAS, the current system of calculating the prepayment discounts required Marina staff to measure the length of the vessel which has been time consuming and a strain on limited resources, and

WHEREAS, the prepayment discount can be streamlined by creating groups of moorage rates that apply to vessels within a range of lengths, and

WHEREAS, based on current revenues and demand, the Council finds that it is reasonable and appropriate to reduce the prepayment discount on 20 and 24 foot slips from 25 percent to 22.5 percent and to create a prepayment discount of 10 percent for 28 foot annual rate moorages; now therefore,

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

Sec. 1. DMMC 15.04.480 and section 6(B) of Ordinance No. 466 as amended by section 1 of Ordinance No. 812 as amended by section 1 of Ordinance No. 1172 as amended by section 1 of Ordinance No. 1250 as amended by section 1 of Ordinance No. 1294

Ordinance No. _____
Page 2 of 6

as amended by section 1 of Ordinance No. 1318 as amended by section 1 of Ordinance No. 1472 as amended by section 1 of Ordinance No. 1503 as amended by section 1 of Ordinance No. 1590 is amended to read as follows:

Marina charges and fees.

(1) Monthly moorage rates for all slips shall be established as set forth below and as reflected on Appendix "A"* of the Ordinance codified in this section which is incorporated by this reference.
~~, seasonal monthly moorage rates for the 20-, 24- and 28-foot slips, both open and covered and pre-payment rates, both annual and seasonal for the 20- and 24-foot slips and seasonal monthly moorage rates for the 20-, 24- and 28-foot slips, both open and covered, shall be established on the basis of the lineal footage of the berth, whether the berth is open or covered. Overhang shall be prorated and any portion of a foot shall be considered a full foot.—Dry shed storage rates for a boat of appropriate size and boating accessories shall be set in a standard monthly amount. Dry shed rates for storage of non-boating related items, household goods and the like, without a boat of appropriate size will be set at two times the rate for boat storage.~~

(a) The pre-payment discount for annual moorage in the 20- and 24-foot slips, both open and covered, is ~~25—~~22.5 percent, subject to the conditions set forth in the City of Des Moines Marina Rules and Regulations.

(b) The pre-payment discount for annual moorage in 28-foot slips, both open and covered, is 10 percent, subject to the conditions set forth in the City of Des Moines Marina Rules and Regulations.

(c) The pre-payment discount for seasonal moorage in the 20-, 24-, and 28-foot moorages slips, both open and covered, is set at 15 percent,

Ordinance No. _____
 Page 3 of 6

subject to the conditions set forth in the City of Des Moines Marina Rules and Regulations.

(ed) Rates for all other goods and services shall be established by executive order of the City Manager and published at the office of the marina. Charges for continuing services and moorage fees are payable in advance and due on or before the tenth day of each month.

(2) Seasonal moorage rates for 20-, 24- and 28-foot slips at the Des Moines Marina will apply for new tenants signing moorage agreements after March 31st of any year and shall continue through October 31st of that year, at which time the rates shall revert to the regular posted rate and remain at that rate as long as the tenant retains their moorage.

(3) Effective ~~February~~ January 1, 2016, annual moorage prepayment rates for 20-, ~~and 24-~~, and 28-foot slips will apply for any new or current tenant in those moorages that pays for one year's (12 months) moorage in advance. The moorage rate for annual tenants that terminate their moorage before the end of the 12-month period will be recalculated at the monthly rate before the balance, if any, is refunded.

(4) The baseline for rates for general moorage berths, seasonal rates in the 20-, 24-, and 28-foot slips, annual rates for the 20-, ~~and 24-~~, and 28-foot ~~slips moorages~~, and dry shed storage shall be as reflected on Appendix "A"* of the Ordinance codified in this section which is incorporated herein by this reference. The baseline rates contained in Appendix "A" shall take effect ~~February~~ January 1, 2016.

(5) Persons using the marina facilities shall pay in full all applicable state and federal taxes imposed by statute including the State Leasehold Excise Tax (chapter 82.29A RCW) as adopted by the

Ordinance No. _____
 Page 4 of 6

city in Ordinance No. 387, passed by the city council April 15, 1976, and codified in chapter 3.72 DMMC as presently constituted or as may be subsequently amended.

(6) Persons using the marina facilities shall pay for all electricity and other utilities or services which shall be furnished to their berth at the established rates provided by the applicable schedule of rates posted by the City.

(7) Formula to Establish Future Rates. The baseline for rates for general moorage, annual moorage, and seasonal moorage in the 20-, 24- and 28-foot slips and dry shed storage shall be the rates contained in Appendix "A"* ~~of the attached to this Ordinance and~~ codified in this section. These rates will be used to calculate total moorage due as set forth in Marina Rules ~~65.0, and 65.2 and 6.3 on February~~ January 1, 2016. On the first day of ~~February~~ January of each succeeding year, rates for ~~general~~ all moorage berths and dry shed storage shall be established by application of the Consumer Price Index, All Urban Consumers, Seattle-Tacoma-Bremerton, Washington area, for the preceding 12-month period ending August 31st, published by the U.S. Department of Labor, Bureau of Labor Statistics (hereinafter, "CPI"). Rates to be effective on ~~February~~ January 1, 2015 ~~2017~~, shall be established by multiplying the baseline rates contained in this section by the CPI percentage published for the period ending August 31, ~~2014~~ 2016, and adding the results to the baseline rate. In no event shall the amount added to the baseline rates be less than zero. Rates effective on the first day of ~~February~~ January of each succeeding year shall be established by applying the CPI in a like manner to the rates of the previous year.

*Appendix "A" attached to this Ordinance and codified in this section is on file in the City Clerk's office.

Ordinance No. _____
Page 5 of 6

NEW SECTION. Sec. 3. 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. 4. Effective date. This Ordinance shall take effect and be in full force five (5) days after its final passage by the Des Moines City Council.

PASSED BY the City Council of the City of Des Moines this _____ day of _____, 20__ and signed in authentication thereof this _____ day of _____, 20__.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

Effective Date: _____

DRAFTED:

Ordinance No. _____
Page 6 of 6

Appendix "A"

Draft Ordinance 15-175

Effective ~~February 1~~ January 1, 2014~~6~~, the following baseline rates, exclusive of any applicable tax, shall be charged for facilities and services at the Des Moines Marina:

A. General Moorage Rates

Per lineal foot per month. Total monthly moorage charges are calculated by the method described in Rule No. ~~56.2~~ and Rule No. 8.0 found in the City of Des Moines Marina - Rules and Regulations handbook.

SLIP SIZE	OPEN	COVERED
20 Foot	\$6.31 08	\$7.847.56
24 Foot	\$6.81 7.07	\$8.998.67
28 Foot	\$7.33 07	\$9.749.39
32 Foot	\$7.72 \$8.01	\$10.37 00
36 Foot	\$8.19 \$8.49	\$11.81 39
40 Foot	\$8.75 \$9.07	\$12.53 08
50 Foot	\$9.88 \$10.25	\$14.69 17
54 Foot	\$9.88 \$10.25	N/A
62 Foot	\$10.18 \$10.63	N/A

B. Seasonal Moorage Rates

~~Per lineal foot per month. Total monthly moorage charges for seasonal moorage will be as shown in the following table. are calculated by the method described in Rule No. 6.2 and Rule No. 8.0 found in the City of Des Moines Marina - Rules and Regulations handbook.~~

SLIP SIZE	OPEN	COVERED
20-23 Foot	\$215.97 8.89	\$269.56 11.10
24-27 Foot	\$282.96 9.92	\$358.29 12.57
28-31 Foot	\$324.88 9.92	\$411.37 12.57

C. Prepayment Rates

Per lineal foot per month. Total monthly annual moorage charges are calculated by the method described in Rule No. ~~65.2~~ and Rule No. ~~8.0~~ found in the City of Des Moines Marina - Rules and Regulations handbook. Prepaid seasonal rates are calculated using the Prepaid Seasonal Rates table below.

Prepaid Annual Rates - (12 month minimum)

SLIP SIZE	OPEN	COVERED
20	\$4.8956	\$6.085.57
24	\$5.4811	\$6.976.50
28	\$6.60	\$8.77

Moorage rates for tenants that terminate before the end of the 12 month minimum period will revert to the monthly rates posted in A. General Moorage Rates.

Prepaid Seasonal Rates - (5 month minimum)

SLIP SIZE	OPEN	COVERED
20-23	\$183.577.56	\$9.44\$229.13
24-27	\$240.528.43	\$10.68\$304.55
28-31	\$276.158.43	\$10.68\$349.66

Moorage rates for seasonal tenants that terminate before the end of the 5 month minimum period will revert to the monthly rates posted in B. Seasonal Moorage Rates.

D. Overhang shall be pro-rated. Any portion of a foot shall be considered a full foot.

E. The Dry Shed Storage baseline rate shall be \$200.00 per month, as of ~~February~~ January 1, 2016. The Dry Shed Storage Baseline rate for sheds used to store exclusively non-boating related items or household goods without a boat of appropriate

size shall be \$400.00 per month, as of ~~February~~ January 1,
20164. (The appropriate use for the Dry Sheds is described in
Rule 7.2 of the City of Des Moines Marina Rules and Regulations.

F. Rates for all other goods and services shall be as
established by executive order of the City Manager and published
at the office of the Des Moines Marina.

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Draft Resolution 15-191 Accepting Findings of Fact That An Emergency Existed

ATTACHMENTS:

1. Draft Resolution 15-191
2. Proclamation of Emergency
3. Emergency Design Task Order with KPG
4. Emergency Public Works Contract with Scarcella Bros.

AGENDA OF: November 19, 2015

DEPT. OF ORIGIN: Planning, Building & Public Works

DATE SUBMITTED: November 12, 2015

CLEARANCES:

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

**APPROVED BY CITY MANAGER
FOR SUBMITTAL:** [Signature]

Purpose:

The purpose of this agenda item is to seek Council approval for the waiver of competitive bidding requirements for contracts authorized by the City Manager as a result of heavy rains on October 31, 2015, as an emergency measure declared by the November 3, 2015 Proclamation of Emergency. The heavy rains caused the land mass located downhill and adjacent to the landslide repair work made on South 251st Street last year to become unstable and undermine the stormwater discharge diffuser and is threatening to undermine the retaining wall that supports the road and utilities.

Suggested Motion

Motion: "I move to adopt Draft Resolution 15-191 to allow the waiver of competitive bidding requirements for contracts authorized by the City Manager pursuant to the November 3, 2015 Proclamation of Emergency pursuant to RCW 39.04.280."

Background and Discussion:

On October 31, 2015, following heavy rains, the land mass located downhill and adjacent to the landslide repair work made on South 251st Street last year has become unstable and has undermined the stormwater discharge diffuser and is now threatening to undermine the retaining wall that supports the road and utilities.

In response a Proclamation of Emergency was issued by the City Manager on November 3, 2015 (Attachment 2), thereby waiving competitive bidding requirements and award of professional services and public works contracts for any emergency related work. The City Council was briefed on the situation at the November 5, 2015 Council meeting.

The City is contracting with KPG (Attachment 3), to provide an emergency design services to stabilize the area, extend the storm drainage outfall away from the retaining wall, to buttress the wall with rock, and to again stabilize the area for public safety. The City is also contracting with Scarsella Bros., Inc. (Attachment 4) to provide construction resources to perform emergency stabilization work as directed by KPG and the City.

Financial Impact:

At this time, costs for the initial response to the emergency total approximately \$40,000 + staff time.

Costs for the emergency repairs and subsequent permanent fix are unknown at this time. Repairs will be funded from the Storm Water Capital fund. Other planned projects may have to be delayed in order to fund this immediate priority.

Recommendation/Conclusion:

Approve the Draft Resolution

Concurrence:

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

CITY ATTORNEY'S FIRST DRAFT 11/05/2015

DRAFT RESOLUTION NO. 15-191

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, accepting findings that an emergency existed on October 31, 2015, which justified the City's entering into emergency contracts to repair and remediate the effects of heavy rains undermining the stormwater discharge diffuser and threatening to undermine the retaining wall that supports the 251st Street road and utilities; and to ratify the actions taken and the waiver of the competitive bid laws pursuant to state law and the November 3, 2015 Proclamation of Emergency.

WHEREAS, on October 31, 2015, the City experienced heavy rains resulting in a slide at the 1000 block of South 251st Street which represented a real and immediate threat to life and property, and

WHEREAS, RCW 39.04.280(1)(e) allows for the waiver of competitive bidding for contracts for emergency expenditures caused by unanticipated occurrences for the restoration to a condition of usefulness of any public property which has been damaged or destroyed or for public relief from an unanticipated emergency, and

WHEREAS, on November 3, 2015, a Proclamation of Emergency was issued by the City Manager, thereby waiving competitive bidding requirements and awards for any emergency related work, and

WHEREAS, emergency-related work included efforts to secure and stabilize the existing retaining wall, extend the storm drainage outfall away from the wall, to buttress the wall with rock, to again stabilize the surrounding environment for public safety, and

WHEREAS, the City entered into emergency professional services and public works contracts to respond to the remediation of the site and the emergency structural stabilization of South 251st Street to their previous condition prior to the storm, and

WHEREAS, The City Council was formally briefed on the situation on November 5, 2015; now therefore,

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

Resolution No. ____
Page 2 of ____

Sec. 1. The foregoing recitals are adopted as findings of fact.

Sec. 2. The City Council finds that, under these circumstances, an emergency existed as defined by RCW 39.04.280(3), justifying execution of construction contracts and professional services contracts without compliance with competitive bidding requirements of state law, including an emergency design contract with KPG for time and expense, and an emergency construction contract with Scarsella Bros., Inc. for time and expense as directed by the City and it's agent.

Sec. 3. The Des Moines City Council does hereby ratify the actions taken and the waiver of the competitive bid laws pursuant to state law and the November 3, 2015 Proclamation of Emergency.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____ day of _____, 2015 and signed in authentication thereof this ____ day of _____, 2015.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

[Type here]



PROCLAMATION OF EMERGENCY

WHEREAS, the City of Des Moines staff has reported to the City Manager that beginning on October 31, 2015, following heavy rains, the land mass located downhill and adjacent to the landslide repair work made on 251st Street last year has become unstable and has undermined the stormwater discharge diffuser and is now threatening to undermine the retaining wall that supports the road and utilities. The roadway remains open at this time, but temporary closures should be expected during construction activities. The emergency work will require significant resources to extend the storm drainage outfall away the retaining wall, to buttress the wall with rock, and to again stabilize the area for public safety, and

WHEREAS, these problems may last for a significant period of time and could cause a threat to life and property, and

WHEREAS, this constitutes an emergency as defined by the Des Moines Comprehensive Emergency Management Plan and necessitates the utilization of emergency powers granted pursuant to chapter 2.36 DMMC, and RCW 38.52.070(2); now therefore,

BE IT PROCLAIMED by the City Manager of the City of Des Moines that an emergency exists in the City of Des Moines; therefore, the Des Moines Planning, Building, and Public Works Director Management and City Departments are authorized to take emergency actions and to provide emergency services to protect the health and safety of persons and property pursuant to the City of Des Moines Comprehensive Emergency Management Plan ("Plan"), chapter 38.52 RCW, and chapter 2.36 DMMC. As directed pursuant to the Plan, each City Department is authorized to exercise the powers vested under this proclamation to enter into contracts and to incur obligations necessary to combat such victims of such disaster in the light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements.)

DATED this 3rd day of November, 2015.

CITY OF DES MOINES

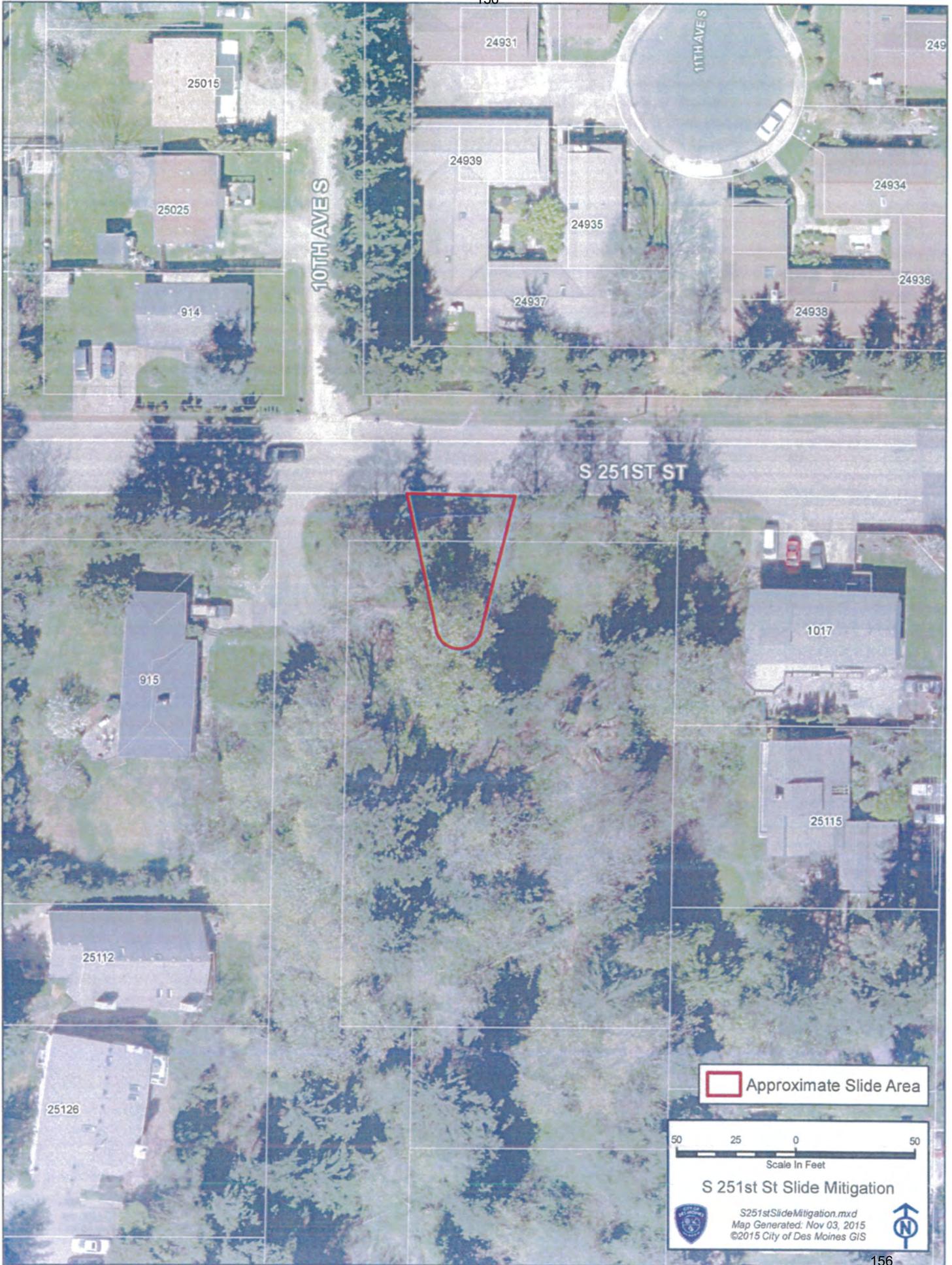


 City Manager

APPROVED AS TO FORM:



 Des Moines City Attorney





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Formal Task Assignment Document

Task Number 2014-05

The general provisions and clauses of Agreement 2014-2015 On-Call General Civil Engineering Services shall be in full force and effect for this Task Assignment

Location of Project: S 251st Street, between 10th Avenue S and 11th Avenue S

Project Title: S 251st Street Emergency Repairs

Maximum Amount Payable Per Task Assignment: Time and Expense

Completion Date: December 31, 2015

Description of Work:

S 251st Street in the vicinity of 10th Avenue S is supported on a fill embankment and MSE wall structure constructed over an historic ravine. A 36" outfall pipe and T-shaped outlet structure discharge water below and in front of the MSE wall structure and has recently caused severe erosion and sloughing. This task order is provided to assist the City with interim emergency repair measures in order to improve slope stability until final repair measures can be completed. Work will be completed on a time and materials basis as needed to assist with the following:

- Review site conditions and assist the City with obtaining an emergency HPA from WDFW.
- Work collaboratively with City and City Contractor to provide a rock outfall pad at the base of the slope and extend the outfall pipe away from the wall face. Work shall include field review, meetings, and field assistance during installation of interim measures using emergency techniques. Field support will include KPG staff with geotechnical support provided by GeoDesign as a subconsultant to KPG.
- Perform field survey of roadway, wall, slope failure, new outfall pad, and downstream channel reach to begin development of permanent repair measures. This information will be used to coordinate with the City and WDFW to arrive at a design solution that will meet HPA permit requirements. Final design and permitting will be performed under a separate task order.

Agency Project Manager Signature: _____ Date: 11.9/15

Oral Authorization Date: _____ Date: 11/5/15

Consultant Signature: [Signature] Date: 11-5-2015

Agency Approving Authority: [Signature] Date: 11/9/15

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PUBLIC WORKS CONTRACT between City of Des Moines and

Scarsella Bros., Inc

South 251st Street Slide Repair

THIS CONTRACT is made and entered into this 3rd day of November, 2015, by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Scarsella Bros., Inc organized under the laws of the State of Washington, located and doing business at P.O.Box 68697 Seattle, WA 98168-1697; Robert Scarsella (253) 872-7173 (hereinafter the "Contractor").

CONTRACT

The parties agree as follows:

I. DESCRIPTION OF WORK.

Contractor shall perform the services for the City as specifically described in Exhibit A: Invitation to Bid Documents attached hereto and incorporated herein by reference.

Following a landslide repair in 2014 on South 251st Street between 10th Ave S and 11th Ave S, the City has observed some settlement of quarry spall placement below the constructed MRE wall and HDPE storm drainage outfall. The work will include removal of organic and soil materials from the hillside, construction of a rock embankment, and extension of the existing HDPE storm drainage outfall.

The work shall be directed by the Agency or authorized engineers.

All work shall meet the requirements of the WSDOT Standard Specifications and Standard Plans 2014.

The work shall be measured and paid using Force Account per WSDOT Section 1-09.6 of the Standard Specifications.

a. Contractor represents that the services furnished under this Contract will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time such services are performed.

b. The Contractor shall provide and furnish any and all labor, materials, tools, equipment and utility and transportation services along with all miscellaneous items necessary to perform this Contract except for those items mentioned therein to be furnished by the City.

c. All work shall be accomplished in a workmanlike manner in strict conformity with the attached plans and specifications including any and all Addenda issued by the City, City Regulations and Standards, other Contract Documents hereinafter enumerated.

In addition, the work shall be in conformance with the following documents which are by reference incorporated herein and made part hereof:

- (i) the Standard Specifications of the Washington State Department of Transportation (WSDOT) (current edition);
- (ii) the American Public Works Association (APWA) (current edition);
- (iii) the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways (current edition);
- (iv) the Standard Plans for Road, Bridge and Municipal Construction (as prepared by the WSDOT/APWA current edition);
- (v) the American Water Works Association Standard (AWWA) (current edition), and;
- (vi) shall perform any changes in the work in accord with the Contract Documents.

d. Any inconsistency in the parts of the Contract and the documents referenced in section I c above shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

1. Terms and provisions of the Contract
2. Addenda,
3. Proposal Form,
4. Special Provisions, including APWA General Special Provisions, if they are included,
5. Contract Plans,
6. Amendments to the Standard Specifications,
7. WSDOT Standard Specifications for Road, Bridge and Municipal Construction,
8. Contracting Agency's Standard Plans (if any), and
9. WSDOT Standard Plans for Road, Bridge, and Municipal Construction.

II. TIME OF COMPLETION. The parties agree that work on the tasks described in Section I above and will begin immediately upon execution of this Contract. Upon the effective date of this Contract, the Contractor shall complete the work described in Section I within **5 calendar days**.

III. COMPENSATION. The City shall pay the Contractor per Force Account per WSDOT Section 1-09.9 of the Standard Specifications including applicable Washington State Sales Tax. The Contractor shall invoice the City monthly. The City shall pay to the

Contractor, as full consideration for the performance of the Contract, an amount equal to the unit and lump sum prices set forth in the bid. The Contractor will submit requests for Progress payments on a monthly basis and the City will make progress payment within 45 days after receipt of the Contractor's request until the work is complete and accepted by the City. The City's payment shall not constitute a waiver of the City's right to final inspection and acceptance of the project.

- A. Retainage. The City shall hold back a retainage in the amount of five percent (5%) of any and all payments made to contractor for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor and Industries and until settlement of any liens filed under Chapter 60.28 RCW. If Contractor plans to submit a bond in lieu of the retainage specified above, the bond must be in a form acceptable to the City and submitted within 30 days upon entering into this Contract, through a bonding company meeting standards established by the City.
- B. Defective or Unauthorized Work. The City reserves its right to withhold payment from Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Contract; and extra work and materials furnished without the City's written approval. If Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the City may complete the work by contract or otherwise, and Contractor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Contract price specified above. The City further reserves its right to deduct the cost to complete the Contract work, including any Additional Costs, from any and all amounts due or to become due the Contractor. Notwithstanding the terms of this section, the City's payment to contractor for work performed shall not be a waiver of any claims the City may have against Contractor for defective or unauthorized work.
- C. Final Payment: Waiver of Claims. THE CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CONTRACTOR'S CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY CONTRACTOR AS UNSETTLED AT THE TIME FINAL PAYMENT IS MADE AND ACCEPTED.

IV. INDEPENDENT CONTRACTOR. The parties understand and agree that Contractor is a firm skilled in matters pertaining to construction and will perform

independent functions and responsibilities in the area of its particular field of expertise. Contractor and its personnel, subcontractors, agents and assigns, shall act as independent contractors and not employees of the City. As such, they have no authority to bind the City or control employees of the City, contractors, or other entities. The City's Planning, Building and Public Works Director or his or her designated representative shall have authority to ensure that the terms of the Contract are performed in the appropriate manner.

The Contractor acknowledges that all mandatory deductions, charges and taxes imposed by any and all federal, state, and local laws and regulations shall be the sole responsibility of the Contractor. The Contractor represents and warrants that all such deductions, charges and taxes imposed by law and/or regulations upon the Contractor are, and will remain, current. If the City is assessed, liable or responsible in any manner for those deductions, charges or taxes, the Contractor agrees to indemnify and hold the City harmless from those costs, including attorney's fees.

V. TERMINATION. The City may terminate this Contract for good cause. "Good cause" shall include, without limitation, any one or more of the following events:

- A. The Contractor's refusal or failure to supply a sufficient number of properly skilled workers or proper materials for completion of the Contract work.
- B. The Contractor's failure to complete the work within the time specified in this Contract.
- C. The Contractor's failure to make full and prompt payment to subcontractors or for material or labor.
- D. The Contractor's persistent disregard of federal, state or local laws, rules or regulations.
- E. The Contractor's filing for bankruptcy or becoming adjudged bankrupt.
- F. The Contractor's breach of any portion of this Contract.

If the City terminates this Contract for good cause, the Contractor shall not receive any further money due under this Contract until the Contract work is completed. After termination, the City may take possession of all records and data within the Contractor's possession pertaining to this project which may be used by the City without restriction.

VI. LIQUIDATED DAMAGES. This section of the Contract shall apply only in the event of a delay in the completion of the work within the timeframe specified in the Contract. This being a Public Works project performed for the benefit of the public, and there being a need for the completion of the project in the time specified in the Contract, City and Contractor agree that damages for delay in the performance or completion of the work are extremely difficult to ascertain. However, City and Contractor agree that due to

the expenditure of public funds for the work specified in this Contract, and the need to provide the work for the benefit of the health, safety and welfare of the public, the failure to complete the work within the time specified in the Contract will result in loss and damage to City. City and Contractor agree that a delay will result in, but not be limited to, expense to the City in the form of salaries to City employees, the extended use of City equipment, delays in other portions of the project on which Contractor is working, increased cost to the City for the project, delays in other projects planned by City, and loss of use and inconvenience to the public.

Although difficult to quantify and ascertain, City and Contractor agree that the sum listed as liquidated damages represents a fair and reasonable forecast of the actual damage caused by a delay in the performance or completion of the work specified in the Contract. In addition, City and Contractor agree that the liquidated damages set forth below are intended to compensate the City for its loss and damage caused by delay. The liquidated damages are not intended to induce the performance of Contractor.

Contractor declares that it is familiar with liquidated damages provisions, and understands their intent and purpose. By signing this Contract, Contractor further declares that it understands the liquidated damages provision of this contract, that it is a product of negotiation, and that it is a fair estimation of the damage and loss that City will suffer in the event of delay.

City and Contractor further agree that the contractor shall not be charged with liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes.

City and Contractor agree that for each day beyond the completion date specified in the Contract that the project is not completed, the sum of **\$0** shall be deducted from the amount to be paid Contractor and shall be retained by City as damages.

In the event that the Contract is terminated by City for cause pursuant to the general conditions of the contract, this liquidated damages section shall apply, but only to the extent that the contract is delayed. In addition to liquidated damages, City shall be permitted to recover from Contractor the cost of completion of the work if the cost of completion exceeds the original sum of money agreed upon.

VII. PREVAILING WAGES. Contractor shall file a "Statement of Intent to Pay Prevailing Wages," with the State of Washington Department of Labor & Industries prior to commencing the Contract work and an Affidavit of Prevailing Wages Paid after completion of the work. The Statement of Intent to Pay Prevailing Wages," shall include Contractor's registration certificate number and the prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020, and the estimated number of workers in each classification. Contractor shall pay prevailing wages in effect on the date the bid is accepted or executed by Contractor, and comply with Chapter 39.12 of the Revised Code of Washington, as well as any other applicable prevailing wage rate provisions. The latest prevailing wage rate revision issued by the Department of Labor

and Industries must be submitted to the City by Contractor. It shall be the responsibility of Contractor to require all subcontractors to comply with Chapter 39.12 RCW and this section of the Contract.

The State of Washington prevailing wage rates applicable for this Public Works project, which is located in King County, may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>. Based on the bid submittal deadline for this project, the applicable effective date for prevailing wages for this project is 10/16/2015. A copy of the applicable prevailing wage rates are also available at the office of the Owner, located at 21650 11th Avenue South, Des Moines, WA, 98198.

VIII. HOURS OF LABOR. Contractor shall comply with the "hours of labor" requirements and limitations as set forth in Chapter 49.28 RCW. It shall be the responsibility of Contractor to require all subcontractors to comply with the provisions of Chapter 49.28 RCW and this section of the Contract. The Contractor shall pay all reasonable costs (such as over-time of crews) incurred by the City as a result of work beyond eight (8) hours per day or forty (40) hours per week. Additional hours beyond a forty (40)-hour workweek will be pro-rated against contractual workdays.

IX. COMPLIANCE WITH WAGE, HOUR, SAFETY, AND HEALTH LAWS. The Contractor shall comply with the rules and regulations of the Fair Labor Standards Act, 294 U.S.C. 201 *et seq*, the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq*, the Washington Industrial Safety and Health Act, Chapter 49.17 RCW, and any other state or federal laws applicable to wage, hours, safety, or health standards.

X. DAYS AND TIME OF WORK. Unless otherwise approved by the City, the working hours for this project will be limited to the following hours:

Monday through Friday: 7:00 a.m. to 7:00 p.m.

Saturday, Sunday and Holidays: 8:00 a.m. to 5:00 p.m.

XI. WORKERS' COMPENSATION. The Contractor shall maintain Workers' Compensation insurance in the amount and type required by law for all employees employed under this Contract who may come within the protection of Workers' Compensation Laws. In jurisdictions not providing complete Workers' Compensation protection, the Contractor shall maintain Employer's Liability Insurance in the amount, form and company satisfactory to the City for the benefit of all employees not protected by Workers' Compensation Laws.

The Contractor shall make all payments arising from the performance of this Contract due to the State of Washington pursuant to Titles 50 and 51 of the Revised Code of Washington.

Whenever any work by the Contractor under the authority of this Contract is on or about navigable waters of the United States, Workers' Compensation coverage shall be extended to include United States Longshoreman and harbor worker coverage. The Contractor shall provide the City with a copy of the necessary documentation prior to the start of any activity.

XII. CHANGES. The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Contractor determines, for any reason, that a change order is necessary, Contractor must submit a written change order request to the person listed in the notice provision section of this Contract, section XXII(C), within seven (7) calendar days of the date Contractor knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Contractor fails to require a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided in subsections A through E of Section XIII, Claims, below.

The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Contractor as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

XIII. CLAIMS. If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Contractor may file a claim as provided in this section. The Contractor shall give written notice to the City of all claims within seven (7) calendar days of the occurrence of the events giving rise to the claims, or within seven (7) calendar days of the date the Contractor knew or should have known of the facts or events giving rise to the claim, whichever occurs first. Any claim for damages, additional payment for any reason, or extension of time, whether under this Contract or otherwise, shall be conclusively deemed to have been waived by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Contract.

At a minimum, a Contractor's written claim shall include the information set forth in subsections A, items 1 through 5 below.

FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.

- A. Notice of Claim. Provide a signed written notice of claim that provides the following information:

1. The date of the Contractor's claim;
2. The nature and circumstances that caused the claim;
3. The provisions in this Contract that support the claim;
4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and
5. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

- B. Records. The Contractor shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The City shall have access to any of the Contractor's records needed for evaluating the protest.

The City will evaluate all claims, provided the procedures in this section are followed. If the City determines that a claim is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

- C. Contractor's Duty to Complete Protested Work. In spite of any claim, the Contractor shall proceed promptly to provide the goods, materials and services required by the City under this Contract.
- D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Contractor also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).
- E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Contractor completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

XIV. LIMITATION OF ACTIONS. CONTRACTOR MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS CONTRACT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR CONTRACTOR'S ABILITY TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

XV. WARRANTY. Upon acceptance of the contract work, Contractor must provide the City a warranty bond for one year in the amount of the contract value specified in Section III above and in a form acceptable to the City. In the event any defects are found within the first year, the warranty bond shall be extended for an additional year. The Contractor shall correct all defects in workmanship and materials within one (1) year from the date of the City's acceptance of the Contract work. In the event any parts are repaired or replaced, only original replacement parts shall be used—rebuilt or used parts will not be acceptable. When defects are corrected, the warranty for that portion of the work shall extend for one (1) year from the date such correction is

completed and accepted by the City. The Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.

XVI. DISCRIMINATION. In the hiring of employees for the performance of work under this Contract or any sub-contract, the Contractor, its sub-contractors, or any person acting on behalf of the Contractor or sub-contractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

XVII. INDEMNIFICATION. Contractor shall defend, indemnify and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

The City's inspection or acceptance of any of Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Contract 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 Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of this Contract.

XVIII. INSURANCE. The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors.

No Limitation. Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85 or an equivalent endorsement. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

C. Other Insurance Provisions

The Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

E. Verification of Coverage

Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing insurance of the Contractor before commencement of the work.

F. Subcontractors

The Contractor shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices.

G. Notice of Cancellation

The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.

H. Failure to Maintain Insurance

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

XIX. WORK PERFORMED AT CONTRACTOR'S RISK. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

XX. BOND - SEPARATE PAYMENT AND PERFORMANCE BONDS REQUIRED. Pursuant to Chapter 39.08 RCW, the Contractor shall, prior to the execution of the Contract, furnish both a performance bond and a payment bond to the City, both in the full amount of the bid with a surety company as surety. The purpose of the bonds is to ensure that the Contractor shall faithfully perform all the provisions of this Contract and pay all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such Contractor or subcontractors with provisions and supplies for the carrying on of such work. Such bonds shall provide that any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original Contractor. In addition, the surety company/companies providing such bonds shall agree to be bound to the laws of the State of Washington, and subjected to the jurisdiction of the State of Washington and the King County Superior Court in any proceeding to enforce the bond. This Contract shall not become effective until said bonds are supplied and approved by the Engineer and filed with the City Clerk.

In the event that the Compensation called for in Section III of this Contract is less than \$35,000.00, which sum shall be determined after the addition of applicable Washington State sales tax, the Contractor may, prior to the execution to this contract and in lieu of the above mentioned bonds, elect to have the City retain 50% of the contract amount for a period of either thirty (30) days after final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

XXI. DEBARMENT. The Contractor must certify that it, and its subcontractors, have not been and are not currently on the Federal or the Washington State Debarment List and if the Contractor or its subcontractors become listed on the Federal or State Debarment List, the City will be notified immediately.

XXII. MISCELLANEOUS PROVISIONS.

A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Contract, or to exercise any option conferred by this Contract in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law.

1. Alternative Dispute Resolution. If a dispute arises from or relates to this Contract 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 JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written Contract of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. 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.

2. Applicable Law and Jurisdiction. This Contract shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to this Contract cannot be submitted to arbitration, then it shall be commenced exclusively in the King County Superior Court or the United States District Court, Western District of Washington as appropriate. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section XVII of this Contract.

C. Written Notice. All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of the Contract, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business 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 in this Contract or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Contract by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Contract shall continue in full force and effect and no further assignment shall be made without additional written consent.

E. Modification. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and Contractor.

F. Compliance with Laws. The Contractor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Contractor's business, equipment, and personnel engaged in operations covered by this Contract or accruing out of the performance of those operations.

G. Counterparts. This Contract may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Contract.

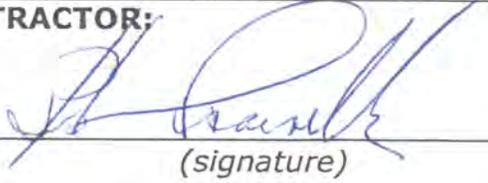
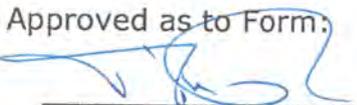
H. Business License. Contractor shall comply with the provisions of Title 5 Chapter 5.04 of the Des Moines Municipal Code.

I. Records Retention and Audit. During the progress of the Work and for a period not less than three (3) years from the date of completion of the Work or for the retention period required by law, whichever is greater, records and accounts pertaining to the Work and accounting therefore are to be kept available by the Parties for inspection and audit by representatives of the Parties and copies of all records, accounts, documents, or other data pertaining to the Work shall be furnished upon request. Records and accounts shall be maintained in accordance with applicable state law and regulations.

J. Entire Contract. The written provisions and terms of this Contract, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Contract. All of the above documents are hereby made a part of this Contract. However, should any language in any of the Exhibits to this Contract conflict with any language contained in this Contract, then the order of precedence shall be in accordance with Section I c of this Contract.

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

IN WITNESS, the parties below execute this Contract, which shall become effective on the last date entered below.

<p>CONTRACTOR:</p> <p>By: <u></u> (signature)</p> <p>Print Name: <u>Robert Scarsella</u></p> <p>Its <u>Vice President</u> (Title)</p> <p>DATE: <u>Nov. 4, 2015</u></p>	<p>CITY OF DES MOINES:</p> <p>By: <u></u> (signature)</p> <p>Print Name: <u>Anthony A. Piasecki</u></p> <p>Its <u>City Manager</u> (Title)</p> <p>DATE: <u>11/5/15</u></p> <p style="text-align: right;">Approved as to Form: <u></u> City Attorney</p> <p style="text-align: right;">DATE: <u>11-5-15</u></p>
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<p>NOTICES TO BE SENT TO:</p> <p>CONTRACTOR:</p> <p>Mason Dhanens P.O.Box 68697 Seattle, WA 98168-0697 (253) 872-7173 (telephone) (253) 395-1209 (facsimile)</p>	<p>NOTICES TO BE SENT TO:</p> <p>CITY OF DES MOINES:</p> <p>Andrew Merges, PE City of Des Moines 21650 11th Avenue South Des Moines, WA 98198 (206) 870-6568 (telephone) (206) 870-6596 (facsimile)</p>
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**PERFORMANCE BOND
to City of Des Moines, WA**

Bond No. 023033865

The City of Des Moines, Washington, (City) has awarded to Scarsella Bros. Inc. (Principal), a contract for the construction of the project designated as Emergency 251st Street Slide Repair (Contract), and said Principal is required to furnish a bond for performance of all obligations under the Contract.

The Principal, and Liberty Mutual Insurance Company (Surety), a corporation, organized under the laws of the State of Massachusetts and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the City of Des Moines, in the sum of One Hundred Thousand and 00/100ths US Dollars (\$ 100,000.00) Total Contract Amount, subject to the provisions herein.

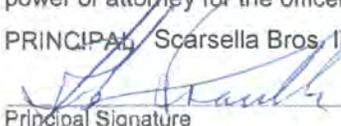
This statutory performance bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all the terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and if such performance obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

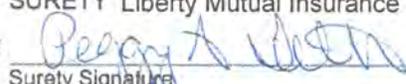
This bond shall be executed in four (4) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the officer executing on behalf of the surety.

PRINCIPAL Scarsella Bros. Inc.

SURETY Liberty Mutual Insurance Company


Principal Signature

11/4/2015
Date


Surety Signature

11/4/2015
Date

Robert Scarsella
Printed Name

Peggy A. Firth
Printed Name

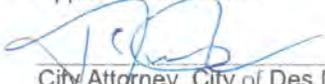
Vice President
Title

Attorney-in-Fact
Title

Name, address, and telephone of local office/agent of Surety Company is:

Propel Insurance
925 Fourth Avenue, Suite 3200
Seattle, WA 98104 (206) 676-4200

Approved as to form:


City Attorney, City of Des Moines

11-5-15
Date

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 7128643

American Fire and Casualty Company
The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Aliceon A. Keltner; Annelies M. Richie; Barbara A. Johnson; Brent E. Heilesen; Carley Espiritu; Christopher Kinyon; Cynthia L. Jay; Diane M. Harding; Eric A. Zimmerman; James B. Binder; Jamie Diemer; Jennifer L. Snyder; Jon J. Oja; Julie R. Truitt; Karen C. Swanson; Kristine A. Lawrence; Lisa M. Anderson; Mitchell R. Smee; Peggy A. Firth; Peter J. Comfort

all of the city of Tacoma, state of WA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 1st day of October, 2015.



American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 1st day of October, 2015, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2017
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Gregory W. Davenport, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 7 day of November, 2015.



By: Gregory W. Davenport
Gregory W. Davenport, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

PUBLIC WORKS PAYMENT BOND
to City of Des Moines, WA
Bond No. 023033865

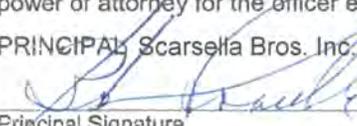
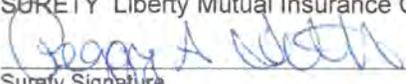
The City of Des Moines, Washington, (City) has awarded to Scarsella Bros. Inc. (Principal), a contract for the construction of the project designated as Emergency 251st Street Slide Repair, (Contract), and said Principal is required under the terms of that Contract to furnish a payment bond in accord with Title 39.08 Revised Code of Washington (RCW) and (where applicable) 60.28 RCW.

The Principal, and Liberty Mutual Insurance Company (Surety), a corporation organized under the laws of the State of Massachusetts and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the City of Des Moines, in the sum of one Hundred Thousand and 00/100ths US Dollars (\$ 100,000.00) Total Contract Amount, subject to the provisions herein.

This statutory payment bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall pay all persons in accordance with RCW Titles 39.08, 39.12, and 60.28 including all workers, laborers, mechanics, subcontractors, and materialmen, and all persons who shall supply such contractor or subcontractor with provisions and supplies for the carrying on of such work, and if such payment obligations have not been fulfilled, this bond shall remain in full force and effect.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, except as provided herein, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond shall be executed in four (4) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the officer executing on behalf of the surety.

PRINCIPAL <u>Scarsella Bros. Inc.</u>		SURETY <u>Liberty Mutual Insurance Company</u>	
	<u>11/4/2015</u>		<u>11/4/2015</u>
Principal Signature	Date	Surety Signature	Date
<u>Robert Scarsella</u>		<u>Peggy A. Firth</u>	
Printed Name		Printed Name	
<u>Vice President</u>		<u>Attorney-in-Fact</u>	
Title		Title	

Name, address, and telephone of local office/agent of Surety Company is:
Propel Insurance
925 Fourth Avenue, Suite 3200
Seattle, WA 98104 (206) 676-4200

Approved as to form:
 11.5.15
City Attorney, City of Des Moines, WA Date

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 7128650

American Fire and Casualty Company
The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Aliceon A. Keltner; Annelies M. Richie; Barbara A. Johnson; Brent E. Heilesen; Carley Espirtu; Christopher Kinyon; Cynthia L. Jay; Diane M. Harding; Eric A. Zimmerman; James B. Binder; Jamie Diemer; Jennifer L. Snyder; Jon J. Oja; Julie R. Truitt; Karen C. Swanson; Kristine A. Lawrence; Lisa M. Anderson; Mitchell R. Smee; Peggy A. Firth; Peter J. Comfort

all of the city of Tacoma, state of WA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surely and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 1st day of October, 2015.



American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 1st day of October, 2015, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2017
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS - Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surely any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surely any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surely any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Gregory W. Davenport, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 4 day of November, 2015.



By: Gregory W. Davenport
Gregory W. Davenport, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

**PERFORMANCE BOND
to City of Des Moines, WA**

Bond No. 023033865

The City of Des Moines, Washington, (City) has awarded to Scarsella Bros. Inc. (Principal), a contract for the construction of the project designated as Emergency 251st Street Slide Repair, (Contract), and said Principal is required to furnish a bond for performance of all obligations under the Contract.

The Principal, and Liberty Mutual Insurance Company (Surety), a corporation, organized under the laws of the State of Massachusetts and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the City of Des Moines, in the sum of One Hundred Thousand and 00/100ths US Dollars (\$ 100,000.00) Total Contract Amount, subject to the provisions herein.

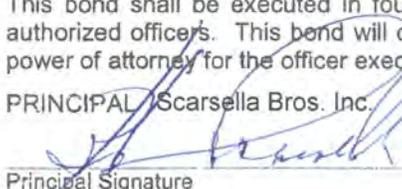
This statutory performance bond shall become null and void, if and when the Principal, its heirs, executors, administrators, successors, or assigns shall well and faithfully perform all of the Principal's obligations under the Contract and fulfill all the terms and conditions of all duly authorized modifications, additions, and changes to said Contract that may hereafter be made, at the time and in the manner therein specified; and if such performance obligations have not been fulfilled, this bond shall remain in full force and effect.

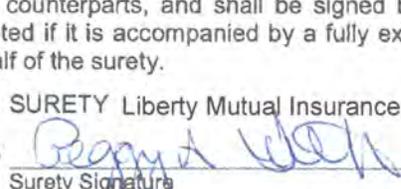
The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

This bond shall be executed in four (4) original counterparts, and shall be signed by the parties' duly authorized officers. This bond will only be accepted if it is accompanied by a fully executed and original power of attorney for the officer executing on behalf of the surety.

PRINCIPAL Scarsella Bros. Inc.

SURETY Liberty Mutual Insurance Company


Principal Signature Date 11/4/2015


Surety Signature Date 11/4/2015

Robert Scarsella
Printed Name

Peggy A. Firth
Printed Name

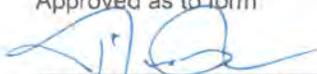
Vice President
Title

Attorney-in-Fact
Title

Name, address, and telephone of local office/agent of Surety Company is:

Propel Insurance
925 Fourth Avenue, Suite 3200
Seattle, WA 98104 (206) 676-4200

Approved as to form


City Attorney, City of Des Moines

11-5-15
Date

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 7128644

American Fire and Casualty Company
The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company
West American Insurance Company

POWER OF ATTORNEY

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American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

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Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2017
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

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Gregory W. Davenport, Assistant Secretary

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PUBLIC WORKS PAYMENT BOND
to City of Des Moines, WA
 Bond No. 023033865

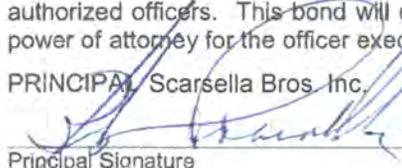
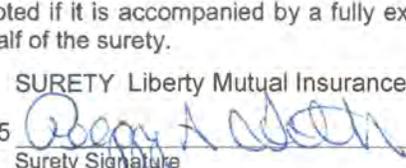
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The Principal, and Liberty Mutual Insurance Company (Surety), a corporation organized under the laws of the State of Massachusetts and licensed to do business in the State of Washington as surety and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Dept., are jointly and severally held and firmly bound to the City of Des Moines, in the sum of one Hundred Thousand and 00/100ths US Dollars (\$ 100,000.00) Total Contract Amount, subject to the provisions herein.

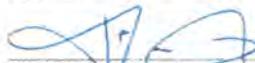
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PRINCIPAL <u>Scarsella Bros. Inc.</u>	SURETY <u>Liberty Mutual Insurance Company</u>
	
11/4/2015	11/4/2015
Principal Signature	Surety Signature
Date	Date
<u>Robert Scarsella</u>	<u>Peggy A. Firth</u>
Printed Name	Printed Name
<u>Vice President</u>	<u>Attorney-in-Fact</u>
Title	Title

Name, address, and telephone of local office/agent of Surety Company is:
Propel Insurance
925 Fourth Avenue, Suite 3200
Seattle, WA 98104 (206) 676-4200

Approved as to form:
 11-5-15
 City Attorney, City of Des Moines, WA Date

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Certificate No. 7128645

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The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company
West American Insurance Company

POWER OF ATTORNEY

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American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA SS
COUNTY OF MONTGOMERY

On this 1st day of October, 2015, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2017
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Gregory W. Davenport, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 4 day of November, 2015



By: Gregory W. Davenport
Gregory W. Davenport, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.