

AGENDA

REGULAR MEETING DES MOINES CITY COUNCIL

January 12, 2012 - 7:30 p.m.

CALL TO ORDER - Mayor

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE

COMMENTS FROM THE PUBLIC:

At this time the audience is invited to comment on any topic to bring it to Council's attention. Please sign in prior to the meeting and limit comments to three minutes or less.

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

PRESIDING OFFICER'S REPORT

ADMINISTRATION REPORTS

Planning Agency Report to the City Council

UW Student Presentation – Marina District Way Finding Program

EXECUTIVE SESSION

Real Estate (RCW 42.56.110(b))

CONSENT CALENDAR

Item 1: Approval of Vouchers

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

Claim checks \$1,940,492.66

Payroll fund transfers in the total amount of \$841,575.12

Total certified Wire Transfers, Voids, A/P & Payroll vouchers are \$ 2,782,067.78

Item 2: Transportation Gateway Project: S. 24th Avenue South Right of Way Acquisition: Furney – Tax Parcel 092204-9320 – Project Parcel #54; tax parcel 092204-9135 – Project Parcel #56; and tax parcel 092204-9126 – Project Parcel #57

Motion is to approve purchase of land from three parcels owned by Robert Furney as follows: 248 square feet of land for \$1,530.16, Temporary Slope Easement (of mutual benefit) with an area of 1,960 square feet, and improvements at \$600 for a total of \$2,130.00 for Parcel #54; 207 square feet of land for \$1,277.19 and improvements at \$300 for a total of \$1,577.00 for Parcel #56; 300 square feet of land for \$1,851.00, a permanent 700 square foot slope

easement for \$1,079.75 and improvements at \$300 for a total of \$3,231.00 for Parcel #57 as *just compensation*; an administrative settlement for all three parcels in the amount of \$3062.00, and payment for the Statutory Evaluation Allowance of \$750 per parcel, which is \$2,250.00 for all three parcels, for a grand total of \$12,250.00 (*rounded to nearest dollar*) plus any closing costs, and further to authorize the City Manager to sign the Statutory Warranty Deeds, Permanent and Temporary Slope Easements, Construction Easements/Rights of Entry, and Real Property Vouchers substantially in the forms as submitted and accept the rights of way on behalf of the City of Des Moines.

Item 3: Reappointment of Susan Corey to a Full Term on the Human Services Advisory Committee

Motion is to confirm the Mayoral reappointment of Susan Corey to the Human Services Advisory Committee, effective January 1, 2012, to a two year term which expires on December 31, 2013.

OLD BUSINESS

1. DNR Lease

Staff Presentation: Harbormaster Joe Dusenbury

NEW BUSINESS

1. CleanScapes Solid Waste Contract Amendment (Supplemental Garbage Pickup Schedule)

Staff Presentation: Land Use Planner II Laura Techico

2. Intergovernmental Policies and Positions

Staff Presentation: City Manager Tony Piasecki

NEXT MEETING DATE – January 14, 2012, Goal Setting Retreat at Founder's Lodge
January 26, 2012, Regular City Council meeting

ADJOURNMENT

Consent Agenda Item #1

CITY OF DES MOINES Voucher Certification Approval

12-Jan-12

Auditing Officer Certification

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

As of Jan 12, 2012 the Des Moines City Council, by unanimous vote, does approve for payment those vouchers and payroll transfers included in the attached list and further described as follows:

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

Claims Vouchers:	Numbers			Amounts	
Total A/P Checks/Vouchers	130582	-	130911	330	1,146,622.39
Electronic Wire Transfers	BANK MASTERCARD,DEPT OF REV, BANK OF AMERICA				795,802.14
Subtotal for this Council Packet					1,942,424.53
Voided Claim Checks this check run:	130619/130778				(1,843.04)
Voided Claim Checks from previous check runs	130041/130463				(88.83)
Total Claims/Wire Transfers/Voids					1,940,492.66

Payroll Vouchers:	DISBURSED 12/20/11					Amounts
Payroll Checks	17473	-	17487	=	15	20,706.48
Direct Deposit	510001	-	510129	=	129	262,746.39
Payroll Taxes						59,318.03
Wage/Garnishments						744.07
Voids					0	0.00
Electronic Wire Transfers						77,581.20
ICMA 401 Forfeitures						0.00
Total Claims						421,096.17

Payroll Vouchers:	DISBURSED 01/05/12					Amounts
Payroll Checks	17488	-	17508	=	21	22,740.04
Direct Deposit	10001	-	10132	=	132	257,202.51
Payroll Taxes						56,212.30
Wage/Garnishments						744.07
Voids					0	
Electronic Wire Transfers						83,580.03
ICMA 401 Forfeitures						
Total Claims						420,478.95
Total certified Wire Transfers,Voids, A/P & Payroll vouchers for Jan 12, 2012						2,782,067.78

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Transportation Gateway Project: S.
24th Avenue South Right of Way
Acquisition: Furney – Tax Parcels:
092204-9320 – Project Parcel #54
092204-9135 – Project Parcel #56
092204-9126 – Project Parcel #57

AGENDA OF: January 12, 2012

DEPT. OF ORIGIN: Planning, Building & Public
Works

DATE SUBMITTED: January 3, 2011

ATTACHMENTS:

1. Statutory Warranty Deeds (#54,56 & 57)
2. Construction Easement/Right Entry (all 3)
3. Permanent Slope Easement (#57 only)
4. Temporary Slope Easement (#54 only)
5. Administrative Settlement (all 3)
6. Real Property Voucher (all 3)
7. Project Map (all 3)

CLEARANCES

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: AS

Purpose and Recommendation:

The purpose of this agenda item is to seek City Council acceptance of right of way and easements required to widen 24th Avenue South, consistent with the City's adopted right of way plan for CIP project #319.131. The following motion will appear on the Consent Calendar:

Suggested Motion

Motion: "I move to purchase land from three parcels owned by Robert Furney as follows: 248 square feet of land for \$1,530.16, Temporary Slope Easement (of mutual benefit) with an area of 1,960 square feet, and improvements at \$600 for a total of \$2,130.00 for Parcel #54; 207 square feet of land for \$1,277.19 and improvements at \$300 for a total of \$1,577.00 for Parcel #56; 300 square feet of land for \$1,851.00, a permanent 700 square foot slope easement for \$1,079.75 and improvements at \$300 for a total of \$3,231.00 for Parcel #57 as Just Compensation; an administrative settlement for all three parcels in the amount of \$3062.00, and payment for the Statutory Evaluation Allowance of \$750 per parcel, or \$2,250.00 for all three parcels, for a grand total of \$12,250.00 (*rounded to nearest dollar*) plus any closing costs, and further to authorize the City Manager to sign the Statutory Warranty Deeds, Permanent and Temporary Slope Easements, Construction Easements/Rights of Entry, and Real Property Vouchers substantially in the forms as submitted and accept the rights of way on behalf of the City of Des Moines."

Background:

Widening and improvement 24th Avenue S. to 18th Avenue S. is an element of the City of Des Moines Comprehensive Plan and an adopted element of the 2011 Capital Improvement Program, Project #319.131. This arterial segment is one of the three roadway segments referred collectively as the Transportation Gateway Project. The City Council passed a motion on April 7, 2011, to begin the right of way acquisition phase for S. 216th Street Segment 2 and 24th Avenue S. from S. 208th Street to S. 216th Street including roadway transitions. The negotiated right of way is consistent with the June 2, 2011 Council direction to extend and match the sidewalk with developer improvements adjacent to and south of the project.

Discussion:

Design of this project is complete including all environmental documentation under NEPA and SEPA.

The adopted right of way plan requires this 755 sq. ft. right of way take, a 700 sq. ft permanent slope easement and a 1900 sq. ft temporary slope easement for future sidewalk, road and intersection improvements fronting this property. Also included is \$1,200 for improvements. *(According to the State and Federal guidelines, any improvements (grass, mulch, shrubs, trees, pavement, gravel, etc.) within the fee acquisition area are given contributory value and owners are compensated for as part of the acquisition. This value determined from a book called "The Guide-Building, Construction and Material Prices". Prices contained in the Guide are from local supplier and contractor prices, and are representative of current market conditions.* An Administrative Settlement of \$3062.00 was required to close negotiations plus closing costs. This amount is negotiated with the owner when they dispute what the offer is and a reasonable settlement is reached. In addition, the owner secured the services of a financial advisor to assist in valuation of the property and settlement that will need to be reimbursed as a Statutory Allowance estimated at \$750 per parcel.

There is no money exchanged for the Construction Easements/Rights of Entry as these agreements are considered mutually beneficial to restore the properties during construction.

Alternatives:

The final design and alignment for the roadway is based upon an offset alignment which minimizes impacts to developed properties. Alternatives were considered during predesign (symmetrical verses an offset alignment) resulting in settling on a right of way plan supported by final design. No other alternatives are currently available.

Financial Impact:

Funds for acquisition of these rights of way were approved as part of the City of Des Moines budget.

Recommendation/Conclusion:

Staff recommends the Council approve the proposed motion.

Concurrence:

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

After Recording, Return to:

CITY OF DES MOINES
ATTN: CITY ATTORNEY
21630 11th Avenue South, Suite C
Des Moines, WA 98198-6398

STATUTORY WARRANTY DEED

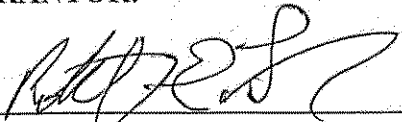
Grantor/s: Robert E. Furney, as his separate estate
Grantee: City of Des Moines, a municipal corporation of the State of Washington
Abbr. Legal Desc: Ptn. of Sec. 9, Twn. 22N, Rng. 4E, NE Qtr., W.M., King County
Tax Parcel Nos.: 092204-9320
Project Parcel No: 54

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

Also, the Grantor requests the Assessor and Treasurer of said County to set over to the remainder of Tax Parcel No.092204-9320, the lien of all unpaid taxes, if any, affecting the real estate herein conveyed, as provided by RCW 84.60.070

DATED this 20 day of Dec, 2011.

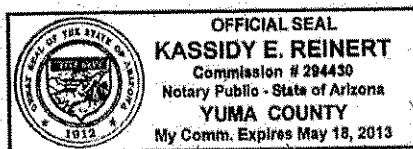
GRANTOR:



ROBERT E. FURNEY, as his separate estate

STATE OF Arizona }
COUNTY OF _____ } SS

I hereby certify that I know or have satisfactory evidence that, Robert E. Furney, as his separate estate is/ are the person/s who appeared before me, and said person/s acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the instrument and acknowledged it to be his/her/their free and voluntary, act for the uses and purposes mentioned in this instrument.

Dated 12-20-2011




Notary Public in and for the State of AZ
residing at The Foothills Bank
My appointment expires 5-18-2013

ACCEPTED BY:

CITY OF DES MOINES
a Municipal Corporation

Anthony A. Piasecki, City Manager

Date:

By direction of the Des Moines City Council taken in open public meeting on _____,
2011.

APPROVED as to form only:

Pat Bosmans, City Attorney

Date

EXHIBIT A
PARCEL NUMBER 092204-9320
RIGHT OF WAY ACQUISITION

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

BEGINNING AT THE NORTHWEST CORNER OF LOT 1, KING COUNTY SHORT PLAT NUMBER 182055, RECORDED UNDER RECORDING NUMBER 8203020845, RECORDS OF KING COUNTY, WASHINGTON, ALSO BEING ON THE EASTERLY MARGIN OF 24TH AVENUE SOUTH;

THENCE NORTH 01° 06' 35" EAST ALONG SAID EASTERLY MARGIN, 122.50 FEET TO THE NORTHWEST CORNER OF SAID PARCEL "A";

THENCE SOUTH 88° 23' 41" EAST ALONG THE NORTH LINE OF SAID PARCEL "A", 1.51 FEET;

THENCE SOUTHERLY ON A CURVE TO THE LEFT WHOSE CENTER BEARS SOUTH 88° 59' 00" EAST, 5950.50 FEET, AN ARC DISTANCE OF 122.53 FEET TO THE SOUTH LINE OF SAID PARCEL "A";

THENCE NORTH 88° 23' 41" WEST ALONG SAID SOUTH LINE, 2.97 FEET TO THE POINT OF BEGINNING.

CONTAINING 248 SQUARE FEET, MORE OR LESS.

PARCEL "A"

(PER PACIFIC NORTHWEST TITLE COMPANY ORDER NO. 1114093, DATED APRIL 14, 2010)

THE SOUTH 345.72 OF THE NORTH 684 FT. OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST W.M., KING COUNTY, WASHINGTON;

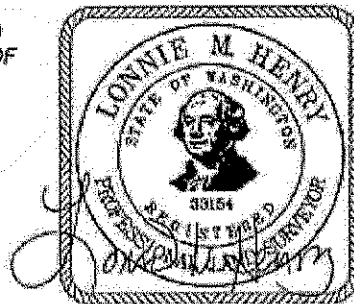
LESS THE WEST 30 FT. THEREOF FOR COUNTY ROAD;

AND LESS THE NORTH 72.5 FT. OF THE EAST 138.0 FT. OF THE WEST 168 FT. THEREOF;

AND LESS THE SOUTH 150.72 FT. OF THE EAST 213 FT. OF THE WEST 243 FT. THEREOF.

SURVEYOR'S NOTE:

THE CENTERLINE OF SOUTH 216TH STREET AND 24TH AVENUE SOUTH IS BASED ON THE RIGHT OF WAY PLANS FOR THE GATEWAY PROJECT, 24TH AVENUE SOUTH, ON FILE WITH THE CITY OF DES MOINES PUBLIC WORKS.



54-0922049320 row.doc

Page 1 of 1

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EXHIBIT A-1.1
EXCEPTIONS TO WARRANTIES UNDER
STATUTORY WARRANTY DEED

Reference is made to the Pacific Northwest Title Insurance Company Preliminary Title Commitment No. 1114093, dated April 14, 2010 ("Commitment"). Grantee assumes the title to the real property subject to the matters listed in the Commitment, which matters are exceptions to the Grantor's warranties under this Statutory Warranty Deed.

REP / 122011
Initial DATE

NE 1/4, SEC. 9, T. 22 N., R. 4 E., WM.



24TH AVE. S.

N 1°06'35" E

EXISTING RIGHT OF WAY @

30'

ROW

PCB

122.50'

EXISTING RIGHT OF WAY

2.97'

R=5950.50', L=122.53'

1.51'

RIGHT OF WAY
AREA = 248 S.F.±

TAX LOT NUMBER
092204-9399

LOT 1
KCSP NO. 182095
REC. NO. 8203020645

PROPERTY LINE

54

TAX LOT NUMBER
092204-9320

TAX LOT NUMBER
092204-9342

PROPERTY LINE

DATE: MARCH 30, 2011

FILE: 54.DWG

KPG

115 8th Ave N
Seattle, WA 98109
(206) 246-2800
www.kpg.com

5902 Jefferson Ave
Tacoma, WA 98402
(253) 621-4722

EXHIBIT A-1
PARCEL 092204-9320
RIGHT OF WAY ACQUISITION

After Recording, Return to:

CITY OF DES MOINES
ATTN: CITY ATTORNEY
21630 11th Avenue South, Suite C
Des Moines, WA 98198-6398

STATUTORY WARRANTY DEED

Grantor/s: Robert E. Furney, as his separate estate and Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust dated August 2, 1999, each as to an undivided interest, as it may appear of record

Grantee: City of Des Moines, a municipal corporation of the State of Washington

Abbr. Legal Desc: Ptn. of Sec. 9, Twn. 22N, Rng. 4E, NE Qtr., W.M., King County

Tax Parcel Nos.: 092204-9135

Project Parcel No: 56

THE GRANTOR/S, Robert E. Furney, as his separate estate and Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust dated August 2, 1999, each as to an undivided interest, as it may appear of record, for and in consideration of sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, hereby convey and warrant to the City of Des Moines, a Washington municipal corporation of the State of Washington, its successor and assigns, under the imminent threat of the Grantee's exercise of its rights of Eminent Domain per Chapter 8.12 RCW, for the use of the public, the real property described and attached hereto as Exhibit A and illustrated and attached hereto as Exhibit A-1, situated in City of Des Moines, in King County, Washington.

Also, the Grantors request the Assessor and Treasurer of said County to set over to the remainder of Tax Parcel No.092204-9135, the lien of all unpaid taxes, if any, affecting the real estate herein conveyed, as provided by RCW 84.60.070

DATED this 20 day of DEC, 2011.

GRANTOR/S:

[Signature]
ROBERT E. FURNEY, as his separate estate

[Signature]
Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust,
dated August 2, 1999, each as to an undivided interest, as it may appear of record

STATE OF _____)
COUNTY OF _____) ss

I hereby certify that I know or have satisfactory evidence that, Robert E. Furney, as his separate estate and Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust dated August 2, 1999, each as to an undivided interest, as it may appear of record is/ are the person/s who appeared before me, and said person/s acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the instrument and acknowledged it to be his/her/their free and voluntary, act for the uses and purposes mentioned in this instrument.

Dated 12-20-2011



[Signature]
Notary Public in and for the State of AZ
residing at The Foothills Bank
My appointment expires 5-18-2013

ACCEPTED BY:
CITY OF DES MOINES
a Municipal Corporation

Anthony A. Piasecki, City Manager

Date:

By direction of the Des Moines City Council taken in open public meeting on _____,
2011.

APPROVED as to form only:

Pat Bosmans, City Attorney

Date

EXHIBIT A
PARCEL NUMBER 092204-9135
RIGHT OF WAY ACQUISITION

THE WEST 1.50 FEET OF THE HEREINAFTER DESCRIBED PARCEL "A".
CONTAINING 207 SQUARE FEET, MORE OR LESS.

PARCEL "A"

(PER PACIFIC NORTHWEST TITLE COMPANY ORDER NO. 1114095, DATED APRIL 16, 2010)

SOUTH 138.28 FEET OF THE NORTH 338.28 FEET OF THE WEST HALF OF THE SOUTHWEST
QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 22 NORTH, RANGE 4 EAST,
W.M., IN KING COUNTY, WASHINGTON;

EXCEPT THE WEST 30 FEET FOR 24TH AVENUE SOUTH.

SURVEYOR'S NOTE:

THE CENTERLINE OF SOUTH 216TH STREET AND 24TH AVENUE SOUTH IS BASED ON THE RIGHT OF
WAY PLANS FOR THE GATEWAY PROJECT, 24TH AVENUE SOUTH, ON FILE WITH THE CITY OF DES
MOINES PUBLIC WORKS.



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5-24-11
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EXHIBIT A-1.1
EXCEPTIONS TO WARRANTIES UNDER
STATUTORY WARRANTY DEED

Reference is made to the Pacific Northwest Title Insurance Company Preliminary Title Commitment No. 1114095, dated April 16, 2010 ("Commitment"). Grantee assumes the title to the real property subject to the matters listed in the Commitment, which matters are exceptions to the Grantor's warranties under this Statutory Warranty Deed.

Initial DATE

NE 1/4, SEC. 8, T. 22 N., R. 4 E., W.M.



N 108°35' E

24TH AVE. S.

EXISTING RIGHT OF WAY 6'

30' ROW

EXISTING RIGHT OF WAY

138.29'

138.29'

RIGHT OF WAY
AREA = 207 S.F.±

TAX LOT NUMBER
092204-9342

58
TAX LOT NUMBER
092204-9135

PROPERTY LINE

PROPERTY LINE

TAX LOT NUMBER
092204-9320

TAX LOT NUMBER
092204-9125

DATE: MARCH 30, 2011

FILE: 55.DWG

KPG

7700 N. 4th
Tucson, AZ 85718
(520) 285-8540
www.kpg.com

6500 J. Avenue Ave
Tucson, AZ 85742
(520) 837-1723

EXHIBIT A-1
PARCEL 092204-9135
RIGHT OF WAY ACQUISITION

After Recording, Return to:

CITY OF DES MOINES
ATTN: CITY ATTORNEY
21630 11th Avenue South, Suite C
Des Moines, WA 98198-6398

STATUTORY WARRANTY DEED

Grantor/s: Robert E. Furney, as his separate estate and Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust dated August 2, 1999, each as to an undivided interest, as it may appear of record

Grantee: City of Des Moines, a municipal corporation of the State of Washington

Abbr. Legal Desc: Ptn. of Sec. 9, Twn. 22N, Rng. 4E, NE Qtr., W.M., King County

Tax Parcel Nos.: 092204-9126

Project Parcel No: 57

THE GRANTOR/S, Robert E. Furney, as his separate estate and Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust dated August 2, 1999, each as to an undivided interest, as it may appear of record, for and in consideration of sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, hereby convey and warrant to the City of Des Moines, a Washington municipal corporation of the State of Washington, its successor and assigns, under the imminent threat of the Grantee's exercise of its rights of Eminent Domain per Chapter 8.12 RCW, for the use of the public, the real property described and attached hereto as Exhibit A and illustrated and attached hereto as Exhibit A-1, situated in City of Des Moines, in King County, Washington.

Also, the Grantors request the Assessor and Treasurer of said County to set over to the remainder of Tax Parcel No.092204-9126, the lien of all unpaid taxes, if any, affecting the real estate herein conveyed, as provided by RCW 84.60.070

DATED this 20th day of December, 2011.

GRANTOR/S:

Robert E. Furney
ROBERT E. FURNEY, as his separate estate

Robert E. Furney
Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust,
dated August 2, 1999, each as to an undivided interest, as it may appear of record

STATE OF _____)
COUNTY OF _____) ss

I hereby certify that I know or have satisfactory evidence that, Robert E. Furney, as his separate estate and Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust dated August 2, 1999, each as to an undivided interest, as it may appear of record is/ are the person/s who appeared before me, and said person/s acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the instrument and acknowledged it to be his/her/their free and voluntary, act for the uses and purposes mentioned in this instrument.

Dated 12-20-2011



Kassidy E. Reinert
Notary Public in and for the State of AZ
residing at The Foothills Bank
My appointment expires 5-18-2013

ACCEPTED BY:
CITY OF DES MOINES
a Municipal Corporation

Anthony A. Piasecki, City Manager

Date:

By direction of the Des Moines City Council taken in open public meeting on _____,
2011.

APPROVED as to form only:

Pat Bosmans, City Attorney

Date

EXHIBIT A
PARCEL NUMBER 092204-9126
RIGHT OF WAY ACQUISITION

THE WEST 1.50 FEET OF THE HEREINAFTER DESCRIBED PARCEL "A",
CONTAINING 300 SQUARE FEET, MORE OR LESS.

PARCEL "A"

(PER PACIFIC NORTHWEST TITLE COMPANY ORDER NO. 1114095, DATED APRIL 18, 2010)

NORTH 200 FEET OF WEST HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER IN
SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON,

EXCEPT THE WEST 30 FEET FOR 24TH AVENUE SOUTH;

SURVEYOR'S NOTE:

THE CENTERLINE OF SOUTH 216TH STREET AND 24TH AVENUE SOUTH IS BASED ON THE RIGHT OF
WAY PLANS FOR THE GATEWAY PROJECT, 24TH AVENUE SOUTH, ON FILE WITH THE CITY OF DES
MOINES PUBLIC WORKS.



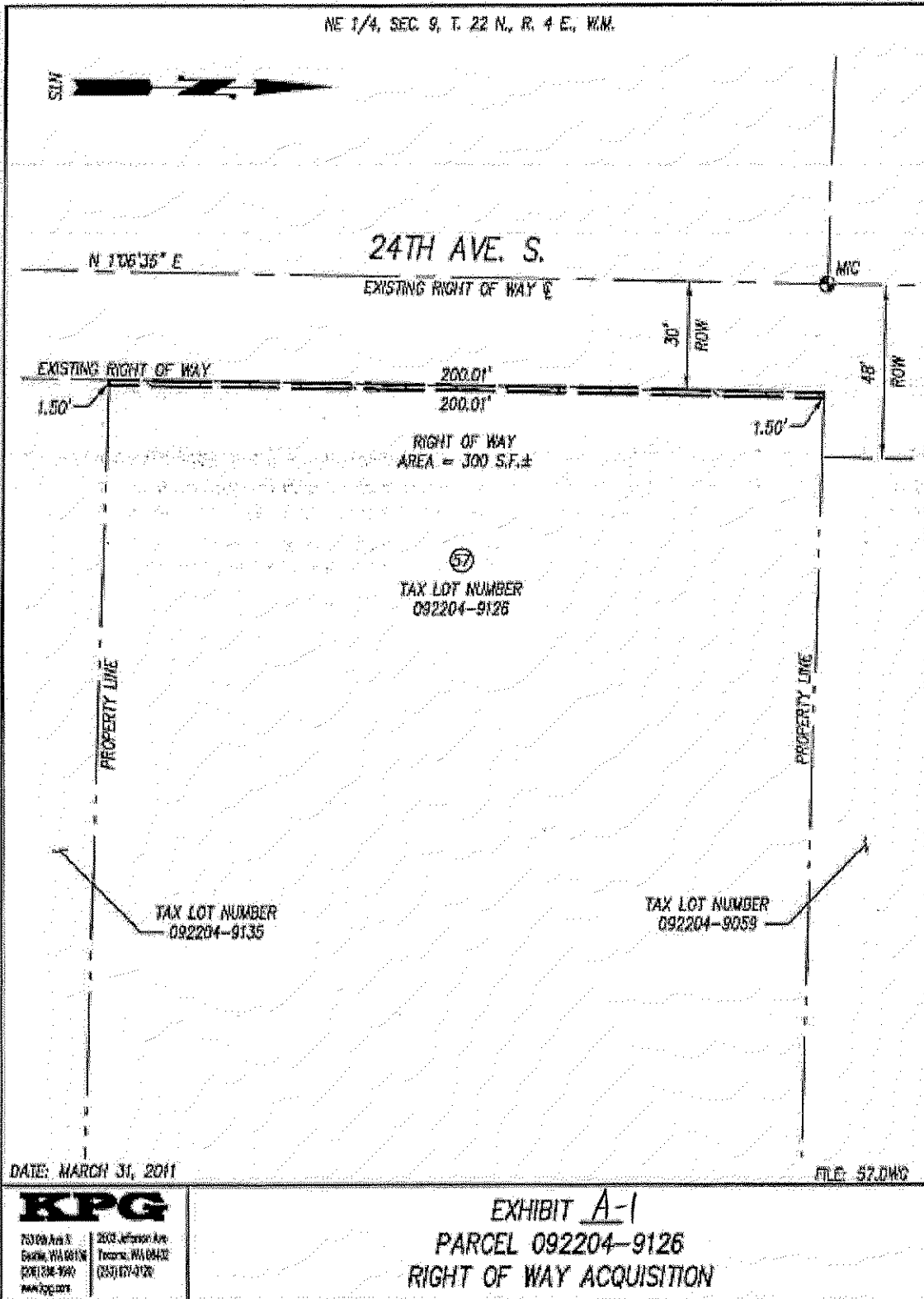
57-0922049126 row .doc

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EXHIBIT A-1.1
EXCEPTIONS TO WARRANTIES UNDER
STATUTORY WARRANTY DEED

Reference is made to the Pacific Northwest Title Insurance Company Preliminary Title Commitment No. 1114095, dated April 16, 2010 ("Commitment"). Grantee assumes the title to the real property subject to the matters listed in the Commitment, which matters are exceptions to the Grantor's warranties under this Statutory Warranty Deed.

INITIAL / DATE



Return Address:
City of Des Moines
Attn: City Attorney
21630 11th Avenue So., Suite C
Des Moines, WA 98198-6398

**CONSTRUCTION EASEMENT
AND RIGHT OF ENTRY**

ROW Plan #	
Grantor/s:	<i>Robert E. Furney, as his separate estate</i>
Grantee:	<i>City of Des Moines, a municipal corporation of the State of Washington</i>
Legal Description/STR:	<i>Ptn. of Sec. 9, Twn. 22N, Rng. 4E, NE Qtr., W.M., King County</i>
Assessor's Tax Parcel ID#:	<i>092204-9320</i>
Property Address:	<i>xxx- 24th Ave S., Des Moines, WA (vacant land)</i>
Mailing Address:	<i>PO Box 13150, Des Moines WA 98198</i>
Phone Contact #:	

TRANSPORTATION GATEWAY PROJECT
24th Avenue South Improvements

THIS EASEMENT AGREEMENT, made this _____ day of _____, 2011, by and between Robert E. Furney, as his separate property, ("Grantor/s" herein), and the CITY OF DES MOINES, a municipal corporation of the State of Washington, ("Grantee" herein),

In consideration of the transportation, sidewalk, utility and general improvements planned to occur immediately on or adjacent to property that is subject to this easement as a result of the above 24th Avenue S. Improvements, the Grantor/s hereby grant to the Grantee, its contractors, employees, agents, successors and assigns, for mutual benefit and other valuable consideration, the right to enter upon land known as King County Assessor's Parcel Number(s) 092204-9399 located adjacent to 24th Avenue S, Des Moines, WA 98198, as required for the purpose of placing personnel and equipment on said premises to re-construct driveway access, restore fences, utility services, mailboxes, plantings, walls and/or walkways to match newly constructed roadway and sidewalk grades within right of way as shown in the plans and specifications found on file with the City Engineer of the Grantee.

SPECIAL STIPULATIONS

1. This license shall remain in force until such time as the construction of street improvements has been accepted for operation and maintenance by the Grantee. Specific details concerning the public street improvements may be found on maps, plans, and specifications on file with Grantee's City Engineer.
2. Grantee, its agents and assigns, will notify Grantor/s their agents, successors, and assigns, of its construction schedule, and will, to the greatest extent practicable, schedule the construction activity so as to minimize any inconvenience to the property.
3. The Grantee agrees, to the extent practicable, to leave the property in as good condition as existed on the day construction commenced. This shall include the timely removal of any and all debris, rubbish or combustible material resulting from construction activities.
4. The Grantee plans to underground overhead electrical and communication lines adjacent to the Grantor/s' property as part of the Grantee's construction contract. Secondary conversions to connect overhead utilities to the Grantor/s' property will likely be required. According to RCW 35.96, and DMMC 12.48, the Grantor/s is responsible for all costs associated with said secondary conversions of undergrounding utilities on private property. In consideration of the disruption associated with this construction easement, and the need for timely execution of a construction contract, if and when awarded by the Grantee, the Grantees agrees to require its contractor to schedule and coordinate with the Grantor/s to underground secondary overhead utilities on the Grantor/s' property via digging a utility trench and installing said communications and electrical wiring directly between the point of primary connection to the existing secondary exterior terminal connections owned by the utility servicing the property.
5. Compensation: Grantor/s acknowledge that the property and/or property rights conveyed herein are in consideration for benefits to be derived by matching the roadway improvements with the Grantor/s' property. The Grantor/s/s agree the expenses of the Grantee for conversion and under-grounding of said secondary utilities cited in Section 4 above, if necessary, is good and valuable consideration.
6. Grantor/s authorize and appoint Grantee as its agent and attorney-in-fact to make application for any and all permits required to complete the project.
7. The rights herein granted shall include all incidental rights, including but not limited to, rights of ingress and egress necessary to properly perform the work indicated for construction of the project. Grantee and those entitled to exercise the rights granted herein shall exercise all due diligence in their activities upon the property. Grantee hereby agrees to indemnify and hold harmless Grantor/s against and from any and all liability for losses, damages and expenses on account of damage to property or injury to persons resulting from or arising out of the rights herein granted to Grantee and/or its contractors, employees, agents, successors or assigns.

GRANTOR/S:

Robert E. Furney
ROBERT E. FURNEY

12 20 2011
Date

GRANTEE:

CITY OF DES MOINES,
a Washington municipal corporation

By: Anthony A. Piasecki, City Manager

Date:

At the direction of the Des Moines City Council taken at open public meeting the _____ day of _____, 2011.

APPROVED as to form only:

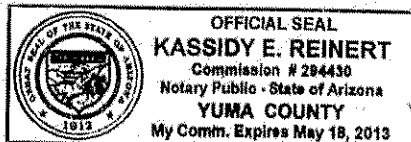
Pat Bosmans, City Attorney

Date

STATE OF Arizona }
COUNTY OF _____ } ss

I certify that I know or have satisfactory evidence that Robert E. Furney is/ are the person/s who appeared before me, and said person/s acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the instrument and acknowledged it to be his/her/their free and voluntary, act for the uses and purposes mentioned in this instrument.

Dated 12-20-2011



Kassidy E. Reinert
Notary Public in and for the State of AZ
residing at The Foothills Bank
My appointment expires 5-18-2013

STATE OF
COUNTY OF

}
} ss
}

This instrument was acknowledged before me on _____ (date of acknowledgment) by
Anthony Piasecki as City Manager, City of Des Moines, a State of Washington municipal
corporation, on behalf of said corporation.

Seal

Notary Public in and for the State of _____
residing at _____
My appointment expires _____

Return Address:
City of Des Moines
Attn: City Attorney
21630 11th Avenue So., Suite C
Des Moines, WA 98198-6398

**CONSTRUCTION EASEMENT
AND RIGHT OF ENTRY**

ROW Plan #

Grantors:

Robert E. Furney, as his separate estate and Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust dated August 2, 1999, each as to an undivided interest, as it may appear of record

Grantee:

*City of Des Moines,
a municipal corporation of the State of Washington*

Legal Description/STR:

*Ptn. of Sec. 9, Twn. 22N, Rng. 4E, NE Qtr., W.M.,
King County*

Assessor's Tax Parcel ID#:

092204-9135

Property Address:

21222/ 21228- 24th Ave S., Des Moines, WA

Mailing Address:

PO Box 13150, Des Moines WA 98198

Phone Contact #:

TRANSPORTATION GATEWAY PROJECT
24th Avenue South Improvements

THIS EASEMENT AGREEMENT, made this _____ day of _____, 2011, by and between Robert E. Furney, as his separate estate and Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust dated August 2, 1999, each as to an undivided interest, as it may appear of record ("Grantors" herein), and the CITY OF DES MOINES, a municipal corporation of the State of Washington, ("Grantee" herein),

In consideration of the transportation, sidewalk, utility and general improvements planned to occur immediately on or adjacent to property that is subject to this easement as a result of the above 24th Avenue S. Improvements, the Grantor(s) hereby grants to the Grantee, its contractors, employees, agents, successors and assigns, for mutual benefit and other valuable consideration, the right to enter upon land known as King County Assessor's Parcel Number(s) 092204-9135 located adjacent to 24th Avenue S, Des Moines, WA 98198, as required for the purpose of placing personnel and equipment on said premises to re-construct driveway access, restore fences, utility services, mailboxes, plantings, walls and/or walkways to match newly constructed

Project Parcel No. 56

roadway and sidewalk grades within right of way as shown in the plans and specifications found on file with the City Engineer of the Grantee.

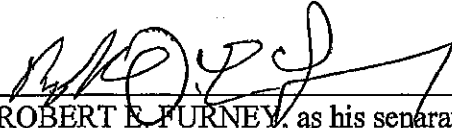
SPECIAL STIPULATIONS

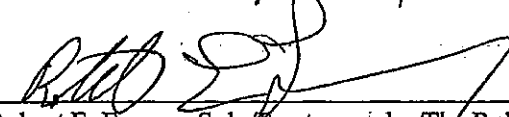
1. This license shall remain in force until such time as the construction of street improvements has been accepted for operation and maintenance by the Grantee. Specific details concerning the public street improvements may be found on maps, plans, and specifications on file with Grantee's City Engineer.
2. Grantee, its agents and assigns, will notify Grantor their agents, successors, and assigns, of its construction schedule, and will, to the greatest extent practicable, schedule the construction activity so as to minimize any inconvenience to the property.
3. The Grantee agrees, to the extent practicable, to leave the property in as good condition as existed on the day construction commenced. This shall include the timely removal of any and all debris, rubbish or combustible material resulting from construction activities.
4. The Grantee plans to underground overhead electrical and communication lines adjacent to the Grantor's property as part of the Grantee's construction contract. Secondary conversions to connect overhead utilities to the Grantor's property will likely be required. According to RCW 35.96, and DMMC 12.48, the Grantor is responsible for all costs associated with said secondary conversions of undergrounding utilities on private property. In consideration of the disruption associated with this construction easement, and the need for timely execution of a construction contract, if and when awarded by the Grantee, the Grantees agrees to require its contractor to schedule and coordinate with the Grantor to underground secondary overhead utilities on the Grantor's property via digging a utility trench and installing said communications and electrical wiring directly between the point of primary connection to the existing secondary exterior terminal connections owned by the utility servicing the property.
5. Compensation: Grantors acknowledge that the property and/or property rights conveyed herein are in consideration for benefits to be derived by matching the roadway improvements with the Grantors' property. The Grantors agree the expenses of the Grantee for conversion and under-grounding of said secondary utilities cited in Section 4 above, if necessary, is good and valuable consideration.
6. Grantors authorize and appoint Grantee as its agent and attorney-in-fact to make application for any and all permits required to complete the project.
7. The rights herein granted shall include all incidental rights, including but not limited to, rights of ingress and egress necessary to properly perform the work indicated for construction of the project. Grantee and those entitled to exercise the rights granted herein shall exercise all due diligence in their activities upon the property. Grantee hereby agrees to indemnify and hold harmless Grantors against and from any and all liability for losses, damages and expenses on account of damage to property or injury to persons resulting from or arising out

of the rights herein granted to Grantee and/or its contractors, employees, agents, successors or assigns.

DATED: 12 20 2011

GRANTORS:


ROBERT E. FURNEY, as his separate estate


Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust,
dated August 2, 1999, each as to an undivided interest, as it may appear of record

GRANTEE:

CITY OF DES MOINES,
a Washington municipal corporation

By: Anthony A. Piasecki, City Manager

Date: _____

At the direction of the Des Moines City Council taken at open public meeting the _____ day of _____, 2011.

APPROVED as to form only:

Pat Bosmans, City Attorney

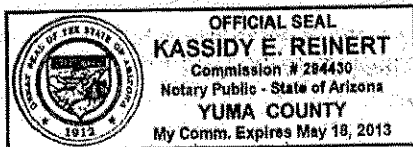
Date _____

STATE OF
COUNTY OF

}
} ss
}

I certify that I know or have satisfactory evidence that Robert E. Furney, as his separate estate and Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust dated August 2, 1999, each as to an undivided interest, as it may appear of record is/ are the person/s who appeared before me, and said person/s acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the instrument and acknowledged it to be his/her/their free and voluntary, act for the uses and purposes mentioned in this instrument.

Dated 12-20-2011



Kassidy E. Reinert
Notary Public in and for the State of AZ
residing at The Foothills Bank
My appointment expires 5-18-2013

State of Washington
County of King

This instrument was acknowledged before me on _____ (date of acknowledgment) by Anthony Piasecki as City Manager, City of Des Moines, a State of Washington municipal corporation, on behalf of said corporation.

Notary Public in and for the State of _____
residing at _____
My appointment expires _____

Grantee's, and its contractors', use of the Easement Area shall be at Grantee's sole expense and risk. Grantee shall indemnify Grantor and hold it harmless from and against any and all loss, cost, damage, liability and expense (including reasonable attorneys' fees) that may arise out of Grantee's, or its contractors', activities in the Easement Area during the term of this Agreement.

ACKNOWLEDGEMENT REGARDING
EXEMPTION FROM WASHINGTON REAL ESTATE EXCISE TAX

Robert E. Furney, as his separate estate, and Robert E. Furney, Sole Trustee of the under the Robert E. Furney Living Trust dated August 2, 1999, (together, "Furney") is the "Grantor" and the City of Des Moines, a municipal corporation of the State of Washington ("City"), is the "Grantee" under those certain Statutory Warranty Deeds (the "Deeds") under which Grantor has granted and conveyed to Grantee portions of certain real property owned by Grantor commonly known as King County Assessor's Tax Parcel Nos. 092204-9135, 092204-9320, and 092204-9126 (the "Properties") for use in connection with the City of Des Moines project known as 24th Avenue S. Improvements (S 216th to S. 208th St.) ("Project").

Under Washington law, except in the event of an exemption, the seller of real property is obligated to pay Real Estate Excise Tax (REET) measured as a specified percentage of all consideration received for the sale. Pursuant to WAC 458-61A-206, there is an exemption for the obligation to pay the tax if the sale is made to a governmental entity under an imminent threat of the exercise of eminent domain. To qualify for this exemption, the City of Des Moines must have satisfied the following conditions (the "Exemption Conditions"): (a) notified the grantor in writing of its intent to exercise its power of eminent domain prior to the sale; and (b) have the present ability and authority to use its power of eminent domain against the grantor's property at the time of sale; and (c) have specific statutory authority authorizing the City of Des Moines to use the power of eminent domain for property under the conditions presented.

The City certifies to Furney that it has satisfied the Exemption Conditions such that the transfer of the Properties under the Deeds is exempt from REET. If the foregoing certification is incorrect, the City shall pay any REET due and payable in connection with the Deeds and Furney shall have no responsibility to do so.

Dated this ____ day of _____, 20____.

CITY OF DES MOINES, a Municipal Corporation

Anthony A. Piasecki, City Manager

INITIALS

DATE

**ACKNOWLEDGEMENT REGARDING
COMPLIANCE WITH SUBDIVISION REQUIREMENTS**

Robert E. Furney, as his separate estate, and Robert E. Furney, Sole Trustee of the under the Robert E. Furney Living Trust dated August 2, 1999, (together, "Furney") is the "Grantor" and the City of Des Moines, a municipal corporation of the State of Washington ("City"), is the "Grantee" under those certain Statutory Warranty Deeds (the "Deeds") under which Grantor has granted and conveyed to Grantee portions of certain real property owned by Grantor commonly known as King County Assessor's Tax Parcel Nos. 092204-9135, 092204-9320, and 092204-9126 (the "Properties") for use in connection with the City of Des Moines project known as 24th Avenue S. Improvements (S 216th to S. 208th St.) ("Project").

Washington law and City of Des Moines ordinances require that all divisions of land to comply with the state subdivision statute and municipal subdivision ordinances or with an exemption or exception thereto, including without limitation RCW 58.17 *et seq.* and Des Moines Municipal Code Title 17 (collectively, the "Subdivision Laws").

The City of Des Moines represents and acknowledges that the conveyance of the Properties in connection with the Project by Furney to the City under the Deeds satisfies or is exempt from the Subdivision Laws.

Dated this _____ day of _____, 20____.

CITY OF DES MOINES, a Municipal Corporation

Anthony A. Plasecki, City Manager

INITIALS DATE

Return Address:
City of Des Moines
Attn: City Attorney
21630 11th Avenue So., Suite C
Des Moines, WA 98198-6398

**CONSTRUCTION EASEMENT
AND RIGHT OF ENTRY**

ROW Plan #	
Grantors:	<i>Robert E. Furney, as his separate estate and Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust dated August 2, 1999, each as to an undivided interest, as it may appear of record</i>
Grantee:	<i>City of Des Moines, a municipal corporation of the State of Washington</i>
Legal Description/STR:	<i>Ptn. of Sec. 9, Twn. 22N, Rng. 4E, NE Qtr., W.M., King County</i>
Assessor's Tax Parcel ID#:	<i>092204-9126</i>
Property Address:	<i>21204/ 21214 24th Ave S., Des Moines, WA</i>
Mailing Address:	<i>PO Box 13150, Des Moines WA 98198</i>
Phone Contact #:	

TRANSPORTATION GATEWAY PROJECT
24th Avenue South Improvements

THIS EASEMENT AGREEMENT, made this _____ day of _____, 2011, by and between Robert E. Furney, as his separate estate and Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust dated August 2, 1999, each as to an undivided interest, as it may appear of record ("Grantors" herein), and the CITY OF DES MOINES, a municipal corporation of the State of Washington, ("Grantee" herein),

In consideration of the transportation, sidewalk, utility and general improvements planned to occur immediately on or adjacent to property that is subject to this easement as a result of the above 24th Avenue S. Improvements, the Grantor(s) hereby grants to the Grantee, its contractors, employees, agents, successors and assigns, for mutual benefit and other valuable consideration, the right to enter upon land known as King County Assessor's Parcel Number(s) 092204-9126 located adjacent to 24th Avenue S, Des Moines, WA 98198, as required for the purpose of

placing personnel and equipment on said premises to re-construct driveway access, restore fences, utility services, mailboxes, plantings, walls and/or walkways to match newly constructed roadway and sidewalk grades within right of way as shown in the plans and specifications found on file with the City Engineer of the Grantee.

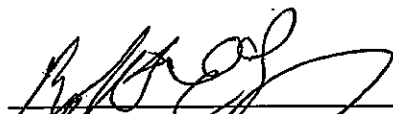
SPECIAL STIPULATIONS

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2. Grantee, its agents and assigns, will notify Grantor their agents, successors, and assigns, of its construction schedule, and will, to the greatest extent practicable, schedule the construction activity so as to minimize any inconvenience to the property.
3. The Grantee agrees, to the extent practicable, to leave the property in as good condition as existed on the day construction commenced. This shall include the timely removal of any and all debris, rubbish or combustible material resulting from construction activities.
4. The Grantee plans to underground overhead electrical and communication lines adjacent to the Grantor's property as part of the Grantee's construction contract. Secondary conversions to connect overhead utilities to the Grantor's property will likely be required. According to RCW 35.96, and DMMC 12.48, the Grantor is responsible for all costs associated with said secondary conversions of undergrounding utilities on private property. In consideration of the disruption associated with this construction easement, and the need for timely execution of a construction contract, if and when awarded by the Grantee, the Grantees agrees to require its contractor to schedule and coordinate with the Grantor to underground secondary overhead utilities on the Grantor's property via digging a utility trench and installing said communications and electrical wiring directly between the point of primary connection to the existing secondary exterior terminal connections owned by the utility servicing the property.
5. Compensation: Grantors acknowledge that the property and/or property rights conveyed herein are in consideration for benefits to be derived by matching the roadway improvements with the Grantors' property. The Grantors agree the expenses of the Grantee for conversion and under-grounding of said secondary utilities cited in Section 4 above, if necessary, is good and valuable consideration.
6. Grantors authorize and appoint Grantee as its agent and attorney-in-fact to make application for any and all permits required to complete the project.
7. The rights herein granted shall include all incidental rights, including but not limited to, rights of ingress and egress necessary to properly perform the work indicated for construction of the project. Grantee and those entitled to exercise the rights granted herein shall exercise all due diligence in their activities upon the property. Grantee hereby agrees to indemnify and hold harmless Grantors against and from any and all liability for losses, damages and

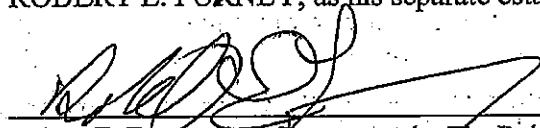
expenses on account of damage to property or injury to persons resulting from or arising out of the rights herein granted to Grantee and/or its contractors, employees, agents, successors or assigns.

DATED: 12-20-2011

GRANTOR/S:



ROBERT E. FURNEY, as his separate estate



Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust,
dated August 2, 1999, each as to an undivided interest, as it may appear of record

GRANTEE:

CITY OF DES MOINES,
a Washington municipal corporation

By: Anthony A. Piasecki, City Manager

Date:

At the direction of the Des Moines City Council taken at open public meeting the _____ day of _____, 2011.

APPROVED as to form only:

Pat Bosmans, City Attorney

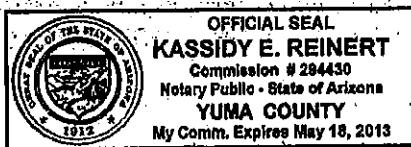
Date

STATE OF
COUNTY OF

}
} ss
}

I certify that I know or have satisfactory evidence that Robert E. Furney, as his separate estate and Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust dated August 2, 1999, each as to an undivided interest, as it may appear of record is/ are the person/s who appeared before me, and said person/s acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the instrument and acknowledged it to be his/her/their free and voluntary, act for the uses and purposes mentioned in this instrument.

Dated 12-20-2011



Kassidy E. Reinert
Notary Public in and for the State of AZ
residing at The Foothills Bank
My appointment expires 5-18-2013

State of Washington
County of King

This instrument was acknowledged before me on _____ (date of acknowledgment) by Anthony Piasecki as City Manager, City of Des Moines, a State of Washington municipal corporation, on behalf of said corporation.

Notary Public in and for the State of _____
residing at _____
My appointment expires _____

After Recording, Return to:

CITY OF DES MOINES
ATTN: CITY ATTORNEY
21630 11th Avenue South, Suite C
Des Moines, WA 98198-6398

SLOPE EASEMENT

ROW Plan #	
Grantor/s:	<i>Robert E. Furney, as his separate estate and Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust dated August 2, 1999, each as to an undivided interest, as it may appear of record</i>
Grantee:	<i>City of Des Moines, a municipal corporation of the State of Washington</i>
Legal Description/STR:	<i>Ptn. of Sec. 9, Twn. 22N, Rng. 4E, NE Qtr., W.M., King County</i>
Assessor's Tax Parcel ID#:	<i>092204-9126</i>
Property Address:	<i>21204/ 21214 24th Ave S., Des Moines, WA</i>
Mailing Address:	<i>PO Box 13150, Des Moines WA 98198</i>
Phone Contact #:	

TRANSPORTATION GATEWAY PROJECT **24th Avenue South Improvements**

THIS EASEMENT AGREEMENT, made this _____ day of _____, 2011, by and between: Robert E. Furney, as his separate estate and Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust dated August 2, 1999, each as to an undivided interest, as it may appear of record, ("Grantors" herein), and the CITY OF DES MOINES, a municipal corporation of the State of Washington, ("Grantee" herein),

WITNESSETH:

- 1. Grant of Easement.** The Grantors, for and in consideration of TEN DOLLARS (\$10.00), and other good and valuable consideration, receipt of which is hereby acknowledged, hereby grant and convey to the City of Des Moines, a municipal corporation of the State of Washington, its contractors, employees, agents, successors and assigns (Grantee), for the purposes set forth herein, a non-exclusive perpetual easement for constructing and maintaining roadway walls and slopes in excavation and/or embankment ("Easement" herein) over, under, along, across, and through the following described real property ("Easement Area" herein) in King County, Washington.

2. **Property Subject to Easement.**


- a. **Property Description.** The Property subject to this Easement is legally described and shown in Exhibit "A" and Exhibit A-1, attached hereto and incorporated by reference.
 - b. **Easement Areas.** Except as is otherwise set forth herein, Grantee's rights shall be exercised only upon that portion of the Property legally described in Exhibit "A" and Exhibit A-1 ("Easement Areas" herein) attached hereto and incorporated by reference.
3. **Purpose.** Grantee shall have the right to construct, operate, maintain, repair, replace, improve, remove, and enlarge walls and/or slopes in excavation and/or embankment, and other associated features within the Easement Areas for the purpose constructing and maintaining roadway side slopes.
4. **Access.** Grantee shall have the right of access to the Easement Areas over and across the Property to enable Grantee to exercise its rights hereunder. Grantee shall compensate Grantors for any damage to the Property caused by the exercise of such right of access by Grantee.
5. **Easement Areas Clearing and Maintenance.** Grantee shall have the right to cut, remove and dispose of any and all brush, trees or other vegetation in the Easement Areas. Grantee shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of brush, trees or other vegetation in the Easement Areas.
6. **Grantors' Use of Easement Areas.** Grantors reserve the right to use the Easement Areas for any purpose so long as the use does not interfere with the easement rights herein granted. Grantors may install groundcover and shrub landscaping plantings within the Easement Areas with Grantee's prior written consent. Grantors shall not alter the ground surface and subsurface within the Easement Areas by excavation, placement of fill material, or installation of any wall or rockery, without Grantee's prior written consent. Grantee's prior written consent, where required, shall not be unreasonably withheld. Grantors shall not construct or maintain any buildings within the Easement Areas.
7. **Indemnity.** Grantee agrees to indemnify Grantors from and against liability incurred by Grantors as a result of Grantee's negligence in the exercise of the rights herein granted to Grantee, but nothing herein shall require Grantee to indemnify Grantors for that portion of any such liability attributable to the negligence of Grantors or the negligence of others.
8. **Covenant Running With the Land.** This Easement shall be a covenant running with the land and shall forever bind Grantors, their heirs, successors, and assigns.


Grantors acknowledge that the property and/or property rights conveyed herein are in consideration of a mutual benefit to be derived; and Grantors have been informed of its right to receive just compensation and have waived said rights.

The lands herein described can be found in design plans on file with the Director of the City of Des Moines Public Works in Des Moines, Washington, CIP Road Project 319.333, S. 216th Street Improvement, Segment 2, and/or CITY CIP Road Project CIP 319.131, 24th Avenue South Improvements.

DATED this 25 day of Dec, 2011

GRANTOR/S:


ROBERT E. FURNEY, as his separate estate


Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust,
dated August 2, 1999, each as to an undivided interest, as it may appear of record

GRANTEE:

CITY OF DES MOINES,
a Washington municipal corporation

By: Anthony A. Piasecki, City Manager

Date: _____

By direction of the Des Moines City Council taken at open public meeting _____,
2011.

APPROVED as to form only:

By: Pat Bosmans, City Attorney

Date: _____

STATE OF WASHINGTON)
COUNTY OF) ss

I certify that I know or have satisfactory evidence that Robert E. Furney, as his separate estate and Robert E. Furney, Sole Trustee, under The Robert E. Furney Living Trust dated August 2, 1999, each as to an undivided interest, as it may appear of record, ("Grantors" herein), is/are the person/s who appeared before me, and said person/s acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the instrument and acknowledged it to be his/her/their free and voluntary, act for the uses and purposes mentioned in this instrument.

Dated 12-20-2011



Kassidy E. Reinert
Notary Public in and for the State of AZ
residing at The Foothills Bank
My appointment expires 5-18-2013

STATE OF WASHINGTON)
COUNTY OF KING) ss

This instrument was acknowledged before me on _____ (date of acknowledgment)
by Anthony Piasecki as City Manager, City of Des Moines, a State of Washington municipal
corporation, on behalf of said corporation.

Dated _____

Notary Public in and for the State of _____
residing at _____
My appointment expires _____

EXHIBIT A
PARCEL NUMBER 092204-9126
PERMANENT SLOPE EASEMENT

THE EAST 5.00 FEET OF THE WEST 6.50 FEET OF THE SOUTH 140.00 FEET OF THE HEREINAFTER DESCRIBED PARCEL "A".

CONTAINING 700 SQUARE FEET, MORE OR LESS.

PARCEL "A"

(PER PACIFIC NORTHWEST TITLE COMPANY ORDER NO. 1114095, DATED APRIL 16, 2010)

NORTH 200 FEET OF WEST HALF OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER IN SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON,

EXCEPT THE WEST 30 FEET FOR 24TH AVENUE SOUTH;

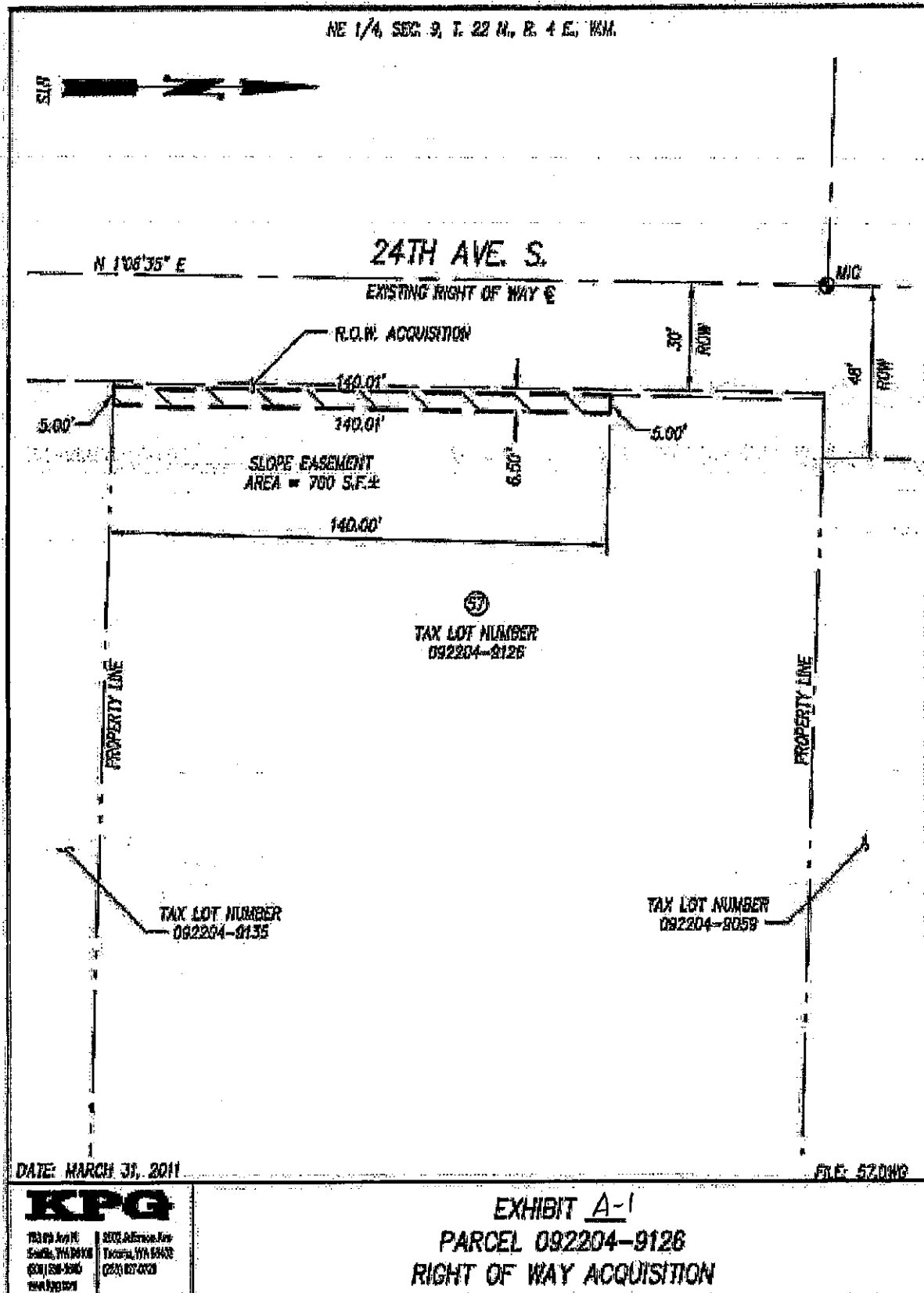
SURVEYOR'S NOTE:

THE CENTERLINE OF SOUTH 216TH STREET AND 24TH AVENUE SOUTH IS BASED ON THE RIGHT OF WAY PLANS FOR THE GATEWAY PROJECT, 24TH AVENUE SOUTH, ON FILE WITH THE CITY OF DES MOINES PUBLIC WORKS.



57-0922049126 perm slope esmt .doc

Page 1 of 1
KPG
TACOMA • SEATTLE



After Recording, Return to:

CITY OF DES MOINES
ATTN: CITY ATTORNEY
21630 11th Avenue South, Suite C
Des Moines, WA 98198-6398

TEMPORARY SLOPE EASEMENT

ROW Plan #

Grantor: *Robert E. Furney, as his separate estate*

Grantee: *City of Des Moines,
a municipal corporation of the State of Washington
Ptn. of Sec. 9, Twn. 22N, Rng. 4E, NE Qtr., W.M., King County*

Legal Description/STR:

Assessor's Tax Parcel ID#: 092204-9320

Property Address: *xxx- 24th Ave S., Des Moines, WA (vacant land)*

Mailing Address: *PO Box 13150, Des Moines WA 98198*

Phone Contact #:

Transportation Gateway Project
24th Avenue South Improvements

THIS EASEMENT AGREEMENT, made this _____ day of _____, 2011, by and between Robert E. Furney, as his separate estate, ("Grantor" herein), and the CITY OF DES MOINES, a municipal corporation of the State of Washington, ("Grantee" herein),

WITNESSETH:

1. **Grant of Easement.** The Grantor, for and in consideration of valuable mutual benefits and in further consideration of the general public purpose and welfare, hereby grants and conveys to the Grantee, its contractors, employees, agents, successors and assigns, for the purposes set forth herein, a non-exclusive temporary easement for constructing slopes in excavation and/or embankment ("Easement" herein) over, under, along, across, and through the following described real property ("Easement Area" herein) in King County, Washington.

2. **Property Subject to Easement.**

- a. **Property Description.** The Property subject to this Easement is legally described in Exhibit "A", attached hereto and incorporated by reference.
 - b. **Easement Areas.** Except as is otherwise set forth herein, Grantee's rights shall be exercised only upon that portion of the Property legally described in Exhibit A and Exhibit "A-1" ("Easement Areas" herein) attached hereto and incorporated by reference.
3. **Purpose.** Grantee shall have the right to construct, operate, maintain, repair, replace, improve, remove, and enlarge slopes in excavation and/or embankment, and other associated features within the Easement Areas for the purpose constructing and maintaining roadway side slopes.
4. **Access.** Grantee shall have the right of access to the Easement Areas over and across the Property to enable Grantee to exercise its rights hereunder. Grantee shall compensate Grantor for any damage to the Property caused by the exercise of such right of access by Grantee.
5. **Easement Areas Clearing and Maintenance.** Grantee shall have the right to cut, remove and dispose of any and all brush, trees or other vegetation in the Easement Areas. Grantee shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of brush, trees or other vegetation in the Easement Areas.
6. **Grantor's Use of Easement Areas.** Grantor reserves the right to use the Easement Areas for any purpose so long as the use does not interfere with the easement rights herein granted.
7. **Termination:** This license shall remain in force until such time as the construction of street improvements has been accepted for operation and maintenance by the Grantee. Specific details concerning the public street improvements may be found on maps, plans, and specifications on file with Grantee's City Engineer.
8. **Indemnity.** Grantee agrees to indemnify Grantor from and against liability incurred by Grantor as a result of Grantee's negligence in the exercise of the rights herein granted to Grantee, but nothing herein shall require Grantee to indemnify Grantor for that portion of any such liability attributable to the negligence of Grantor or the negligence of others.
9. **Assignment.** Grantee shall have the right to assign this Easement to franchised utilities in the event that Grantee needs to request undergrounding of overhead lines; provided, however, the obligations of this Easement shall be assumed by assignee.

Grantor acknowledges that the property and/or property rights conveyed herein are in consideration of a mutual benefit to be derived; and Grantors has been informed of its right to receive just compensation and have waived said rights.

The lands herein described can be found in design plans on file with the Director of the City of Des Moines Public Works in Des Moines, Washington, CIP Road Project 319.333, S. 216th Street Improvements, Segment 2, and/or CITY CIP Road Project CIP 319.131, 24th Avenue S. Improvements.

DATED this ____ day of _____, 2011.

GRANTOR:

ROBERT E. FURNEY, as his separate estate

Date:

GRANTEE:

CITY OF DES MOINES,
a Washington municipal corporation

By: Anthony A. Piasecki, City Manager

Date:

By direction of the Des Moines City Council taken in open public meeting on
_____, 2011.

APPROVED as to form only:

Pat Bosmans, City Attorney

Date

STATE OF)
) ss
COUNTY OF)

I certify that I know or have satisfactory evidence that Robert E. Furney, as his separate estate, is/ are the person/s who appeared before me, and said person/s acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the instrument and acknowledged it to be his/her/their free and voluntary, act for the uses and purposes mentioned in this instrument.

Dated _____

Notary Public in and for the State of _____
residing at _____
My appointment expires _____

STATE OF)
) ss
COUNTY OF)

This instrument was acknowledged before me on _____ (date of acknowledgment)
by Anthony A. Piasecki as City Manager, City of Des Moines, a State of Washington municipal
corporation, on behalf of said corporation.

Dated _____

Notary Public in and for the State of Washington
Residing at _____
My Commission Expires _____

EXHIBIT
PARCEL NUMBER 092204-9320
TEMPORARY SLOPE EASEMENT

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

BEGINNING AT THE NORTHWEST CORNER OF LOT 1, KING COUNTY SHORT PLAT NUMBER 182055, RECORDED UNDER RECORDING NUMBER 8203020645, RECORDS OF KING COUNTY, WASHINGTON, ALSO BEING ON THE EASTERLY MARGIN OF 24TH AVENUE SOUTH;

THENCE SOUTH 88° 23' 41" EAST ALONG THE SOUTH LINE OF SAID PARCEL "A", 2.97 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTHERLY ON A CURVE TO THE RIGHT WHOSE CENTER BEARS NORTH 89° 50' 13" EAST, 5950.50 FEET, AN ARC DISTANCE OF 122.53 FEET TO THE NORTH LINE OF SAID PARCEL "A";

THENCE SOUTH 88° 23' 41" EAST ALONG SAID NORTH LINE, 16.00 FEET;

THENCE SOUTHERLY ON A CURVE TO THE LEFT WHOSE CENTER BEARS SOUTH 88° 59' 05" EAST, 5934.50 FEET, AN ARC DISTANCE OF 122.53 FEET TO THE SOUTH LINE OF SAID PARCEL "A";

THENCE NORTH 88° 23' 41" WEST ALONG SAID SOUTH LINE, 18.01 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 1,980 SQUARE FEET, MORE OR LESS.

PARCEL "A"

(PER PACIFIC NORTHWEST TITLE COMPANY ORDER NO. 1114093, DATED APRIL 14, 2010)

THE SOUTH 345.72 OF THE NORTH 884 FT. OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST W.M., KING COUNTY, WASHINGTON;

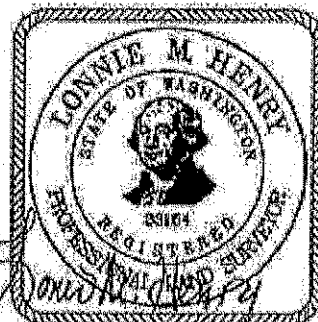
LESS THE WEST 30 FT. THEREOF FOR COUNTY ROAD;

AND LESS THE NORTH 72.5 FT. OF THE EAST 138.0 FT. OF THE WEST 180 FT. THEREOF;

AND LESS THE SOUTH 150.72 FT. OF THE EAST 213 FT. OF THE WEST 243 FT. THEREOF.

SURVEYOR'S NOTE:

THE CENTERLINE OF SOUTH 216TH STREET AND 24TH AVENUE SOUTH IS BASED ON THE RIGHT OF WAY PLANS FOR THE GATEWAY PROJECT, 24TH AVENUE SOUTH, ON FILE WITH THE CITY OF DES MOINES PUBLIC WORKS.



54-0922049320 temp slope esmt.doc

Page 1 of 1

KPG
TACOMA • SEATTLE

NE 1/4, SEC. 9, T. 22 N., R. 4 E., WM.



24TH AVE. S.

EXISTING RIGHT OF WAY

N 1°00'35" E

30' ROW

2.87'

POB

R.O.W. ACQUISITION

R=5950.50', L=122.53'

EXISTING RIGHT OF WAY

16.01'

16.01'

R=5934.50', L=122.53'

TEMPORARY SLOPE EASEMENT
AREA = 1850 SF.±

TAX LOT NUMBER
092204-9309

LOT 1

KCSP NO. 182058

REC. NO. 0203020845

TAX LOT NUMBER
092204-9342

54

TAX LOT NUMBER
092204-9320

PROPERTY LINE

PROPERTY LINE

DATE: MARCH 30, 2011

FILE: 04.DWG

KPG

TSU Pty Ltd H
Boulder, CO 80501
(303) 338-1811
www.kpg.com

TSU Pty Ltd H
Tampa, FL 33602
(813) 887-0700

EXHIBIT
PARCEL 092204-9320
TEMPORARY SLOPE EASEMENT

C E R T I F I E D

L A N D S E R V I C E S C O R P O R A T I O N

December 7, 2011

City of Des Moines
Public Works Department
Attention: Leonard Madsen, P.E.

Via Email to: Len Madsen [LMadsen@desmoineswa.gov]

RE: City of Des Moines- Transportation Gateway Project (24th Ave S Improvements)
Administrative Settlement Request
Owner: ROBERT FURNEY
Tax Parcel Nos: 092204-9320 (Project Parcel: 54)
092204-9135 (Project Parcel: 56)
092204-9126 (Project Parcel: 57)

Dear Mr. Madsen:

I hereby request an administrative settlement for the above referenced properties as follows:

Just Compensation for Parcel 54:	\$ 2,130.00(r)
Just Compensation for Parcel 56:	\$ 1,577.00(r)
Just Compensation for Parcel 57:	\$ 3,231.00(r)
City's Total Offer:	\$ 6,938.00
Proposed Administrative Settlement:	\$ 3,062.00
Final Settlement Amount:	\$10,000.00

Explanation:

1. The City's Total Offer amount of \$6,938.00 for the 3 parcels, per Administrative Offer Summaries (AOS), was presented to the Owner on June 16, 2011.

Parcel 54:

Taken Land in Fee Simple:	248 SF @6.17/ SF	\$ 1,530.16
Temporary Slope Easement:		\$ 0.00
Improvements: Trees		\$ 600.00
Construction Easement/Right of Entry: Mutual Benefit		\$ 0.00
Total Just Compensation		\$2,130.00 (r)

Parcel 56:

Taken Land in Fee Simple:	207 SF @6.17/ SF	\$ 1,277.19
Improvements: Grass sod and driveway		\$ 300.00
Construction Easement/Right of Entry: Mutual Benefit		\$ 0.00
Total Just Compensation		\$1,577.00 (r)

Parcel 57:

Taken Land in Fee Simple:	300 SF @ 6.17/ SF	\$ 1,851.00
Permanent Slope Easement: 700 SF @ 25% of Fee 6.17/ SF		\$ 1,079.75
Improvements: Grass sod and driveway		\$ 300.00
Construction Easement/Right of Entry: Mutual Benefit		\$ 0.00
Total Just Compensation		\$3,231.00 (r)

4619 37th Avenue SW • Seattle, WA 98126
Phone: 206.287.9858 Fax: 206.938-6717 e-mail: customercare@certifiedland.com

ATTACHMENT 5

2. Owner rejected City's offer and submitted verbal counter offer; cited that City's offer per fee valuation at \$6.17/sf was too low, and that there was a recent comparable commercial property that was sold for about three (3) times more (around \$18/sf). No written justification to the counter offer was provided.
3. Lengthy negotiations ensued. In communication with the Owner, the adjacent property's appraisal value was discussed at \$10/sf. Owner cited that his properties have the same commercial zoning (PRC2) as the adjacent parcel that was valued at \$10/sf. Owner reviewed City's offer and submitted a written counter for a total settlement amount of \$10,000.

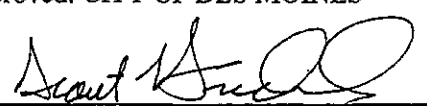
	<u>Original Offer Amount</u>	<u>Proposed Administrative Settlement</u>
Parcel 54:	\$2,130.00 (r)	\$ 870.00
Parcel 56:	\$1,577.00 (r)	\$ 423.00
Parcel 57:	<u>\$3,231.00 (r)</u>	<u>\$1,769.00</u>
	\$6,938.00	\$3,062.00
TOTAL SETTLEMENT AMOUNT		\$10,000.00

The approval of this administrative settlement request for \$3,062.00 will allow the City to proceed with the partial acquisitions of the 3 parcels. This is considered prudent use of public funds as it will eliminate additional litigation costs associated with condemnation proceedings

Sincerely,


Kristine Maristela
Acquisition Agent

Approved: CITY OF DES MOINES


By: Grant Fredricks, Public Works Director

12/8/11
Date:

REAL PROPERTY VOUCHER AGREEMENT

AGENCY NAME City of Des Moines Public Works Engineering 21650 11 th Avenue South Des Moines, WA 98198		I hereby agree to the terms and conditions listed below and hereby certify under penalty of perjury that the items and amounts listed herein are proper charges, that the same or any part thereof has not been paid, and that I am authorized to sign for the Claimant: <i>(Sign in Ink)</i>	
GRANTOR or CLAIMANT ROBERT E. FURNEY <u>ROBERT E FURNEY</u> <u>206-265-2357</u> Tel. No.		By: <u><i>[Signature]</i></u> ROBERT E. FURNEY Date: <u>12/20/11</u> SSN/Tax ID: <u>531-38-7110</u>	
TRANSPORTATION GATEWAY PROJECT PROJECT NUMBER: CIP#319.333 or # 319.131 TITLE: 24 th Avenue S. Improvements (S. 216 th St to S. 208 th St.)		TAX PARCEL NUMBER: 092204-9126 PROJECT PARCEL NUMBER: 57	
In Full, Complete and Final Payment and Settlement for the Title or Interest Conveyed or Released, as Fully Set Forth In Attached Documents:			AMOUNT
Statutory Warranty Deed Date: <u>12/20/11</u> Permanent Slope Easement Date: <u>12/20/11</u> Construction Easement/Right of Entry Date: <u>12/20/11</u> For All Lands Convey: 300 SF in Fee Simple @ \$6.17 per SF 700 SF in Permanent Slope Easement @ 25% of Fee @ \$6.17/SF Construction Easement/Right of Entry For All Improvements: Grass sod and driveway For All Damages: n/a Less Special Benefits: n/a Statutory Evaluation Allowance:			
JUST COMPENSATION			+ \$ 1,851.00 + \$ 1,079.75 + \$ + \$ 300.00 + \$ + \$ + \$ 0.00
Legal / Administrative: Other Items: Deductions:			+ \$ 3,231.00 (r) + \$ 1,769.00
FINAL SETTLEMENT			\$ 5,000.00
SUBTOTAL			\$ 5,000.00
TOTAL AMOUNT TO BE PAID:			\$ 5,000.00
Acquisition Agent: KRISTINE MARISTELA CERTIFIED Land Services Corporation 4619 37 th Ave SW, Seattle, WA 98126 Phone: (206) 287-9858 <u><i>Kristine Maristela</i></u> AGENT <u>12/9/2011</u> Date		The City of Des Moines agrees to the terms and conditions listed above, by direction of the Des Moines City Council on _____, _____ Anthony A. Piasecki, City Manager _____ Date	

☐ Original – Public Works

REAL PROPERTY VOUCHER AGREEMENT

AGENCY NAME City of Des Moines Public Works Engineering 21650 11 th Avenue South Des Moines, WA 98198		I hereby agree to the terms and conditions listed below and hereby certify under penalty of perjury that the items and amounts listed herein are proper charges, that the same or any part thereof has not been paid, and that I am authorized to sign for the Claimant: (Sign in Ink)	
GRANTOR or CLAIMANT ROBERT E. FURNEY <u>ROBERT E. FURNEY</u> <u>206-265-2359</u> Tel. No.		By: <u>[Signature]</u> ROBERT E. FURNEY Date: <u>12/20/11</u> SSN/Tax ID: <u>531-38-7110</u>	
TRANSPORTATION GATEWAY PROJECT PROJECT NUMBER: CIP#319.333 or # 319.131 TITLE: 24 th Avenue S. Improvements (S. 216 th St to S. 208 th St.)		TAX PARCEL NUMBER: 092204-9320 PROJECT PARCEL NUMBER: 54	
In Full, Complete and Final Payment and Settlement for the Title or Interest Conveyed or Released, as Fully Set Forth In Attached Documents: Statutory Warranty Deed Date: <u>12/20/11</u> Construction Easement/Right of Entry Date: <u>12/20/11</u>			AMOUNT
For All Lands Convey: 248 SF in Fee Simple @ \$6.17 per SF Temporary Slope Easement: Mutual Benefit (1,960 SF) Construction Easement/Right of Entry For All Improvements: Trees For All Damages: n/a Less Special Benefits: n/a Statutory Evaluation Allowance:			+ \$ 1,530.16 + \$ 0.00 + \$ 0.00 + \$ 600.00 + \$ + \$ + \$ 0.00
JUST COMPENSATION			\$ 2,130.00 (r)
Legal / Administrative: Administrative Settlement Other Items: Deductions:			+\$ 870.00
FINAL SETTLEMENT			\$ 3,000.00
SUBTOTAL			\$ 3,000.00
TOTAL AMOUNT TO BE PAID:			\$ 3,000.00
Acquisition Agent: KRISTINE MARISTELA CERTIFIED Land Services Corporation 4619 37 th Ave SW, Seattle, WA 98126 Phone: (206) 287-9858 <u>Kristine Maristela</u> AGENT <u>12/9/2011</u> Date		The City of Des Moines agrees to the terms and conditions listed above, by direction of the Des Moines City Council on _____. _____ Anthony A. Piasecki, City Manager _____ Date	

☐ Original -- Public Works

REAL PROPERTY VOUCHER AGREEMENT

AGENCY NAME City of Des Moines Public Works Engineering 21650 11 th Avenue South Des Moines, WA 98198		I hereby agree to the terms and conditions listed below and hereby certify under penalty of perjury that the items and amounts listed herein are proper charges, that the same or any part thereof has not been paid, and that I am authorized to sign for the Claimant: (Sign in Ink) By: <u>[Signature]</u> ROBERT E. FURNEY Date: <u>12/20/11</u> SSN/Tax ID: <u>531-38-7110</u>	
GRANTOR or CLAIMANT ROBERT E. FURNEY <u>ROBERT E FURNEY</u> <u>206-265-2359</u> Tel. No.			
TRANSPORTATION GATEWAY PROJECT PROJECT NUMBER: CIP#319.333 or # 319.131 TITLE: 24 th Avenue S. Improvements (S. 216 th St to S. 208 th St.)		TAX PARCEL NUMBER: 092204-9135 PROJECT PARCEL NUMBER: 56	
In Full, Complete and Final Payment and Settlement for the Title or Interest Conveyed or Released, as Fully Set Forth In Attached Documents: Statutory Warranty Deed Date: <u>12/20/11</u> Construction Easement/Right of Entry Date: <u>12/20/11</u>		AMOUNT	
For All Lands Convey: 207 SF in Fee Simple @ \$6.17 per SF Construction Easement/Right of Entry		+ \$ 1,277.19	
For All Improvements: Grass sod and driveway		+ \$.00	
For All Damages: n/a		+ \$ 300.00	
Less Special Benefits: n/a		+ \$	
Statutory Evaluation Allowance:		+ \$ 0.00	
		JUST COMPENSATION \$ 1,577.00 (r)	
Legal / Administrative: Administrative Settlement		+ \$ 423.00	
Other Items:			
Deductions:			
		FINAL SETTLEMENT \$ 2,000.00	
		SUBTOTAL \$ 2,000.00	
		TOTAL AMOUNT TO BE PAID: \$ 2,000.00	
Acquisition Agent: KRISTINE MARISTELA CERTIFIED Land Services Corporation 4619 37 th Ave SW, Seattle, WA 98126 Phone: (206) 287-9856 <u>Kristine Maristela</u> AGENT Date <u>12/9/2011</u>		The City of Des Moines agrees to the terms and conditions listed above, by direction of the Des Moines City Council on _____ Anthony A. Piasecki, City Manager Date _____	

☐ Original - Public Works



**ROW & EASEMENT ACQUISITIONS
TRANSPORTATION GATEWAY PROJECT
JANUARY, 2012**

NOTES:

ROW ACQUISITION COMPLETE

ROW ACQUISITION PENDING

Attachment 7



KPG
150 W. Federal St. 1st Floor
Klamath Falls, OR 97603
(530) 266-1000
www.kpg.org

0 50 100 200 300
SCALE: 1"=100'



AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Des Moines Human Services
Advisory Committee

ATTACHMENT: None Provided

FOR AGENDA OF: January 12, 2012

DEPT. OF ORIGIN: Parks, Recreation & Senior
Services

DATE SUBMITTED: January 5, 2011

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to recommend City Council approval of a reappointment to the City of Des Moines Human Services Advisory Committee.

Motion: "I move to confirm the Mayoral reappointment of Susan Corey to the Des Moines Human Services Advisory Committee effective January 1, 2012, to a two year term which expires on December 31, 2013."

Background

The City Council adopted Ordinances No. 1047 and 1084 creating the powers and duties; membership, residency requirements and terms; and meetings and reports of the Human Services Advisory Board. The seven members Board positions expire every two years on December 31.

Discussion

Des Moines Human Services Advisory Committee member Susan Corey was appointed to a vacant unexpired term which ended on December, 31, 2011. Mrs. Corey has requested reappointment to the Human Services Advisory Committee for a second term. This agenda seeks confirmation of the Mayoral reappointment of Susan Corey to the Des Moines Human Services Advisory Committee effective January 1, 2012, to fill a two year term which expires on December 31, 2013.

Alternatives

City Council may choose to deny the request for reappointment.

Financial Impact

No financial impact.

Recommendation/Concurrence

The Des Moines Human Services Committee and City Administration support the reappointment.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Aquatic Lands Lease with the State of Washington Department Of Natural Resources

FOR AGENDA OF: January 12, 2012

DEPT. OF ORIGIN: Marina

ATTACHMENTS:

1. Draft Aquatic Lands Lease
2. DNR Lease Agenda Item from the Council Meeting on December 1, 2011.
3. Ordinance 1462.
4. Map of Proposed Lease Areas

DATE SUBMITTED: January 3, 2012

CLEARANCES:

- ☒ Legal TS
☒ Finance pl
☒ Marina [initials]
☐ Parks, Recreation & Senior Services n/a
☐ Planning, Building & Public Works n/a
☐ Police
☐ Courts n/a

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [signature]

Purpose and Recommendation

The purpose of this item is to seek the Council's approval of the agreement between the City and the State of Washington Department of Natural Resources, (DNR), for leasing three parcels of aquatic lands along the western boundary of the Marina. The largest parcel lies under the rock breakwater, another is located in the entrance channel and partially under the NW corner of the North Parking Lot and the third is located under the end of the Public Fishing Pier. These parcels have been leased from the State for many years, with the original lease expiring in 2002. After some delay, the DNR has sent a new draft lease for Council consideration.

Suggested Motion

Motion: "I move to approve the Draft Lease Agreement with the State of Washington Department of Natural Resources for the lease of three parcels of aquatic lands as shown in Exhibit A of the Draft Lease, authorizing the payment of \$101,302.34 per year for the use of the leased lands and further, to authorize the City Manager to sign the agreement, substantially in the form as attached."

Background

At the Council meeting on December 1, 2011, the Council declined to approve the new Aquatic Lands Lease with the DNR because there was a question about how far the right-of-way for 222nd Street extended to the west, and if it actually extended into the parcel owned by the State, (shown as "Lease Area B" on Attachment No. 4). The reason that this is important information is that if, in fact, the right-of-way does extend into "Lease

Area B, the City could vacate the right-of-way and possibly, depending on the exact location of the right-of-way, gain ownership of some of Lease Area B. At that time the Council directed the staff to check the records again to confirm the western-most boundary of the 222nd Street right-of-way and to bring the DNR lease issue back to the Council at the earliest opportunity.

Discussion

In 2009, the City began a process that would consolidate all of the individual parcels on the Marina floor into two large parcels. Part of that process was the vacation of the existing right-of-ways for South 222nd Street and South 223rd Street. The South 222nd Street right-of-way was initially dedicated as Vashon Street as part the plat entitled "Plat of the Town of Des Moines" recorded on July 23, 1889. During the review of the right-of-way vacation, there was some confusion about the western boundary of the South 222nd Street right-of-way because some later maps showed it extending further into the Sound than shown on the original plat. However, after a review of the original platting documents, it was determined that South 222nd Street right-of-way terminated at the mean low tide as shown on the map of the lease areas (Attachment 4). The reason is that the platting documents depicted the western extend of South 222nd Street terminating at the mean low tide line and only those rights-of-way shown on the plat were dedicated to the public pursuant to the dedication language of the recorded plat. A copy of Ordinance 1462 which vacated South 222nd Street is included as Attachment 3.

Alternatives

The formula for calculating the rental rates for aquatic lands is embedded in State law and is very specific. Our City Attorney's office has reviewed the lease to see if the DNR followed the law when calculating the rent and their opinion is that they did. It is always the Council's prerogative to not approve the lease and direct staff to continue negotiating, but there appears to be little room for any substantive change in the City's favor.

Financial Impact

As mentioned above, an increase of about \$85,000 per year in rent is a significant change to the cost/revenue structure of the Marina. The increase has been included in the budget for 2012 and will be partially offset by a general rate increase of 2.7% that will go into effect in February. Other Marina expenses budgeted for 2012, including payroll, have been held at levels at or below 2011.

Recommendation or Conclusion

The staff recommends that the Council authorize the City Manager to sign the Draft Aquatic Lands Lease with the DNR, substantially in the form as presented.

Concurrence

The City Attorney's office has reviewed and approved the Draft Lease document and the Finance Director has been informed of the increase in rent and changes in the appropriate budget line-items.

ATTACHMENT 1

When recorded, return to:
Des Moines Marina
22307 Dock Ave S
Des Moines, WA 98198-4690



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

AQUATIC LANDS LEASE

Lease No. 20-A09080

Grantor: Washington State Department of Natural Resources
Grantee(s): City of Des Moines
Legal Description: Section 8, Township 22 North, Range 4 East, W.M.
Assessor's Property Tax Parcel or Account Number: N/A
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this lease: 2009004515

THIS LEASE is between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and the CITY OF DES MOINES, a Government Agency/Entity ("Tenant").

BACKGROUND

Tenant desires to lease the aquatic lands commonly known as Elliott Bay, which are tidelands and bedlands located in King County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease. State has authority to enter Lease under Chapter 43.12, Chapter 43.30 and Title 79 of the Revised Code of Washington (RCW).

THEREFORE, the Parties agree as follows:

SECTION 1 PROPERTY

1.1 Property Defined.

- (a) State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property").
- (b) This Lease is subject to all valid interests of third parties noted in the records of King County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.
- (c) This Lease does not include a right to harvest, collect or damage natural resources, including aquatic life or living plants; water rights; mineral rights; or a right to excavate or withdraw sand, gravel, or other valuable materials.
- (d) State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not interfere unreasonably with the Permitted Use.

1.2 Survey and Property Descriptions.

- (a) Tenant prepared Exhibit A, which describes the Property. Tenant warrants that Exhibit A is a true and accurate description of the Lease boundaries and the improvements to be constructed or already existing in the Lease area. Tenant's obligation to provide a true and accurate description of the Property boundaries is a material term of this Lease.
- (b) State's acceptance of Exhibit A does not constitute agreement that Tenant's property description accurately reflects the actual amount of land used by Tenant. State reserves the right to retroactively adjust rent if at any time during the term of the Lease State discovers a discrepancy between Tenant's property description and the area actually used by Tenant.

1.3 Inspection. State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property, or the existence of hazardous substances on the Property. Tenant inspected the Property and accepts it "AS IS."

SECTION 2 USE

2.1 Permitted Use. Tenant shall use the Property for a rock breakwater, public fishing pier, parking lot, restroom, covered moorage and vessel access channel to the marina (the "Permitted Use"), and for no other purpose. This is a mixed use, with 44,363 square feet of water-dependent use, 7,417 square feet of nonwater-dependent use, and 22,993 square feet of public access. Exhibit B describes the Permitted Use in detail. The Permitted Use is subject to additional obligations in Exhibit B.

2.2 Restrictions on Permitted Use and Operations. The following limitations apply to the Property and adjacent state-owned aquatic land. Tenant's compliance with the following does not limit Tenant's liability under any other provision of this Lease.

- (a) Tenant shall not cause or permit:
 - (1) Damage to natural resources, except to the extent expressly permitted in Exhibit B,
 - (2) Waste, or
 - (3) Deposit of material, unless approved by State in writing and except to the extent expressly permitted in Exhibit B. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.
- (b) Tenant shall not cause or permit scour or damage to aquatic land and vegetation. This prohibition includes the following limitations:
 - (1) Tenant shall not use or allow use of a pressure washer to clean underwater surfaces unless the water is deeper than seven (7) feet at the time.
 - (2) Tenant shall not allow moorage or anchorage of vessels in water more shallow than seven (7) feet at the extreme low tide or water.
 - (3) If anchoring, Tenant shall use and shall require use of anchor lines with midline floats.
- (c) Tenant shall not construct new bulkheads or place hard bank armoring.
- (d) Tenant shall not construct or install new covered moorage or boat houses.
- (e) Unless approved by State in writing, and except as expressly permitted in Exhibit B, Tenant shall not cause or permit dredging on the Property. State will not approve dredging unless (1) required for flood control, maintenance of existing vessel traffic lanes, or maintenance of water intakes and (2) consistent with State's management plans, if any. Tenant shall maintain authorized dredge basins in a manner that prevents internal deeper pockets.
- (f) Tenant shall limit the number of residential slips, and shall manage residential uses on the Property, in accordance with the provisions of WAC 332-30-171 and as specified in Exhibit B.
- (g) Tenant shall not allow or authorize new floating houses

2.3 Conformance with Laws. Tenant shall, at all times, keep current and comply with all conditions and terms of permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Tenant's use or occupancy of the Property.

2.4 Liens and Encumbrances. Unless expressly authorized by State in writing, Tenant shall keep the Property free and clear of liens or encumbrances arising from the Permitted Use or Tenant's occupancy of the Property.

SECTION 3 TERM

3.1 Term Defined. The term of this Lease is thirty (30) years (the "Term"), beginning on the 1st day of January, 2012 (the "Commencement Date"), and ending on the 31st day of December, 2041 (the "Termination Date"), unless terminated sooner under the terms of this Lease.

3.2 Renewal of the Lease. This Lease does not provide a right of renewal. Tenant may apply for a new lease, which State has discretion to grant. Tenant must apply for a new lease at least one (1) year prior to Termination Date. State will notify Tenant within ninety (90) days of its intent to approve or deny a new Lease.

3.3 End of Term.

- (a) Upon the expiration or termination of this Lease, Tenant shall remove Improvements in accordance with Section 7, Improvements, and surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.
- (b) Definition of Reasonable Wear and Tear.
 - (1) Reasonable wear and tear is deterioration resulting from the Permitted Use that has occurred without neglect, negligence, carelessness, accident, or abuse of the Property by Tenant or any other person on the premises with the permission of Tenant.
 - (2) Reasonable wear and tear does not include unauthorized deposit of material prohibited under Paragraph 2.2 regardless of whether the deposit is incidental to or the byproduct of the Permitted Use.
- (c) If Property is in worse condition, excepting for reasonable wear and tear, on the surrender date than on the Commencement Date, the following provisions apply.
 - (1) State shall provide Tenant a reasonable time to take all steps necessary to remedy the condition of the Property. State may require Tenant to enter into a right-of-entry or other use authorization prior to the Tenant entering the Property if the Lease has terminated.
 - (2) If Tenant fails to remedy the condition of the Property in a timely manner, State may take steps reasonably necessary to remedy Tenant's failure. Upon demand by State, Tenant shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of material deposited improperly on the Property, lost revenue resulting from the condition of the Property, and administrative costs associated with the State's remedy.

3.4 Holdover.

- (a) If Tenant remains in possession of the Property after the Termination Date, the occupancy will not be an extension or renewal of the Term. The occupancy will be a month-to-month tenancy, on terms identical to the terms of this Lease, which either Party may terminate on thirty (30) days' written notice.
 - (1) The monthly rent during the holdover will be the same rent that would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms.
 - (2) Payment of more than the monthly rent will not be construed to create a periodic tenancy longer than month-to-month. If Tenant pays more than the monthly rent and State provides notice to vacate the property, State shall refund the amount of excess payment remaining after the Tenant ceases occupation of the Property.

- (b) If State notifies Tenant to vacate the Property and Tenant fails to do so within the time set forth in the notice, Tenant will be a trespasser and shall owe the State all amounts due under RCW 79.02.300 or other applicable law.

SECTION 4 RENT

4.1 Annual Rent.

- (a) Until adjusted as set forth below, Tenant shall pay to State an annual rent of, consisting of Eighty Three Thousand Six Hundred Eighty Six Dollars and Ninety Six Cents (\$83,686.96) related to the water-dependent use and, Seventeen Thousand Six Hundred Fifteen Dollars and Thirty Eight Cents (\$17,615.38) related to the nonwater-dependent use.
- (b) The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), is due and payable in full on or before the Commencement Date and on or before the same date of each year thereafter. Any payment not paid by State's close of business on the date due is past due.

4.2 Payment Place. Tenant shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

4.3 Adjustment Based on Use. Annual Rent is based on Tenant's Permitted Use of the Property, as described in Section 2 above. If Tenant's Permitted Use changes, the Annual Rent shall be adjusted as appropriate for the changed use.

4.4 Rent Adjustment Procedures.

- (a) Notice of Rent Adjustment. State shall provide notice of adjustments to the Annual Rent allowed under Paragraphs 4.5/4.6(b) to Tenant in writing no later than ninety (90) days after the anniversary date of the Lease.
- (b) Procedures on Failure to make Timely Adjustment. If the State fails to provide the notice required in Paragraph 4.4(a), State shall not collect the adjustment amount for the year in which State failed to provide notice. Upon providing notice of adjustment, State may adjust and prospectively bill Annual Rent as if missed or waived adjustments had been implemented at the proper interval. This includes the implementation of any inflation adjustment.

4.5 Rent Adjustments for Water-Dependent Uses.

- (a) Inflation Adjustment. State shall adjust water-dependent rent annually pursuant to RCW 79.105.200-.360, except in those years in which State revalues the rent under Paragraph 4.5(b) below. This adjustment will be effective on the anniversary of the Commencement Date.
- (b) Revaluation of Rent. At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the water-dependent Annual Rent in accordance with RCW 79.105.200-.360.

- (c) **Rent Cap.** State shall increase rent incrementally in compliance with RCW 79.105.260 as follows: If application of the statutory rent formula for water-dependent uses would result in an increase in the rent attributable to such uses of more than fifty percent (50%) in any one year, State shall limit the actual increase implemented in such year to fifty percent (50%) of the then-existing rent. In subsequent, successive years, State shall increase the rental amount incrementally until the State implements the full amount of increase as determined by the statutory rent formula.

4.6 Rent Adjustments for Nonwater-Dependent Uses.

- (a) **Inflation Adjustment.** Except in those years in which State revalues the rent under Paragraph 4.5(b) below, State shall adjust nonwater-dependent rent annually on the Commencement Date. Adjustment is based on the percentage rate of change in the previous calendar year's Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Commerce, for the Seattle-Tacoma-Bremerton CMSA, All Urban Consumers, all items 1982-84 = 100. If publication of the Consumer Price Index is discontinued, State shall use a reliable governmental or other nonpartisan publication evaluating the information used in determining the Consumer Price Index.
- (b) **Revaluation of Rent.**
 - (1) At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the nonwater-dependent Annual Rent to reflect the then-current fair market rent.
 - (2) If State and Tenant cannot reach agreement on the fair market rental value, the Parties shall submit the valuation to a review board of appraisers. The board must consist of three members, one selected by and at the cost of Tenant; a second member selected by and at the cost of State; and a third member selected by the other two members with the cost shared equally by State and Tenant. The decision of the majority of the board binds the Parties. Until the Parties agree to, or the review board establishes, the new rent, Tenant shall pay rent in the same amount established for the preceding year. If the board determines additional rent is required, Tenant shall pay the additional rent within ten (10) days of the board's decision. If the board determines a refund is required, State shall pay the refund within ten (10) days of the board's decision.

SECTION 5 OTHER EXPENSES

5.1 Utilities. Tenant shall pay all fees charged for utilities required or needed by the Permitted Use.

5.2 Taxes and Assessments. Tenant shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges applicable or attributable to the Property, Tenant's leasehold interest, the improvements, or Tenant's use and enjoyment of the Property.

5.3 Right to Contest. If in good faith, Tenant may contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against loss or liability resulting from such contest.

5.4 Proof of Payment. If required by State, Tenant shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Lease requires Tenant to pay.

5.5 Failure to Pay. If Tenant fails to pay amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Failure to Pay Rent. Failure to pay rent is a default by the Tenant. State may seek remedies under Section 14 as well as late charges and interest as provided in this Section 6.

6.2 Late Charge. If State does not receive full rent payment within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the unpaid amount or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

6.3 Interest Penalty for Past Due Rent and Other Sums Owed.

- (a) Tenant shall pay interest on the past due rent at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Rent not paid by the close of business on the due date will begin accruing interest the day after the due date.
- (b) If State pays or advances any amounts for or on behalf of Tenant, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance. This includes, but is not limited to, State's payment of taxes of any kind, assessments, insurance premiums, costs of removal and disposal of materials or Improvements under any provision of this Lease, or other amounts not paid when due.

6.4 Referral to Collection Agency and Collection Agency Fees. If State does not receive full payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Tenant shall pay collection agency fees in addition to the unpaid amount.

6.5 No Accord and Satisfaction. If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance of the rent or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

6.6 No Counterclaim, Setoff, or Abatement of Rent. Except as expressly set forth elsewhere in this Lease, Tenant shall pay rent and all other sums payable by Tenant without the requirement that State provide prior notice or demand. Tenant's payment is not subject to counterclaim, setoff, deduction, defense or abatement.

SECTION 7 IMPROVEMENTS

7.1 Improvements Defined.

- (a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, fill, structures, bulkheads, docks, pilings, and other fixtures.
- (b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property or Improvements or (2) diminishing the value or utility of the Property or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Tenant.
- (d) "Tenant-Owned Improvements" are Improvements authorized by State and (1) made by Tenant or (2) acquired by Tenant from the prior tenant.
- (e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Tenant that do not conform to plans submitted to and approved by the State.

7.2 Existing Improvements. On the Commencement Date, the following Improvements are located on the Property: A rock breakwater, fishing pier, parking lot, restroom and covered moorage slips. The Improvements are Tenant-Owned Improvements.

7.3 Construction, Major Repair, Modification, and Demolition.

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, demolition, and deconstruction of Improvements ("Work"). Section 11 governs routine maintenance and minor repair.
- (b) All Work must conform to requirements under Paragraph 7.4. Paragraph 11.3, which applies to routine maintenance and minor repair, also applies to all Work under this Paragraph 7.3.
- (c) Except in an emergency, Tenant shall not conduct Work, without State's prior written consent, as follows:
 - (1) State may deny consent if State determines that denial is in the best interests of the State or if proposed Work does not comply with Paragraphs 7.4 and 11.3. State may impose additional conditions reasonably intended to protect and preserve the Property. If Work is for removal of Improvements at End of Term, State may waive removal of some or all Improvements.
 - (2) Except in an emergency, Tenant shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Tenant and

State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Tenant shall submit plans and specifications at least ninety (90) days before commencement of Work.

- (3) State waives the requirement for consent if State does not notify Tenant of its grant or denial of consent within sixty (60) days of submittal.
- (d) Tenant shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Tenant shall provide State with plans and specifications or as-builts of emergency Work.
- (e) Tenant shall not commence or authorize Work until Tenant has:
 - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Tenant shall maintain the performance and payment bond until Tenant pays in full the costs of the Work, including all laborers and material persons.
 - (2) Obtained all required permits.
- (f) Before completing Work, Tenant shall remove all debris and restore the Property to an orderly and safe condition. If Work is intended for removal of Improvements at End of Term, Tenant shall restore the Property in accordance with Paragraph 3.3, End of Term.
- (g) Upon completing work, Tenant shall promptly provide State with as-built plans and specifications.
- (h) State shall not charge rent for authorized Improvements installed by Tenant during this Term of this Lease, but State may charge rent for such Improvements when and if Tenant or successor obtains a subsequent use authorization for the Property and State has waived the requirement for Improvements to be removed as provided in Paragraph 7.5.

7.4 Standards for Work. Tenant shall comply with State's Standards for Improvements current at the time Tenant submits plans and specifications for State's approval in accordance with Paragraph 7.3(b).

- (a) Standards for Work
 - (1) State will not approve plans to construct new Improvements or expand existing Improvements in or over habitats designated by State as important habitat. Tenant shall confirm location of important habitat on Property, if any, with State before submitting plans and specifications in accordance with Paragraph 7.3.
 - (2) Tenant shall not install skirting on any overwater structure.
 - (3) Tenant shall not conduct in-water Work during the following time periods:

Work Prohibited	Species
July 2 to March 2	All Salmonid Species
July 16 to February 15	Bull Trout

If the Washington Department of Fish and Wildlife or other regulatory agency establishes different standards, Tenant shall meet the most protective standard. Tenant shall not conduct in-water Work during time

periods prohibited for such work under WAC 220-110-271, Prohibited Work Times in Saltwater, as amended, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW).

- (4) Where Work is in or within 200 feet of spawning habitat for Pacific Herring (*Clupea harengus*), Surf Smelt (*Hypomesus pretiosus*), and Sand Lance (*Ammodytes hexapterus*), Tenant shall construct all new or expansions to existing Improvements to avoid (1) removal of shoreline vegetation within the Property that provides shading to the upper intertidal zone, (2) changes in typical spawning behavior, (3) destruction or disturbance of spawning substrate or aquatic vegetation used for spawning, and (4) interruption of existing sediment transport mechanisms such as longshore current or wave energy.
- (5) Tenant shall meet the following minimum sewage management standards. If, at the time Tenant applies for regulatory permits, a regulatory agency requires more or fewer facilities, Tenant shall comply with the standard requiring more facilities.
 - (i) Tenant shall provide at least 1 (one) sewage pumpout facility in all marinas with more than 10 boat slips.
 - (ii) Tenant shall provide sewage management facilities at a ratio of at least 1 (one) pumpout station and 1 (one) dump station per every 300 boats over 16 feet in length.
 - (iii) For marinas with 100 or less boats with a holding tank or portable toilet, Tenant shall provide sewage holding tank capacity in a ratio of at least 15 gallons per boat. Sewage holding tanks must have a minimum capacity of 300 gallons. For marinas with more than 100 boats with a holding tank or portable toilet, Tenant shall provide at sewage holding tank with a capacity of at least 2,000 gallons.

7.5 Tenant-Owned Improvements at End of Lease.

- (a) Disposition
 - (1) Tenant shall remove Tenant-Owned Improvements in accordance with Paragraph 7.3 upon the expiration, termination, or cancellation of the Lease unless State waives the requirement for removal.
 - (2) Tenant-Owned Improvements remaining on the Property on the expiration, termination or cancellation date shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership. If RCW 79.125.300 or 79.130.040 apply at the time this Lease expires, Tenant could be entitled to payment by the new tenant for Tenant-Owned Improvements.
 - (3) If Tenant-Owned Improvements remain on the Property after the expiration, termination, or cancellation date without State's consent, State may remove all Improvements and Tenant shall pay State's costs.
- (b) Conditions Under Which State May Waive Removal of Tenant-Owned Improvements.

- (1) State may waive removal of some or all Tenant-Owned Improvements whenever State determines that it is in the best interests of the State and regardless of whether Tenant re-leases the Property.
- (2) If Tenant re-leases the Property, State may waive requirement remove Tenant-Owned Improvements. State also may consent to Tenant's continued ownership of Tenant-Owned Improvements.
- (3) If Tenant does not re-lease the Property, State may waive requirement to remove Tenant-Owned Improvements upon consideration of a timely request from Tenant, as follows:
 - (i) Tenant must notify State at least one (1) year before the Termination Date of its request to leave Tenant-Owned Improvements.
 - (ii) State, within ninety (90) days of receiving Tenant's notification, will notify Tenant whether State consents to some or all Tenant-Owned Improvements remaining. State has no obligation to grant consent.
 - (iii) State's failure to respond to Tenant's request to leave Improvements within ninety (90) days is a denial of the request.
- (c) Tenant's Obligations if State Waives Removal.
 - (1) Tenant shall not remove Improvements if State waives the requirement for removal of some or all Tenant-Owned Improvements.
 - (2) Tenant shall maintain such Improvements in accordance with this Lease until the expiration, termination, or cancellation date. Tenant is liable to State for cost of repair if Tenant causes or allows damage to Improvements State has designated to remain.

7.6 Disposition of Unauthorized Improvements.

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) State may either:
 - (1) Consent to Tenant ownership of the Improvements, or
 - (2) Charge rent for use of the Improvements from the time of installation or construction and
 - (i) Require Tenant to remove the Improvements in accordance with Paragraph 7.3, in which case Tenant shall pay rent for the Improvements until removal, or
 - (ii) Consent to Improvements remaining and Tenant shall pay rent for the use of the Improvements, or
 - (iii) Remove Improvements and Tenant shall pay for the cost of removal and disposal, in which case Tenant shall pay rent for use of the Improvements until removal and disposal.

7.7 Disposition of Personal Property.

- (a) Tenant retains ownership of Personal Property unless Tenant and State agree otherwise in writing.
- (b) Tenant shall remove Personal Property from the Property by the Termination Date. Tenant is liable for damage to the Property and Improvements resulting from removal of Personal Property.

- (c) State may sell or dispose of all Personal Property left on the Property after the Termination Date.
 - (1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Tenant to the State. State shall pay the remainder, if any, to the Tenant.
 - (2) If State disposes of Personal Property, Tenant shall pay for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).
- (c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care applicable under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW, as amended.
- (d) "Tenant and affiliates" when used in this Section 8 means Tenant or Tenant's subtenants, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Property with the Tenant's permission.
- (e) "Liabilities" as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.

8.2 General Conditions.

- (a) Tenant's obligations under this Section 8 extend to the area in, on, under, or above
 - (1) The Property and
 - (2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.
 - (1) Tenant shall exercise the utmost care with respect to Hazardous Substances.
 - (2) Tenant shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

8.3 Current Conditions and Duty to Investigate.

- (a) State makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under, or above the Property.

- (b) This Lease does not impose a duty on State to conduct investigations or supply information to Tenant about Hazardous Substances.
- (c) Tenant is responsible for conducting all appropriate inquiry and gathering sufficient information about the existence, scope, and location of Hazardous Substances on or near the Property necessary for Tenant to meet Tenant's obligations under this Lease and utilize the Property for the Permitted Use.

8.4 Use of Hazardous Substances.

- (a) Tenant and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Tenant shall not undertake, or allow others to undertake by Tenant's permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.
- (c) If use of Hazardous Substances related to Tenant's use or occupancy of the Property results in violation of law:
 - (1) Tenant shall submit to State any plans for remedying the violations, and
 - (2) Tenant shall implement any remedial measures to restore the Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.
- (d) Tenant shall comply with the provisions of Chapter 90.56 RCW Oil and Hazardous Substance Spill Prevention and Response Act. Tenant shall develop, update as necessary and operate in accordance with a plan of operations consistent with the requirements of Chapter 90.56 RCW. Failure to comply with the requirements of Chapter 90.56 is a default under Section 14.
- (e) Tenant shall incorporate best management practices to prevent the release of chemical contaminants, wastewater, garbage and other pollutants, as specified in Resource Manual for Pollution Prevention in Marinas published by the Washington Department of Ecology, publication number 98-11, available at <http://www.ecy.wa.gov/biblio/9811.html>. If the Department of Ecology or other regulatory agency establishes different standards, Tenant shall meet the most protective standard.

8.5 Management of Contamination, if any.

- (a) Tenant and affiliates shall not undertake activities that:
 - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
 - (2) Result in human or environmental exposure to contaminated sediments, if any;
 - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Tenant shall allow reasonable access to:
 - (1) Employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, health department, or other similar environmental agencies; and

- (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Tenant may negotiate an access agreement with such parties, but Tenant may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

- (a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:
 - (1) A release or threatened release of Hazardous Substances;
 - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances;
 - (3) Any lien or action arising from Hazardous Substances;
 - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
 - (5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property.
- (b) Tenant's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a) and to any other property used by Tenant in conjunction with the Property if a release of Hazardous Substances on the other property could affect the Property.
- (c) Tenant shall provide State with copies of all documents Tenant submits to any federal, state or local authorities concerning environmental impacts or proposals relative to the Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollution Discharge and Elimination System Permits; Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality certification; Substantial Development permit; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

8.7 Indemnification.

- (a) Tenant shall fully indemnify, defend, and hold State harmless from and against Liabilities that arise out of, or relate to:
 - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property;
 - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property.
- (b) Tenant shall fully indemnify, defend, and hold State harmless for Liabilities that arise out of or relate to Tenant's breach of obligations under Paragraph 8.5.
- (c) Tenant has no duty to indemnify State for acts or omissions of third parties unless and only if an administrative or legal proceeding arising from a release or threatened release of Hazardous Substances finds or holds that Tenant failed to exercise care as described in Paragraph 8.2(b)(2). In such case, Tenant shall fully

indemnify, defend, and hold State harmless from and against Liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances. This includes Liabilities arising before the finding or holding in the proceeding.

8.8 Reservation of Rights.

- (a) For Liabilities not covered by the indemnification provisions of Paragraph 8.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.
- (b) The Parties expressly reserve all rights, claims, immunities, and defenses either Party may have against third parties. Nothing in this Section 8 benefits or creates rights for third parties.
- (c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 8 do not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.

8.9 Cleanup.

- (a) If Tenant's act, omission, or breach of obligation under Paragraph 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standard, Tenant shall, at Tenant's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.
- (b) Tenant may undertake a cleanup of the Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Tenant cooperates with the Department of Natural Resources in development of cleanup plans. Tenant shall not proceed with Voluntary Cleanup without the Department of Natural Resources approval of final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Lease. Tenant's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Lease.

8.10 Sampling by State, Reimbursement, and Split Samples.

- (a) State may enter the Property and conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (b) If such Tests, along with any other information, demonstrate a breach of Tenant's obligations regarding Hazardous Substances under this Lease, Tenant shall promptly reimburse State for all costs associated with the Tests, provided State gave Tenant thirty (30) calendar days advance notice in non-emergencies and reasonably practical notice in emergencies.
- (c) In non-emergencies, Tenant is entitled to obtain split samples of Test samples, provided Tenant gives State written notice requesting split samples at least ten (10) calendar days before State conducts Tests. Upon demand, Tenant shall promptly reimburse State for additional cost, if any, of split samples.

- (d) If either Party conducts Tests on the Property, the conducting Party shall provide the other with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) calendar days of a written request by the other party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Tenant shall submit data and information to State without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

8.11 Closeout Assessment.

- (a) State may require Tenant to conduct a Closeout Environmental Assessment ("Closeout Assessment") prior to Termination of the Lease.
- (b) The purpose of the Closeout Assessment is to determine the existence, scope, or effects of Hazardous Substances on the Property and associated natural resources. The Closeout Assessment may include sediment sampling.
- (c) No later than one hundred eighty (180) calendar days prior to the Termination Date, or within ninety (90) days of valid notice to early termination, State shall provide Tenant with written notice that State requires a Closeout Assessment.
- (d) Within sixty (60) days of State's notice that Closeout Assessment is required and before commencing assessment activities, Tenant shall submit a proposed plan for conducting the Closeout Assessment in writing for State's approval.
- (e) If State fails to approve or disapprove of the plan in writing within sixty (60) days of its receipt, State waives requirement for approval.
- (f) Tenant shall be responsible for all costs required to complete planning, sampling, analyzing, and reporting associated with the Closeout Assessment.
- (g) If the initial results of the Closeout Assessment disclose that Hazardous Substances may have migrated to other property, State may require additional Closeout Assessment work to determine the existence, scope, and effect of Hazardous Substances on adjacent property, any other property subject to use by Tenant in conjunction with its use of the Property, or on associated natural resources.
- (h) Tenant shall submit Closeout Assessment to State upon completion.
- (i) As required by law, Tenant shall report to the appropriate regulatory authorities if the Closeout Assessment discloses a release or threatened release of Hazardous Substances.

SECTION 9 ASSIGNMENT AND SUBLETTING

9.1 State Consent Required. Tenant shall not convey, transfer, or encumber any part of Tenant's interest in this Lease or the Property without State's prior written consent, which State shall not unreasonably condition or withhold.

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. State may refuse its consent to any conveyance,

transfer, or encumbrance if it will result in a subdivision of the leasehold. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.

- (b) State reserves the right to condition its consent upon:
 - (1) changes in the terms and conditions of this Lease, including, but not limited to, the Annual Rent; and/or
 - (2) the agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.
- (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant.
- (d) State's consent under this Paragraph 9.1 does not constitute a waiver of any claims against Tenant for the violation of any term of this Lease.

9.2 Rent Payments Following Assignment. The acceptance by State of the payment of rent following an assignment or other transfer does not constitute consent to any assignment or transfer.

9.3 Terms of Subleases.

- (a) Tenant shall submit the terms of all subleases to State for approval.
- (b) Tenant shall incorporate the following requirements in all subleases:
 - (1) The sublease must be consistent with and subject to all the terms and conditions of this Lease;
 - (2) The sublease must provide that this Lease controls if the terms of the sublease conflict with the terms of this Lease;
 - (3) The term of the sublease (including any period of time covered by a renewal option) must end before the Termination Date of the initial Term or any renewal term;
 - (4) The sublease must terminate if this Lease terminates for any reason;
 - (5) The subtenant must receive and acknowledge receipt of a copy of this Lease;
 - (6) The sublease must prohibit the prepayment to Tenant by the subtenant of more than the annual rent;
 - (7) The sublease must identify the rental amount subtenant is to pay to Tenant;
 - (8) The sublease must provide that there is no privity of contract between the subtenant and State;
 - (9) The sublease must require removal of the subtenant's Improvements and Personal Property upon termination of the sublease;
 - (10) The subtenant's permitted use must be within the scope of the Permitted Use; and
 - (11) The sublease must require the subtenant to meet all obligations of Tenant under Section 10, Indemnification, Financial Security, and Insurance.

9.4 Short-Term Subleases of Moorage Slips. Short-term subleasing of moorage slips for a term of less than one year does not require State's written consent or approval pursuant to Paragraphs 9.1 or 9.3. Tenant shall conform moorage sublease agreements to the sublease requirements in Paragraph 9.3.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity.

- (a) Tenant shall indemnify, defend, and hold State, its employees, officers, and agents harmless from Claims arising out of the use, occupation, or control of the Property by Tenant, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.
- (b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Property and damages resulting from loss of use of the Property.
- (c) State shall not require Tenant to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.
- (d) Tenant waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.
- (e) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Tenant's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.

10.2 Insurance Terms.

- (a) Insurance Required.
 - (1) Tenant certifies that it is self-insured for all the liability exposures, its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 10.2 and by Paragraph 10.3, Insurance Types and Limits. Tenant shall provide to State evidence of its status as a self-insured entity. Upon request by State, Tenant shall provide a written description of its financial condition and/or the self-insured funding mechanism. Tenant shall provide State with at least thirty (30) days' written notice prior to any material changes to Tenant's self-insured funding mechanism.
 - (2) Unless State agrees to an exception, Tenant shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of Best's Reports. Tenant may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
 - (3) All general liability, excess, umbrella, property, builder's risk, and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees as an additional insured.

- (4) All insurance provided in compliance with this Lease must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
 - (1) Tenant waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Lease covers these damages.
 - (2) Except as prohibited by law, Tenant waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this lease.
- (c) Proof of Insurance.
 - (1) Tenant shall provide State with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Lease and, if requested, copies of policies to State.
 - (2) The certificate(s) of insurance must reference additional insureds and the Lease number.
 - (3) Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Lease, as follows:
 - (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
 - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State thirty (30) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
 - (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
 - (2) Tenant shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Tenant fails to procure and maintain the insurance described above within fifteen (15) days after Tenant receives a notice to comply from State, State may either:
 - (1) Deem the failure an Event of Default under Section 14, or
 - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Tenant shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.2 from the date of State's notice of the expenditure until Tenant's repayment.
- (g) General Terms.
 - (1) State does not represent that coverage and limits required under this Lease are adequate to protect Tenant.
 - (2) Coverage and limits do not limit Tenant's liability for indemnification and reimbursements granted to State under this Lease.

- (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Tenant.

10.3 Insurance Types and Limits.

(a) General Liability Insurance.

- (1) Tenant shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
- (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
- (3) MGL insurance must have no exclusions for non-owned watercraft.

(b) Workers' Compensation.

- (1) State of Washington Workers' Compensation.
 - (i) Tenant shall comply with all State of Washington workers' compensation statutes and regulations. Tenant shall provide workers' compensation coverage for all employees of Tenant. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Tenant's use, occupation, and control of the Property.
 - (ii) If Tenant fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Tenant shall indemnify State. Indemnity shall include all fines; payment of benefits to Tenant, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
- (2) Longshore and Harbor Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Tenant to provide insurance coverage in some circumstances. Tenant shall ascertain if such insurance is required

and, if required, shall maintain insurance in compliance with law. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.

- (c) Employers' Liability Insurance. Tenant shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident or One Million Dollars (\$1,000,000) each employee for bodily injury by disease.

10.4 Financial Security.

- (a) At its own expense, Tenant shall procure and maintain during the Term of this Lease a corporate security bond or provide other financial security that State, at its option, may approve ("Security"). Tenant shall provide Security in an amount equal to Zero Dollars (\$0), which is consistent with RCW 79.105.330, and secures Tenant's performance of its obligations under this Lease, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Tenant's failure to maintain the Security in the required amount during the Term constitutes a breach of this Lease.
- (b) All Security must be in a form acceptable to the State.
 - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of Best's Reports, unless State approves an exception. Tenant may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement.
 - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
 - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
 - (1) State may require an adjustment in the Security amount:
 - (i) At the same time as revaluation of the Annual Rent,
 - (ii) As a condition of approval of assignment or sublease of this Lease,
 - (iii) Upon a material change in the condition or disposition of any Improvements, or
 - (iv) Upon a change in the Permitted Use.
 - (2) Tenant shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any default by Tenant in its obligations under this Lease, State may collect on the Security to offset the liability of Tenant to State. Collection on the Security does not (1) relieve Tenant of liability, (2) limit any of State's other remedies, (3) reinstate or cure the default or (4) prevent termination of the Lease because of the default.

SECTION 11 ROUTINE MAINTENANCE AND REPAIR

11.1 State's Repairs. This Lease does not obligate State to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

11.2 Tenant's Repairs and Maintenance.

- (a) Routine maintenance and repair are acts intended to prevent a decline, lapse or, cessation of the Permitted Use and associated Improvements. Routine maintenance or repair is the type of work that does not require regulatory permits.
- (b) At Tenant's own expense, Tenant shall keep and maintain the Property and all Improvements in good order and repair and in a safe condition. State's consent is not required for routine maintenance or repair.
- (c) At Tenant's own expense, Tenant shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any Improvements on the Property that any public authority may require. If a public authority requires work beyond the scope of routine maintenance and repair, Tenant shall comply with Section 7 of this Lease.

11.3 Limitations. The following limitations apply whenever Tenant conducts maintenance, repair or replacement. The following limitations also apply whenever Tenant conducts maintenance, repair, or replacement on the exterior surfaces, features, or fixtures of a floating house.

- (a) Tenant shall not use or install treated wood at any location above or below water, except that Tenant may use treated wood for above water structural framing.
- (b) Tenant shall not use or install tires (for example, floatation or fenders) at any location above or below water.
- (c) Tenant shall install only floatation material encapsulated in a shell resistant to ultraviolet radiation and abrasion. The shell must be capable of preventing breakup and loss of flotation material into the water.
- (d) Tenant shall orient night lighting to minimize the amount of light shining directly on the water.
- (e) Tenant shall not allow new floating structures to come in contact with underlying tidelands ("ground out"). Tenant must either (1) locate all new floating structures in water too deep to permit grounding out or (2) install stoppers sufficient to maintain a distance of at least 1.5 feet (0.5 meters) between the bottom of the floats and the substrate.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

- (a) In the event of damage to or destruction of the Property or Improvements, Tenant shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction without Tenant's written notice.
- (b) Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and Improvements as nearly as possible to its condition

immediately prior to the damage or destruction in accordance with Paragraph 7.3, Construction, Major Repair, Modification, and Demolition and Tenant's additional obligations in Exhibit B, if any.

12.2 State's Waiver of Claim. State does not waive any claims for damage or destruction of the Property unless State provides written notice to Tenant of each specific claim waived.

12.3 Insurance Proceeds. Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any Improvements on the Property is not conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

12.4 Rent in the Event of Damage or Destruction. Unless the Parties agree to terminate this Lease, there is no abatement or reduction in rent during such reconstruction, repair, and replacement.

12.5 Default at the Time of Damage or Destruction. If Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

SECTION 13 CONDEMNATION

13.1 Definitions.

- (a) "Taking" means that an entity authorized by law exercises the power of eminent domain, either by judgment, settlement in lieu of judgment, or voluntary conveyance in lieu of formal court proceedings, over all or any portion of the Property and Improvements. This includes any exercise of eminent domain on any portion of the Property and Improvements that, in the judgment of the State, prevents or renders impractical the Permitted Use.
- (b) "Date of Taking" means the date upon which title to the Property or a portion of the Property passes to and vests in the condemner or the effective date of any order for possession if issued prior to the date title vests in the condemner.

13.2 Effect of Taking. If there is a taking, the Lease terminates proportionate to the extent of the taking. If this Lease terminates in whole or in part, Tenant shall make all payments due and attributable to the taken Property up to the date of taking. If Tenant has pre-paid rent and Tenant is not in default of the Lease, State shall refund Tenant the pro rata share of the pre-paid rent attributable to the period after the date of taking.

13.3 Allocation of Award.

- (a) The Parties shall allocate the condemnation award based upon the ratio of the fair market value of (1) Tenant's leasehold estate and Tenant-Owned Improvements and (2) State's interest in the Property; the reversionary interest in Tenant-Owned Improvements, if any; and State-Owned Improvements, if any.

- (b) If Tenant and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 DEFAULT AND REMEDIES

14.1 Default Defined. Tenant is in default of this Lease on the occurrence of any of the following:

- (a) Failure to pay rent or other expenses when due;
- (b) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
- (c) Failure to comply with any other provision of this Lease;
- (d) Commencement of bankruptcy proceedings by or against Tenant or the appointment of a trustee or receiver of Tenant's property.

14.2 Tenant's Right to Cure.

- (a) A default becomes an "Event of Default" if Tenant fails to cure the default within the applicable cure period following State's written notice of default. Upon an Event of Default, State may seek remedies under Paragraph 14.3.
- (b) Unless expressly provided elsewhere in this Lease, the cure period is ten (10) days for failure to pay rent or other monetary defaults; for other defaults, the cure period is thirty (30) days.
- (c) For nonmonetary defaults not capable of cure within thirty (30) days, State will not unreasonably withhold approval of a reasonable alternative cure schedule. Tenant must submit a cure schedule within thirty (30) days of a notice of default. The default is not an Event of Default if State approves the schedule and Tenant works diligently and in good faith to execute the cure. The default is an Event of Default if Tenant fails to timely submit a schedule or fails to cure in accordance with an approved schedule.
- (d) State may elect to deem a default by Tenant as an Event of Default if the default occurs within six (6) months after a default by Tenant for which State has provided notice and opportunity to cure and regardless of whether the first and subsequent defaults are of the same nature.

14.3 Remedies.

- (a) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise.
- (b) If the Event of Default (1) arises from Tenant's failure to comply with restrictions on Permitted Use and operations under Paragraph 2.2 or (2) results in damage to natural resources or the Property, State may enter the Property without terminating this Lease to (1) restore the natural resources or Property and charge Tenant restoration costs and/or (2) charge Tenant for damages. On demand by State, Tenant shall pay all costs and/or damages.

- (c) Without terminating this Lease, State may relet the Property on any terms and conditions as State may decide are appropriate.
 - (1) State shall apply rent received by reletting: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. State shall hold and apply any balance to Tenant's future rent as it becomes due.
 - (2) Tenant is responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly.
 - (3) At any time after reletting, State may elect to terminate this Lease for the previous Event of Default.
- (d) State's reentry or repossession of the Property under Paragraph 14.3 is not an election to terminate this Lease or cause a forfeiture of rents or other charges. Tenant is obligated to pay during the balance of the Term, unless (1) State gives Tenant written notice of termination or (2) a legal proceeding decrees termination.
- (e) The remedies specified under this Paragraph 14.3 are not exclusive of any other remedies or means of redress to which the State is lawfully entitled for Tenant's breach or threatened breach of any provision of this Lease.

SECTION 15 ENTRY BY STATE

State may enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease, to monitor impacts to habitat, or survey habitat and species. Tenant grants State permission to cross Tenant's upland and aquatic land property to access the Property. State shall provide at least 24 hours notice before entering Tenant's property. State may coordinate the site inspection with Washington State Department of Ecology or other regulatory authorities, if appropriate. Provision for periodic inspection does not preclude State's option to inspect at other times. State's failure to inspect the Property does not constitute a waiver of any rights or remedies under this Lease.

SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

16.1 No Guaranty or Warranty.

- (a) State believes that this Lease is consistent with the Public Trust Doctrine and that none of the third-party interests identified in Paragraph 1.1(b) will materially or adversely affect Tenant's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.
- (b) State disclaims and Tenant releases State from any claim for breach of any implied covenant of quiet enjoyment. This disclaimer and release includes, but is not limited to, interference arising from exercise of rights under the Public Trust Doctrine; Treaty rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands and navigable waters.

- (c) Tenant is responsible for determining the extent of Tenant's right to possession and for defending Tenant's leasehold interest.

16.2 Eviction by Third-Party. If a third-party evicts Tenant, this Lease terminates as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations abate as of the date of the partial eviction, in direct proportion to the extent of the eviction; this Lease shall remain in full force and effect in all other respects.

SECTION 17 NOTICE AND SUBMITTALS

Following are the locations for delivery of notice and submittals required or permitted under this Lease. Any Party may change the place of delivery upon ten (10) days written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Shoreline District Aquatics
950 Farman Ave N
Enumclaw, WA 98022-9282

Tenant: CITY OF DES MOINES
22307 Dock Ave S
Des Moines, WA 98198-4690

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Lease number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

SECTION 18 MISCELLANEOUS

18.1 Authority. Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant shall provide evidence satisfactory to State confirming these representations.

18.2 Successors and Assigns. This Lease binds and inures to the benefit of the Parties, their successors, and assigns.

18.3 Headings. The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

18.4 Entire Agreement. This Lease, including the exhibits and addenda, if any, contains the entire agreement of the Parties. This Lease merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property.

18.5 Waiver.

- (a) The waiver of any breach or default of any term, covenant, or condition of this Lease is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a rental payment is not a waiver of any preceding or existing breach other than the failure to pay the particular rental payment that was accepted.
- (b) The renewal of the Lease, extension of the Lease, or the issuance of a new lease to Tenant, does not waive State's ability to pursue any rights or remedies under the Lease.

18.6 Cumulative Remedies. The rights and remedies under this Lease are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

18.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Lease.

18.8 Language. The word "Tenant" as used in this Lease applies to one or more persons and regardless of gender, as the case may be. If there is more than one Tenant, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Tenant in the collective. The word "Party" means either or both State and Tenant, depending on the context.

18.9 Invalidity. The invalidity, voidness, or illegality of any provision of this Lease does not affect, impair, or invalidate any other provision of this Lease.

18.10 Applicable Law and Venue. This Lease is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Lease is in the Superior Court for Thurston County, Washington.

18.11 Statutory Reference. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded.

18.12 Recordation. At Tenant's expense and no later than thirty (30) days after receiving the fully-executed Lease, Tenant shall record this Lease in the county in which the Property is located. Tenant shall include the parcel number of the upland property used in conjunction with the Property, if any. Tenant shall provide State with recording information, including the date of recordation and file number. If Tenant fails to record this Lease, State may record it and Tenant shall pay the costs of recording upon State's demand.

18.13 Modification. No modification of this Lease is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

18.14 Survival. Any obligations of Tenant not fully performed upon termination of this Lease do not cease, but continue as obligations of the Tenant until fully performed.

18.15 Exhibits. All referenced exhibits are incorporated in the Lease unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

CITY OF DES MOINES

Dated: _____, 20__

BY: ANTHONY A. PIASECKI

Title: City Manager

Address: 22307 Dock Ave S
Des Moines, WA 98198-4690

Phone: 206-824-5700

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20__

By: BRIDGET MORAN

Title: Deputy Supervisor

Address: Shoreline District Aquatics
950 Farman Ave N
Enumclaw, WA 98022-9282

Approved as to form this
12 day of March, 2010
Janis Snoey, Assistant Attorney General
Aquatic Lands Lease

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
County of)

I certify that I know or have satisfactory evidence that ANTHONY A. PIASECKI is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the CITY MANAGER of the CITY OF DES MOINES to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 20____

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of
Washington, residing at

My appointment expires _____

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
County of)

I certify that I know or have satisfactory evidence that BRIDGET MORAN is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the DEPUTY SUPERVISOR of the DEPARTMENT OF NATURAL RESOURCES, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 20__

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of
Washington, residing at

My appointment expires _____

EXHIBIT A

1. APPROXIMATE HISTORIC LINE OF EXTREME LOW TIDE FROM REID MIDDLETON DRAWING CIRCA 1960. INFORMATION SHOWN TO BE USED FOR CALCULATION OF LEASE AREA ONLY AND SHOULD NOT BE VIEWED AS A BOUNDARY LINE.

2. APPROXIMATE HISTORIC LINE OF MEAN LOW TIDE FROM REID MIDDLETON DRAWING CIRCA 1960. INFORMATION SHOWN TO BE USED FOR CALCULATION OF LEASE AREA ONLY AND SHOULD NOT BE VIEWED AS A BOUNDARY LINE.

3. CURRENT LINE OF EXTREME LOW TIDE IS AT BULKHEAD.

4. UPLAND BOUNDARY PER THE FOLLOWING DOCUMENTS:

AF#6499270, AF#66478990,
AF#6460925, AF#7605240330,
SC#664476, AF#6457961,
SC#664479, AF#6453859,
AF#6494427, AF#6453866,
AF#6455074.

PROX. EASTERLY LINE
DNR APP. NO. 27510
GET SOUND POWER
LIGHT CO. SUBMARINE
PILE EASEMENT

DNR APP. NO. 25261 —
50' DES MOINES SEWER
DISTRICT PIPE OUTFALL
EASEMENT

-EXTENDED SOUTH LINE
OF SOUTH 227TH ST.

SEE NOTE 4 511.00

SEE NOTE 1

MC 5TH AVE S (DOCK ST) VACATED

SCALE IN FEET



ENCASED CONCRETE (CONC) MONUMENT (MON)
ELW EXTREME LOW WATER
MLW MEAN LOW WATER
MHW MEAN HIGH WATER
MC MEANDER CORNER

DNR APP. NO. 21507
EASEMENT

DNR, APP. NO. 21507
EASEMENT

LEASE AREA "C"

DNR APP. NO. 21507
80' PUGET SOUND POWER
& LIGHT CO. SUBMARINE
CABLE EASEMENT

—LEASE AREA "B"
—12°50'21" DEFLECTION

86' CURRENT MLW

SEE NOTE 2
SOUTHERLY LINE, BL
PLAY OF TOWN OF DES "

10.77' CURRENT MHW

GOV'T LOT 2
GOV'T LOT 3

5TH AVE S (4TH ST)

5000

**EXHIBIT B
PLAN OF OPERATIONS**

1. DESCRIPTION OF PERMITTED USE

A. Existing Facilities.

A public pier, rock breakwater, access channel, parking lot, restroom and covered moorage slips. There are no residential slips on SOAL and no floating homes on SOAL.

B. Proposed Facilities.

No new facilities proposed

2. ADDITIONAL OBLIGATIONS

- (a) Tenant shall post clearly the following sign provided by State "Enjoy your Washington State-owned Aquatic Lands" sign.
- (b) Tenant shall post clearly all national and state oil and chemical spill hotlines.
- (c) Tenant shall post clearly the location of the nearest sewage pumpout facility.

ATTACHMENT 2

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Aquatic Lands Lease with the State of
Washington Department Of Natural Resources

FOR AGENDA OF:

DEPT. OF ORIGIN:

DATE SUBMITTED:

ATTACHMENTS:

- ~~1. Draft Aquatic Lands Lease~~
2. Map of Original Lease Areas
3. Map of 1984 Combined Lease Area
4. Map of Proposed New Lease Areas

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: _____

Purpose and Recommendation

The purpose of this item is to seek the Council's approval of the agreement between the City and the State of Washington Department of Natural Resources, (DNR), for leasing three parcels of aquatic lands along the western boundary of the Marina. The largest parcel lies under the rock breakwater, another is located in the entrance channel and partially under the NW corner of the North Parking Lot and the third is located under the end of the Public Fishing Pier. These parcels have been leased from the State for many years, with the original lease expiring in 2002. After some delay, the DNR has sent a new draft lease for Council consideration.

Suggested Motion

Motion: "I move to approve the Draft Lease Agreement with the State of Washington Department of Natural Resources for the lease of three parcels of aquatic lands as shown in Exhibit A of the Draft Lease, authorizing the payment of \$101,302.34 per year for the use of the leased lands and further, to authorize the City Manager to sign the agreement, substantially in the form as attached."

Background

When the City assembled the land to build the Marina in the 1960's they purchased the tidelands between the existing street rights of way that the City already owned. The tidelands lay between the mean high-tide line and the mean low-tide line. Land westward of the mean low tide line is owned by the State, and is usually referred to as "aquatic lands". For the most part the Marina was built on the tidelands owned by the City, but the rock breakwater on the western edge of the Marina was built on State owned aquatic lands. Another parcel of State aquatic lands lies under the entrance channel to the Marina and the northwest tip of the north parking lot. **(See Attachment No. 2.)** In 1972, the City signed a 30 year lease with the State Department of Natural Resources that governed the use of the two parcels and specified the annual rent. At the beginning of the lease the rental rate was about \$1,800.00 per year. When that lease expired in 2002 the rental rate was about \$16,500 per year and the City has been on a "hold over" agreement at that rate since that time.

When the Public Fishing Pier and Artificial Reef were built in the early 1980's, the City leased another tract of Aquatic Land from the State. Because the purpose of the Pier is public access, there was no fee for that lease. A short time later, the two leases, which covered three separate parcels of aquatic lands, were combined into one lease. The three parcels were also combined into one large, (over 35 acres) parcel that is shown in the current lease. **(See Attachment No. 3.)** No one currently working at the City or the Department of Natural Resources knows why this was done.

In 1984, the State legislature established a new formula for calculating the rental rates for aquatic lands. The new formula links the rental rate for the aquatic lands to the value of an adjacent upland parcel. The leasee does not have to own the parcel but the parcel does have to be used in conjunction with the lease and fit some other requirements specified in the new law. The net result of the new formula was, (and continues to be), dramatic escalations in the lease rates for aquatic lands in the Puget Sound area although in the City's case, it appears the new formula was never applied to the entire lease, just the parcel that was in the Marina entrance. Again, no one is able to explain why that happened.

Discussion

The proposed lease splits the leased area into three separate lease areas. **(See Attachment No. 4.)** Lease Area A is the parcel under the rock breakwater, Lease Area B is the parcel in the Marina entrance and under the NW corner of the North Parking lot, and Lease Area C is the area under the outer end of the Public Fishing Pier. The square footage in Lease Area C is not used in the rent calculation because it is used for public access. Never the less, using just the square footage of Lease Areas A & B, the formula yields an annual rent of just over \$101,000.

While the City has had the benefit of over a decade of artificially low rates, this is still a very significant change in the revenue/expense structure of the Marina. The staff is exploring ways to reduce the rental rate in the future. The most promising strategy at this time involves trading the leased parcel in the Marina entrance and under the Northwest corner of the North lot for some of the City owned tidelands to the North. That would reduce the rental rate by about 27%. This may require legislative approval and the staff will be working with the City's legislative contingent to see if this is possible.

Another possibility that has been discussed several times in the past is to provide some type of public access to the rock breakwater. Leased areas used in whole or in part for public access qualify for a reduced rental rate. Several breakwaters on the west coast have boardwalks, or simple gravel walkways with viewing platforms. The staff is actively gathering information on this alternative also.

Alternatives

The formula for calculating the rental rates for aquatic lands is embedded in State law and is very specific. Our City Attorney's office has reviewed the lease to see if the DNR followed the law when calculating the rent and their opinion is that they did. It is always the Council's prerogative to not approve the lease and direct staff to continue negotiating, but there appears to be little room for any substantive change in the City's favor. The staff's opinion is that it would be a better use of resources to focus on acquiring Lease Area B and/or reducing the rate on Lease Area A by creating some type of public access and there may be other ideas, yet undiscovered that have merit.

Financial Impact

As mentioned above, an increase of about \$85,000 per year in rent is a significant change to the cost/revenue structure of the Marina. The increase has been included in the budget for 2012 and will be partially offset by a general rate increase of 2.7% that will go into effect in February. Other Marina expenses budgeted for 2012, including payroll, have been held at levels at or below 2011.

Recommendation or Conclusion

The staff recommends that the Council authorize the City Manager to sign the Draft Aquatic Lands Lease with the DNR, substantially in the form as presented.

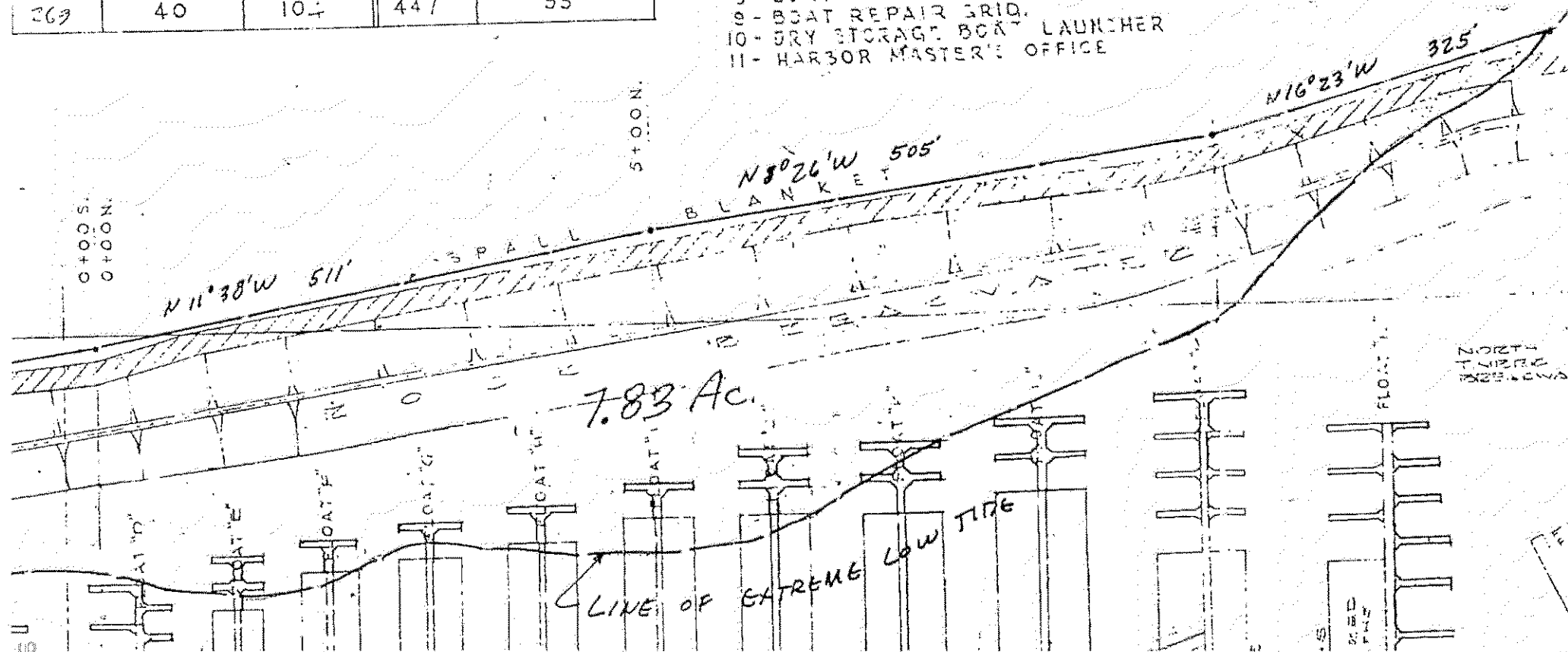
Concurrence

The City Attorney's office has reviewed and approved the Draft Lease document and the Finance Director has been informed of the increase in rent and changes in the appropriate budget line-items.

OPEN	VISITORS	STORAGE	AUTO	BOAT TR'LRs
17	—	—	—	—
48	—	104	—	—
103	7	—	—	—
20	5	—	—	—
30	3	—	—	—
33	16	—	—	—
16	9	—	—	—
269	40	104	447	95

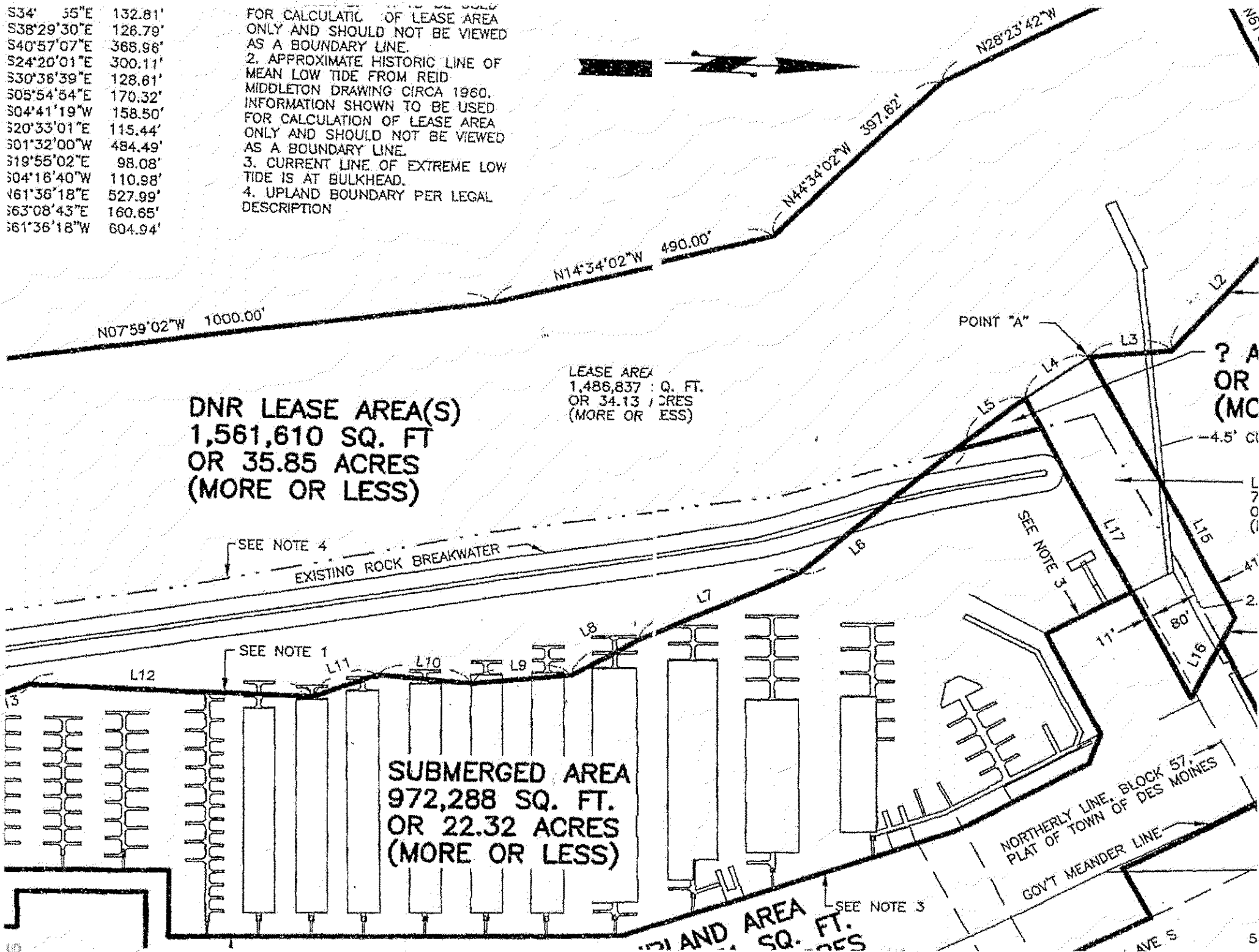
ADDITIONAL FACILITIES PROVIDED

- 1- PUBLIC RESTROOMS.
- 2- PUBLIC TELEPHONES.
- 3- PUBLIC BOAT LAUNCHER.
- 4- FUELING FACILITIES.
- 5- BOAT REPAIR AREA.
- 6- REPAIR SHOP BUILDING.
- 7- PAINT SHED.
- 8- BOAT REPAIR PIER.
- 9- BOAT REPAIR GRID.
- 10- DRY STORAGE BOAT LAUNCHER
- 11- HARBOR MASTER'S OFFICE



S34° 35'E 132.81'
 S38°29'30"E 126.79'
 S40°57'07"E 368.96'
 S24°20'01"E 300.11'
 S30°36'39"E 128.61'
 S05°54'54"E 170.32'
 S04°41'19"W 158.50'
 S20°33'01"E 115.44'
 S01°32'00"W 484.49'
 S19°55'02"E 98.08'
 S04°16'40"W 110.98'
 S61°36'18"E 527.99'
 S63°08'43"E 160.65'
 S61°36'18"W 604.94'

FOR CALCULATION OF LEASE AREA
 ONLY AND SHOULD NOT BE VIEWED
 AS A BOUNDARY LINE.
 2. APPROXIMATE HISTORIC LINE OF
 MEAN LOW TIDE FROM REID
 MIDDLETON DRAWING CIRCA 1960.
 INFORMATION SHOWN TO BE USED
 FOR CALCULATION OF LEASE AREA
 ONLY AND SHOULD NOT BE VIEWED
 AS A BOUNDARY LINE.
 3. CURRENT LINE OF EXTREME LOW
 TIDE IS AT BULKHEAD.
 4. UPLAND BOUNDARY PER LEGAL
 DESCRIPTION



DNR LEASE AREA(S)
1,561,610 SQ. FT
OR 35.85 ACRES
(MORE OR LESS)

LEASE AREA
 1,486,837 : Q. FT.
 OR 34.13 ACRES
 (MORE OR LESS)

SUBMERGED AREA
972,288 SQ. FT.
OR 22.32 ACRES
(MORE OR LESS)

UPLAND AREA
SQ. FT.
ACRES

NORTHERLY LINE, BLOCK 57,
 PLAT OF TOWN OF DES MOINES
 GOV'T MEANDER LINE
 AVE S

MIDDLETON DRAWING CIRCA 1960.
 INFORMATION SHOWN TO BE USED
 FOR CALCULATION OF LEASE AREA
 ONLY AND SHOULD NOT BE VIEWED
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2. APPROXIMATE HISTORIC LINE OF
 MEAN LOW TIDE FROM REID
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 TIDE IS AT BULKHEAD.

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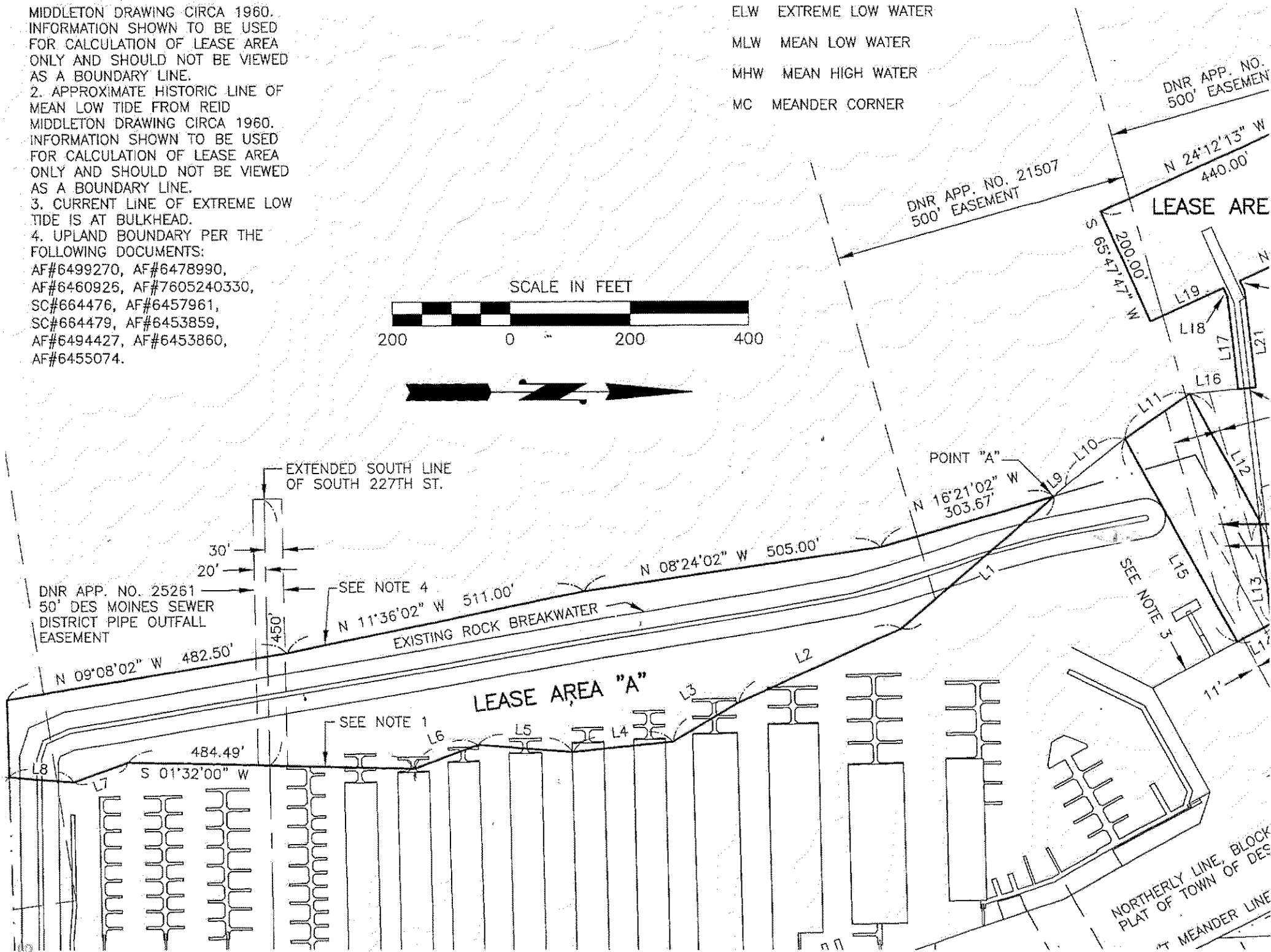
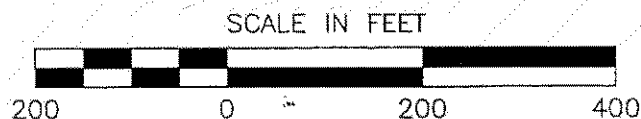
AF#6499270, AF#6478990,
 AF#6460926, AF#7605240330,
 SC#664476, AF#6457961,
 SC#664479, AF#6453859,
 AF#6494427, AF#6453860,
 AF#6455074.

ELW EXTREME LOW WATER

MLW MEAN LOW WATER

MHW MEAN HIGH WATER

MC MEANDER CORNER



ATTACHMENT 3

ORDINANCE NO. 1462

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, vacating City rights-of-way commonly referred to as South 222nd Street, and South 223rd Street, located in Des Moines Marina within the City of Des Moines, subject to the applicant's compliance with requirements set forth herein; and further granting an easement for public utilities currently located in said rights-of-way.

WHEREAS, the City of Des Moines is the property owner abutting each side of the rights-of-way proposed to be vacated; the street vacations were not initiated by petition, but were initiated by legislative action of the City Council under Resolution No. 1100, and

WHEREAS, these public rights-of-way were initially platted on July 23, 1889 as part of the subdivision titled "Plat of the Town of Des Moines", and

WHEREAS, the plat date makes these public rights-of-way eligible for vacation by operation of law (Section 32, Chapter 19, Laws of 1889-90), and

WHEREAS, DMMC 12.12.040 adopts the street vacation procedures of chapter 35.79 RCW, and

WHEREAS, RCW 35.79.010 authorizes the City Council to initiate such street vacation procedures, and

WHEREAS, the public hearing date was initially set by Resolution 1100 and rescheduled by Resolution No. 1105, and

WHEREAS, notice of the public hearing was given in accordance with law and the public hearing was held before the City Council of the City of Des Moines on July 23, 2009, and all persons wishing to be heard were heard, and

WHEREAS, no objections to the vacations were filed by any abutting property owners prior to the hearing, and the Council finds that no person has demonstrated special injury due to substantial impairment of access to such person's property, and

WHEREAS, the Council finds that vacation of the rights-of-way legally described herein and as depicted on the map marked Exhibit "A" to this ordinance, is in the public interest; now therefore,

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

Sec. 1. Findings adopted. Based on the evidence presented, the City Council adopts the following findings of fact:

(1) The public rights-of-way subject to this ordinance commonly known as South 222nd Street and South 223rd Street, located in the City of Des Moines originally identified as "Vashon Avenue" and "Cherry Street" were created by a plat entitled the "Plat of the Town of Des Moines".

(2) The "Plat of the Town of Des Moines" was recorded on July 23, 1889.

(3) The City of Des Moines was incorporated on June 15, 1959.

(4) The public rights-of-way subject to this ordinance were not improved for road purposes within five (5) years of the original platting date.

(5) The rights-of-way subject to this ordinance were platted on second class tidelands.

(6) The rights-of-way subject to this ordinance were under the control of the County Commissioners when the plat was recorded and during the full five (5) year nonuse period.

(7) The rights-of-way are classified as "Type C" rights-of-way pursuant to DMMC 12.12.020; therefore, compensation is not required.

(8) RCW 35.79.035 requires that the City shall not vacate a street or alley if any portion of the street or alley abuts a body of fresh or salt water unless: the vacation is sought to enable the city or town to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses.

(9) The rights-of-way subject to this ordinance are part of the Des Moines Marina.

(10) The public rights-of-way subject to this ordinance are not necessary for present and future use by public utilities because present and future needs for use by public utilities will be met by appropriate easements retained by the City or granted by the property owner abutting the rights-of way proposed to be vacated.

Sec. 2. Rights-of-way vacation. Subject to the requirements set forth in this ordinance, the following legally described public rights-of-way as depicted on the attached map entitled Exhibit "A" are vacated and the property within the rights-of-way so vacated shall belong to the respective abutting property owners, one-half (1/2) to each as required by RCW 35.79.040, subject to the conditions set forth in section 3 of this ordinance:

SOUTH 222nd STREET: That Portion of Vashon Street located between the western 200 feet of Blocks 57 and 40 as shown on Plat of the Town of Des Moines, according to the Plat thereof filed in volume 3 of Plats, Page 165, Records Of King County, Washington, depicted on original plat attached as Exhibit C and as further described as follows: Beginning at the northwest corner of Lot 1 Block 57 of said plat; thence along the north

line of said Lot 1 N 61° 34' 11" E 50 feet; thence N 28° 25' 49" W 80 feet; thence S 61° 34' 11" W 200 feet; thence S 28° 25' 49" E 80 feet; thence N 61° 34' 11" E 150 feet to the point of beginning.

SOUTH 223rd STREET: That Portion of Cherry Street located between Blocks 57 and 58 as shown on Plat of the Town of Des Moines, according to the Plat thereof filed in volume 3 of Plats, Page 165, Records Of King County, Washington depicted on original plat attached as Exhibit C and as further described as follows: Beginning at the northeast corner of Lot 1 Block 58 of said plat; thence N 28° 25' 49" W 80 feet; thence S 61° 34' 11" W 300 feet; thence S 28° 25' 49" E 80 feet; thence N 61° 34' 11" E 300feet to the point of beginning.

Sec. 3. Conditions of right-of-way vacation. The rights-of-way subject to vacation under this ordinance shall be subject to the following condition:

Easements for public utilities shall measure ten (10) feet in width with the centerline of said easements being centered on the existing utility lines located within the rights-of-way subject to this street vacation as illustrated on Exhibit "B" attached hereto and incorporated by this reference.

Sec. 4. Recordation. The City Clerk shall cause a certified copy of this ordinance to be recorded in the records of the King County Recorder.

Sec. 5. Severability - Construction. 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.

/ /

Sec. 6. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law.

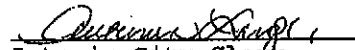
PASSED BY the City Council of the City of Des Moines this 23rd day of July, 2009 and signed in authentication thereof this 23rd day of July, 2009.


MAYOR

APPROVED AS TO FORM:


City Attorney

ATTEST:


Interim City Clerk

Published: July 31, 2009

Effective Date: August 22, 2009

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO. 1462, Adopted July 23, 2009.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance vacates City rights-of-way commonly referred to as South 222nd Street, and South 223rd Street, located in Des Moines Marina within the City of Des Moines, subject to the applicant's compliance with requirements set forth herein; and further grants an easement for public utilities currently located in said rights-of-way.

The full text of the ordinance will be mailed without cost upon request.

Autumn Lingle
Interim City Clerk

Published: July 31, 2009

PORTIONS OF THE S.W. 1/4, S.W. 1/4, SEC. 8, TWP. 22 N., RGE. 4 E., W.M.
AND PORTIONS OF THE N.W. 1/4, SEC. 17, TWP. 22 N., RGE. 4 E., W.M.
CITY OF DES MOINES, KING COUNTY, WASHINGTON

LINE TABLE

LINE	BEARING	DISTANCE
L1	N 89°02'01" E	340.28
L2	N 89°02'01" E	99.85
L3	N 89°01'49" E	339.63
L4	N 89°03'09" E	234.10
L5	N 89°03'09" E	340.10
L6	N 28°25'49" W	5.52
L7	N 28°25'49" W	535.52
L8	N 28°25'49" W	229.08
L9	N 28°25'49" W	311.98
L10	S 61°34'11" W	333.42
L11	N 00°58'17" W	278.77
L12	S 89°03'21" W	340.09
L13	S 89°03'21" W	339.97
L14	S 89°03'21" W	339.84
L15	S 89°03'21" W	144.02
L16	S 61°34'11" W	140.00
L17	S 28°25'49" W	80.00
L18	N 28°38'14" W	80.00
L19	S 61°34'11" W	40.00
L20	S 28°25'49" W	80.00
L21	S 61°34'11" W	300.18
L22	N 18°52'00" W	59.43
L23	N 22°51'35" W	21.40
L24	N 61°34'11" E	290.84
L25	S 00°53'25" E	60.00
L26	S 89°06'35" W	40.15
L27	N 01°04'52" W	60.00
L28	S 89°06'35" E	40.35

LEASE LINE TABLE

LINE	BEARING	DISTANCE
LL1	S 88°30'53" W	131.50
LL2	N 16°21'02" W	303.67
LL3	N 40°57'12" W	27.75
LL4	N 38°29'35" W	128.79
LL5	N 34°43'00" W	132.81
LL6	N 05°42'08" W	81.78
LL7	S 83°32'53" W	104.05
LL8	S 65°41'40" W	15.52
LL9	S 24°12'18" E	134.03
LL10	N 65°41'40" E	20.17
LL11	N 83°32'53" E	109.18
LL12	S 05°42'06" E	30.00
LL13	N 61°36'13" E	244.65
LL14	N 83°41'50" E	173.81
LL15	S 28°38'14" E	66.82
LL16	S 61°36'13" W	391.36
LL17	S 30°36'44" E	128.61
LL18	S 05°54'59" E	170.32
LL19	S 04°41'14" W	158.50
LL20	S 20°33'08" E	115.44
LL21	S 19°55'07" E	98.08
LL22	S 04°18'35" W	110.98

PUGET SOUND

LEASE AREA "A"

1" = 200'

BASIS OF BEARINGS IS MADE
(DETERMINED BY GPS OBSERV

LEGEND

- FND. MON. IN CASE (VISITED MAY 2008)
- FND. PROP. COR. AS NOTED
- SET 1/2" I.R. W/CAP #21454
- SET PK/FLASHER
- DNR - DNR LEASE APPLICATION NO. 20-AD09080 (REC. No. 20080716500002)

SURVEY METHOD: FIELD TRAVERSE AND GPS R.T.K.
EQUIPMENT USED: 1" TOTAL STATION & TOPCON HIPER LITE GPS
SURVEY ACCURACY MEETS OR EXCEEDS REQUIREMENTS OF WAC 332-130-090
CONTROL MONUMENTS FIELD TIED MAY 2008.

AREAS

VACATED S 222ND ST	34,679 S.F. OR 0.80 AC. +/-
VACATED S 223RD ST	23,520 S.F. OR 0.54 AC. +/-
VACATED S 227TH ST	2,415 S.F. OR 0.05 AC. +/-
TOTAL VACATED	60,614 S.F. OR 1.39 AC. +/-



LATEST REVISION: 05/05/09

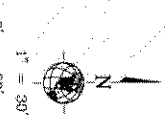
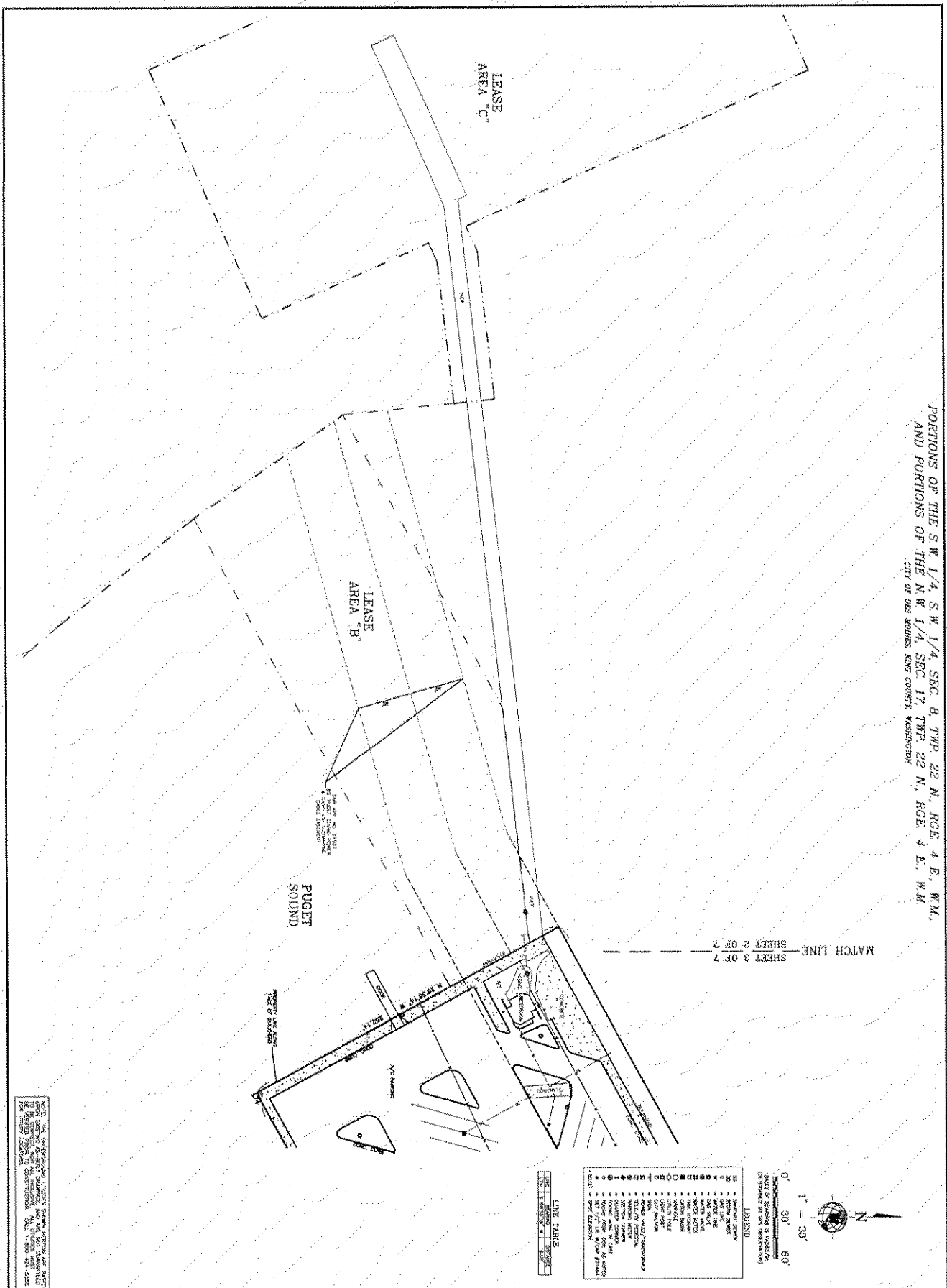
RIGHT OF WAY VACATION SURVEY
FOR DES MOINES MARINA
CITY OF DES MOINES, WASHINGTON

DWN BY	RF	DATE	08/26/08	JOB NO.	20817
CHKD BY	RGH	SCALE	1" = 200'	SHEET	1 OF 1

HANSEN SURVEYING
LAND SURVEYORS & CONSULTANTS
17420 116TH AVE. S.E., RENTON, WA 98058
TEL: 425-235-8440 FAX: 425-235-0268

EXHIBIT A

PORTIONS OF THE S.W. 1/4, S.W. 1/4, SEC. 8, TWP. 22 N., RGE. 4 E., W.M.
AND PORTIONS OF THE N.W. 1/4, SEC. 17, TWP. 22 N., RGE. 4 E., W.M.
CITY OF DES MOINES, KING COUNTY, WASHINGTON



LEGEND

1	BOUNDARY LINE
2	ADJACENT PROPERTY
3	WATER
4	RAILROAD
5	ROAD
6	UTILITY LINE
7	ADJACENT PROPERTY
8	ADJACENT PROPERTY
9	ADJACENT PROPERTY
10	ADJACENT PROPERTY
11	ADJACENT PROPERTY
12	ADJACENT PROPERTY
13	ADJACENT PROPERTY
14	ADJACENT PROPERTY
15	ADJACENT PROPERTY
16	ADJACENT PROPERTY
17	ADJACENT PROPERTY
18	ADJACENT PROPERTY
19	ADJACENT PROPERTY
20	ADJACENT PROPERTY
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LINE TABLE

LINE	BEARING	DISTANCE
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4	S 89° 15' 00" E	100.00
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6	S 89° 15' 00" E	100.00
7	N 89° 15' 00" E	100.00
8	S 89° 15' 00" E	100.00
9	N 89° 15' 00" E	100.00
10	S 89° 15' 00" E	100.00

NOTE: THE CONVEYANCE OF THE LAND HEREIN IS MADE BY THE CITY OF DES MOINES, KING COUNTY, WASHINGTON, TO THE CITY OF DES MOINES, KING COUNTY, WASHINGTON, FOR THE CITY OF DES MOINES, KING COUNTY, WASHINGTON.

DATE: 06/26/08 DRAWN BY: RF, PC CHECKED BY: RCH		BOUNDARY SURVEY OF THE DES MOINES MARINA IN DES MOINES, WASHINGTON		 HANSEN SURVEYING LAND SURVEYORS & CONSULTANTS 17420 118TH AVE. N.E., REDWATER, WA 98053 TEL: 425-335-8140 FAX: 425-335-0285		 ROBERT F. HANSEN LICENSED SURVEYOR NO. 12345 WA		SHEET 2 OF 7 SHEET 3 OF 7	
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CITY OF LOS ANGELES, 1907. PUBLISHED BY THE CITY OF LOS ANGELES.

2 OF 2 SHEET 2 OF 2

During the past few years, the
the U.S. has been a very
country of the world is still
during the

1. Explain how the LPS (polysaccharide) is used to bind and assemble the capsid. The LPS is attached to the capsid by a covalent bond.

PUGET
SOUND

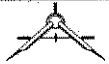
MATCH LINE

NOTE: THE UNDERGROUND UTILITIES SURVEY METHOD ARE BASED UPON EXISTING AS-BUILT DRAWINGS AND ARE NOT GUARANTEES TO BE CORRECTLY MARK ALL UTILITIES. ALL UTILITIES MUST BE VERIFIED PRIOR TO CONSTRUCTION. CALL 714-860-4244-5404 FOR UTILITY LOCATIONS.


$$\frac{0^\circ}{30^\circ} \rightarrow 60^\circ$$

1305001

25	DOWNCAST BEAM
26	CRASH BEAM
27	HASH LINK
28	WATER LINK
29	WATER NAIL
30	WATER WHEEL
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HANSEN SURVEYING
LAND SURVEYING & CONSULTANTS
17400 116TH AVE N.E., RICHTON, WA 98055
TEL: 425-236-8440 FAX: 425-236-0260

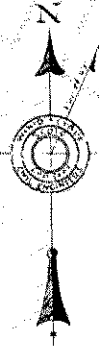


BOUNDARY SURVEY
OF THE
DES MOINES MARINA
IN
DES MOINES, WASHINGTON

DATE: 08/29/08
DISPOSED BY: RF, PC
CHARGED BY: RICH

3	7
10th edition 20017	

KING COUNTY, W.T.



Four all men by these
 are, sh^t that the Washington
 City Improvement Co^r for
 corporation duty organized and
 existing under and by virtue
 of the laws of Washington Ter-
 ritory, does hereby lay out and
 add into townlots streets and
 alleys the following described
 tract of land, viz: All of the North-
 west quarter of the Southwest quarter
 18 and lots one (1), two (2) and three
 (3) of section eight (8) T² S² E² Sec² two
 22, S² T² fourth E² S² M² as the same
 is described on the plat in the Sur-
 veyor General's office at Olympia, W²T²
 and containing one hundred and twenty
 one and sixty one hundredths (121 61/100) acres
 of land, which is heretofore to be known as
 "The Town of Des Moines, King County, W²T²."
 And we do hereby donate and dedicate to
 the uses of the public forever, all the streets
 and alleys shown on this plat, reserving all
 right to establish and maintain all street rail
 way lines, water and gas pipes through said
 streets and alleys. The sizes of the lots, streets and
 alleys are as shown on this plat.

The initial point of this plat and survey is the
 S² E² corner between sections eight (8) and seventeen (17)
 and is the Southeastth corner of this plat.
 In witness whereof we have hereunto set our hands
 and seals this 28th day of July A.D. 1889

The Nashville City Improvement Co.
By J. H. Black President (SEAL)
O. W. Barlow Secretary (SEAL)

This is to certify that on this 23rd day of July A.D. 1889, I, Wm. H. Burlew, President, and O.H. Barlow, Secretary of the Des Moines City Improvement Co. personally appeared before me, undersigned, a Notary Public in and for Pierce County, Washington Territory, well known to be the individuals described in and who executed the foregoing instrument as President and Secretary of said Des Moines City Improvement Co. and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein set forth.

R. Vernon Bards
Notary Public in and for Pierce County W.T.

Wood, Rogers
Civil Engineers

35814
Filed for Record and the request
of The District Attorney, September
July 29, A.D. 1888.
at 10 min. past 3 P.M.
and entered in Vol. 3 of
Pat Book page 165
Records of Henry Langley, J.T.
(C. Auditor
Deputy)

Portions of Vashon
and Cherry Street
subject to this
street vacation ..

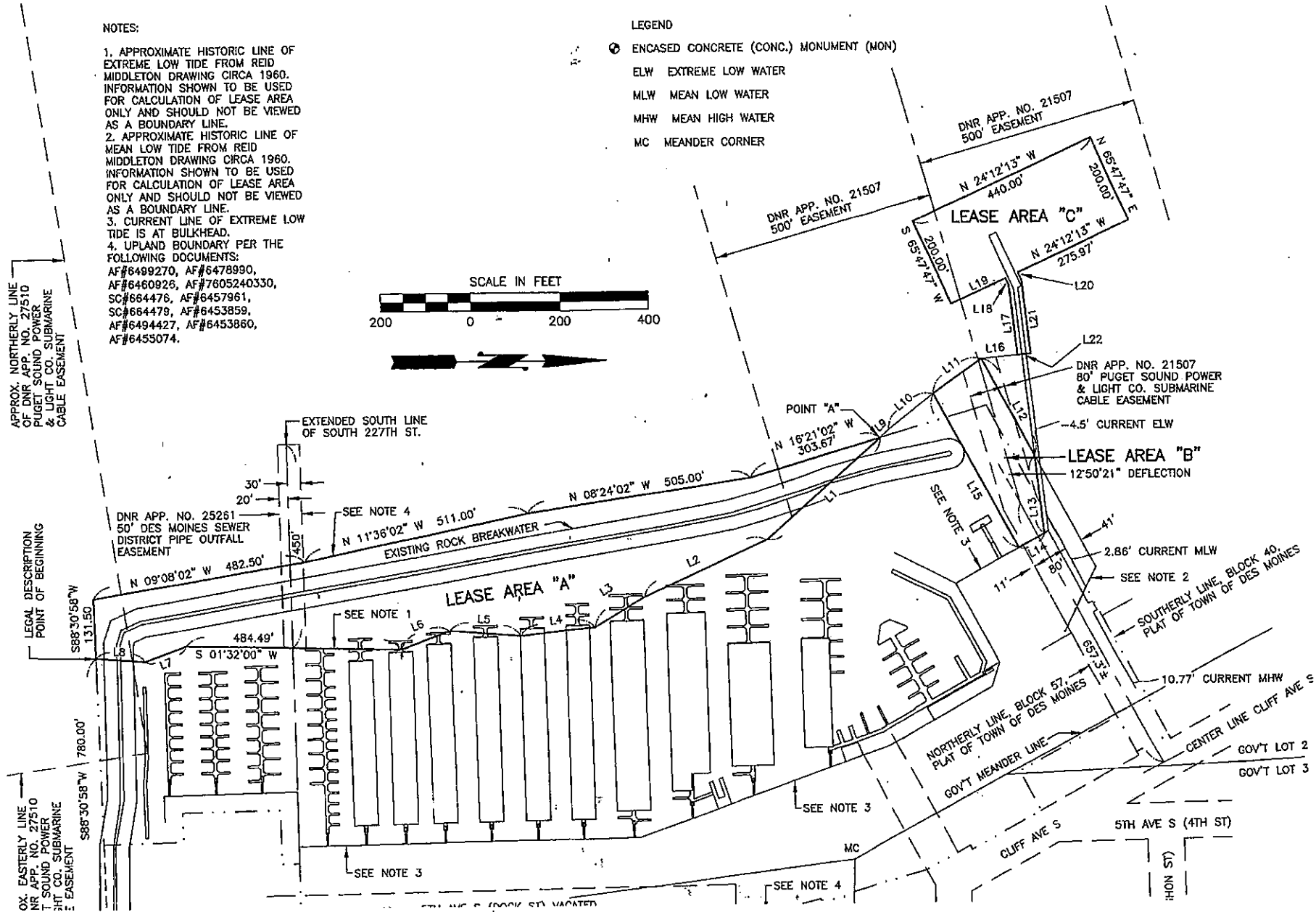
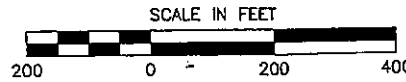
EXHIBIT C

NOTES:

1. APPROXIMATE HISTORIC LINE OF EXTREME LOW TIDE FROM REID MIDDLETON DRAWING CIRCA 1960. INFORMATION SHOWN TO BE USED FOR CALCULATION OF LEASE AREA ONLY AND SHOULD NOT BE VIEWED AS A BOUNDARY LINE.
2. APPROXIMATE HISTORIC LINE OF MEAN LOW TIDE FROM REID MIDDLETON DRAWING CIRCA 1960. INFORMATION SHOWN TO BE USED FOR CALCULATION OF LEASE AREA ONLY AND SHOULD NOT BE VIEWED AS A BOUNDARY LINE.
3. CURRENT LINE OF EXTREME LOW TIDE IS AT BULKHEAD.
4. UPLAND BOUNDARY PER THE FOLLOWING DOCUMENTS:
AF#6489270, AF#6478990,
AF#6460926, AF#7605240330,
SC#664476, AF#6457961,
SC#664479, AF#6453859,
AF#6494427, AF#6453860,
AF#6455074.

LEGEND

- ENCASED CONCRETE (CONC.) MONUMENT (MON)
- ELW EXTREME LOW WATER
- MLW MEAN LOW WATER
- MHW MEAN HIGH WATER
- MC MEANDER CORNER



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AF#6494427, AF#6453860,
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LEGEND

- ENCASED CONCRETE (CONC.) MONUMENT (MON)
- ELW EXTREME LOW WATER
- MLW MEAN LOW WATER
- MHW MEAN HIGH WATER
- MC MEANDER CORNER



APPROX. NORTHERLY LINE
OF DNR APP. NO. 27510
PUGET SOUND POWER
& LIGHT CO. SUBMARINE
CABLE EASEMENT

LEGAL DESCRIPTION
POINT OF BEGINNING

OX. EASTERLY LINE
NR APP. NO. 27510
T SOUND POWER
& LIGHT CO. SUBMARINE
CABLE EASEMENT

S88°30'58"W 780.00'

S88°30'58"W 131.50'

DNR APP. NO. 25261
50' DES MOINES SEWER
DISTRICT PIPE OUTFALL
EASEMENT

EXTENDED SOUTH LINE
OF SOUTH 227TH ST.

SEE NOTE 4

N 11°36'02" W 511.00'

EXISTING ROCK BREAKWATER

LEASE AREA "A"

SEE NOTE 1

SEE NOTE 3

DNR APP. NO. 21507
500' EASEMENT

DNR APP. NO. 21507
500' EASEMENT

LEASE AREA "C"

DNR APP. NO. 21507
80' PUGET SOUND POWER
& LIGHT CO. SUBMARINE
CABLE EASEMENT

-4.5' CURRENT ELW

LEASE AREA "B"

12°50'21" DEFLECTION

SOUTHERLY LINE, BLOCK 40,
PLAT OF TOWN OF DES MOINES

10.77' CURRENT MHW

NORTHERLY LINE, BLOCK 57,
PLAT OF TOWN OF DES MOINES

CLIFF AVE S

5TH AVE S (4TH ST)

(MON ST)

GOV'T LOT 2
GOV'T LOT 3

SEE NOTE 3

SEE NOTE 4

MC

CLIFF AVE S (ROCK ST) VACATED

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Addendum to Contract for Comprehensive Garbage, Recycle and Compostables Collection between the City of Des Moines and CleanScapes, Inc.

FOR AGENDA OF: January 12, 2012

DEPT. OF ORIGIN: P.B.P. W.

DATE SUBMITTED: January 5, 2012

ATTACHMENTS:

1. Contract Addendum (color)
2. Comprehensive Garbage, Recyclables and Compostables Collection Agreement (available on the City website or in the City Clerk's office)

CLEARANCES:

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

APPROVED BY CITY MANAGER
FOR SUBMITTAL: MS

Purpose and Recommendation

The purpose of this report is to seek City Council approval of an addendum to the May 13, 2011 Comprehensive Garbage, Recyclables and Compostables Collection Agreement (Agreement) between the City of Des Moines and CleanScapes, Inc. The addendum revises Attachment B of the Agreement, which contains the fee schedule, in order to insert additional service levels. No changes to current service levels or rates are proposed.

Suggested Motion

Motion: I move to authorize the City Manager to sign the January 13, 2012 contract addendum to the May 13, 2011 Comprehensive Garbage, Recyclables and Compostables Collection Agreement between the City of Des Moines and CleanScapes, Inc.

Background

The Comprehensive Garbage, Recyclables and Compostables Collection Agreement was signed by the City of Des Moines and CleanScapes, Inc. on May 13, 2011. Collection under this contract began on November 1, 2011. During verification of existing accounts and enrollment of new customers, demands for additional service levels not contained in the fee schedule, Attachment B of the Agreement, were

identified. A contract addendum to add these service levels and associated fees to the fee schedule is proposed. No changes to current service levels or rates are proposed. Upon Council approval, notice will be provided to affected rate payers 45 days prior to the effective date of the revised fee schedule pursuant to Revised Code of Washington (RCW) 35.21.157.

Discussion

The following service level/rate additions are proposed:

1. Every other week residential recycling only service: There is currently no rate for this service, yet several customers have asked for this option. For customers who wish to self-haul or cannot afford to pay for garbage service, but still wish to recycle, the proposed addendum suggests an every other week rate for recycling. This rate is identical to half of the collection fee component (excludes disposal) of the garbage service adjusted for every other week collection.
2. Yard debris/food waste extras: There is currently no rate specifically for extra compostables bags or cans. The interim solution has been to charge the garbage extras rate (the only extras rate on the current fee schedule). The proposed addendum saves customers \$2.49 per bag by providing them with a lower yard waste disposal rate.
3. Increased weekly collecting frequencies: The existing rate schedule for non-compacted commercial garbage accommodates frequencies higher than once-a-week by multiplying the frequency to the weekly rate (e.g. twice a week collection = weekly collection x 2). The proposed addendum applies the same formula to commercial yard debris/food waste carts and compactor collection that customers may want collected more frequently.
4. On call services: There are no existing on-call rates for garbage or recycle services less than 10 yards. The proposed addendum proposes to use the monthly rate already on the fee schedule for that commodity and container size, dividing by 4.33 weeks per month to get a once a week rate, and then adding a 20% set-up fee to accommodate the additional customer service, data entry, fuel, and driver time needed to complete an unexpected on-call collection.
5. Compacted 15 cubic yard commercial/multi-family drop-box collection: There is no existing rate for this service, and the size is currently not offered in Des Moines. This size provides a reasonable alternative for customers who do not need the 20 cubic yard drop box, but have more waste than a 10 cubic yard drop box. The rate is set at the midpoint between the 10 cubic yard drop box and the 20 cubic yard drop box.
6. Drop box dry run: There is no existing rate for drop box dry runs. There are times when customers call to schedule a drop box collection, but do not make the drop box accessible for collection (e.g. lock the gate, park a truck in front of the drop box, etc.). Instead of charging a full haul charge, the customer is charged a reduced dry run charge if all driver and call center attempts to obtain access are futile. This rate is calculated by taking an average one-way trip time multiplied by the hourly roll-off truck and driver rate.

Alternatives

1. The City Council may authorize the City Manager to sign the January 13, 2012 Addendum to the May 13, 2011 Comprehensive Garbage, Recyclables and Compostables Collection Agreement (Agreement) between the City of Des Moines and CleanScapes, Inc.
2. The City Council may not authorize the City Manager to sign the January 13, 2012 Addendum to the May 13, 2011 Comprehensive Garbage, Recyclables and Compostables Collection

Agreement (Agreement) between the City of Des Moines and CleanScapes, Inc. Only those rates and service levels contained in the existing fee schedule will be utilized.

3. The City Council may continue this Agenda Item and request that staff provides additional information on the proposed service level and rate additions.

Financial Impact

The overall financial impact of the additional rates for the residents of Des Moines should result in no change or savings for services requested by the resident or business. The primary impact of the additional rates is to provide additional services to customers who have service needs outside of the scope of the May 13, 2011 Agreement.

Recommendation or Conclusion

Staff recommends approval of the January 13, 2012 addendum to the May 13, 2011 Comprehensive Garbage, Recyclables and Compostables Collection Agreement (Agreement) between the City of Des Moines and CleanScapes, Inc.

Concurrence

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

**CONTRACT ADDENDUM TO
CONTRACT FOR COMPREHENSIVE GARBAGE, RECYCLE AND COMPOSTABLES
COLLECTION BETWEEN
THE CITY OF DES MOINES AND CLEANSCAPES, INC.**

THIS ADDENDUM is entered into on this 13th day of January, 2012, pursuant to that certain Contract entered into between the **CITY OF DES MOINES, WASHINGTON** (hereinafter referred to as "City"), and **CLEANSCAPES, INC.**, (hereinafter referred to as "Contractor"), on the 13th day of May, 2011.

The parties herein agree that the Contract dated May 13, 2011, shall remain in full force and effect, except for the amendments set forth as follows:

I) **ATTACHMENT B** of Contract dated May 13, 2011, is hereby amended to read as follows:

Attachment B, Fee Schedule, updated January 13, 2012, attached.

Amendments to Attachment B, Fee Schedule, updated January 13, 2012 shall become effective 45 days after ratepayers are notified of service level or fee changes in accordance with RCW 35.12.157.

Except as modified hereby, all terms and conditions of contract dated May 13, 2011, remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Addendum as of the date first above written.

<p>CLEANSCAPES, INC.</p> <p>By: _____ Signature</p> <p>Print Name: _____ Its _____</p> <p>Date: _____</p>	<p>CITY OF DES MOINES:</p> <p>By: _____ Signature</p> <p>Print Name: <u>Anthony A. Piasecki</u> Its City Manager</p> <p>Date: _____</p> <p>Attest: _____ Approved as to Form: _____</p> <p>_____ City Clerk City Attorney</p> <p>DATE: _____</p>
<p>NOTICES TO BE SENT TO:</p> <p>CLEANSCAPES, INC.</p> <p>Chris Martin, President CleanScapes, Inc. 117 S. Main St., Suite 300 Seattle, WA 98104</p> <p>206-859-6700 (Telephone) 206-859-6701 (Facsimile)</p>	<p>NOTICES TO BE SENT TO:</p> <p>CITY OF DES MOINES:</p> <p>Anthony A. Piasecki, City Manager City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198</p> <p>206-870-6541 (Telephone) 206-870-6540 (Facsimile)</p>

Attachment B - January 13, 2012

	Service Level	Pounds Per Unit	Disposal Fee	Collection Fee	Total Service Fee
Monthly Weekly Residential Curbside Service	One 32/35 gallon Garbage Cart	22.22	\$ 1.21	\$ 7.30	\$ 8.51
	One 10 gallon Garbage Microcan	5.13	\$ 1.21	\$ 7.30	\$ 8.51
	One 20 gallon Garbage Cart	12.08	\$ 2.85	\$ 10.07	\$ 12.92
	One 32/35 gallon Garbage Cart	19.32	\$ 4.56	\$ 12.76	\$ 17.32
	One 60/64 gallon Garbage Cart	38.64	\$ 9.12	\$ 17.16	\$ 26.28
	One 90/96 gallon Garbage Cart	57.96	\$ 13.68	\$ 21.55	\$ 35.23
	Garbage Extras (32 gallon equivalent)				\$ 4.61
	One 32/35 gallon Recycling Cart		\$ -	\$ 6.38	\$ 6.38
	One 60/64 gallon Recycling Cart		\$ -	\$ 8.58	\$ 8.58
	One 90/96 gallon Recycling Cart		\$ -	\$ 10.78	\$ 10.78
EOW Residential Recycling Only Service	Recycle Extras (32 gallon equivalent)				\$ -
	Miscellaneous Fees:				
	EoW Yard Debris service				\$ 8.13
	Yard Debris/Foodwaste Extras (32 gallon equivalent)				\$ 2.12
	96 Gallon Extra Yard Waste Cart Rental				\$ 1.73
	Return Trip				\$ 6.91
	Carry-out Charge, per 25 ft, per month				\$ 4.61
	Drive-in Charge, per month				\$ 6.91
	Overweight/Oversize container (per p/u)				\$ 3.46
	Redelivery of containers				\$ 11.52
On-Call Bulky Waste Collection	Cart Cleaning (per cart per event)				\$ 11.52
	Sunken Can Surcharge per month				\$ 8.64
	White Goods, except refrigerators		\$ 20.00	\$ 37.61	\$ 57.61
	Refrigerators/Freezers		\$ 20.00	\$ 37.61	\$ 57.61
	Sofas, Chairs		\$ 20.00	\$ 37.61	\$ 57.61
	Mattresses		\$ 20.00	\$ 37.61	\$ 57.61
Weekly Commercial/MF and Multi-Family Can and Cart	One 20 gallon Garbage Cart	11.68	2.76	\$ 19.82	\$ 22.58
	One 32/35 gallon Garbage Cart	18.69	\$ 4.41	\$ 20.69	\$ 25.10
	One 60/64-gallon Garbage Cart	37.39	\$ 8.82	\$ 25.27	\$ 34.09
	One 90/96-gallon Garbage Cart	56.08	\$ 13.23	\$ 29.25	\$ 42.48
	Garbage Extras (32 gallon equivalent)				\$ 4.61
Weekly Commercial/MF YW/ Only Service	One 96 gallon Yard Debris/Foodwaste service, 1 pickup/week				\$ 16.13
	One 96 gallon Yard Debris/Foodwaste cart, 2 pickups/week				\$ 32.26
	One 96 gallon Yard Debris/Foodwaste cart, 3 pickups/week				\$ 48.39
	One 96 gallon Yard Debris/Foodwaste cart, 4 pickups/week				\$ 64.52
	One 96 gallon Yard Debris/Foodwaste cart, 5 pickups/week				\$ 80.65
	Yard Debris/Foodwaste Extras (32 gallon equivalent)				\$ 2.12
	Miscellaneous Fees:				
	Return Trip				\$ 6.91
	Carry-out Charge, per 25 ft, per p/u				\$ -
	Drive-in Charge, per month (per p/u)				\$ 6.91
	Gate and/or unlock fee (per p/u)				\$ -
	Container roll-out, >10 feet (per p/u)				\$ -
	Overweight/Oversize container (per p/u)				\$ 3.46
	Redelivery of container				\$ 11.52
	Cart Cleaning (per cart per event)				\$ 11.52
Commercial/MF Detachable Container (compacted)	1 Cubic Yard, 1 pickup/week (Compacted)	354.00	\$ 83.54	\$ 65.85	\$ 149.39
	1 Cubic Yard, 2 pickups/week (Compacted)	708.00	\$ 167.08	\$ 131.70	\$ 298.78
	1 Cubic Yard, 3 pickups/week (Compacted)	1,062.00	\$ 250.62	\$ 197.55	\$ 448.17
	1 Cubic Yard, 4 pickups/week (Compacted)	1,416.00	\$ 334.15	\$ 263.40	\$ 597.56
	1 Cubic Yard, 5 pickups/week (Compacted)	1,770.00	\$ 417.69	\$ 329.25	\$ 746.95
	1.5 Cubic Yard, 1 pickup/week (Compacted)	531.00	\$ 125.31	\$ 94.38	\$ 219.69
	1.5 Cubic Yard, 2 pickups/week (Compacted)	1,062.00	\$ 250.62	\$ 188.76	\$ 439.38
	1.5 Cubic Yard, 3 pickups/week (Compacted)	1,593.00	\$ 375.92	\$ 283.14	\$ 659.07
	1.5 Cubic Yard, 4 pickups/week (Compacted)	2,124.00	\$ 501.23	\$ 377.52	\$ 878.76
	1.5 Cubic Yard, 5 pickups/week (Compacted)	2,655.00	\$ 626.54	\$ 471.90	\$ 1,098.45
	2 Cubic Yard, 1 pickup/week (Compacted)	708.00	\$ 167.08	\$ 119.97	\$ 287.05
	2 Cubic Yard, 2 pickups/week (Compacted)	1,416.00	\$ 334.15	\$ 239.94	\$ 574.09
	2 Cubic Yard, 3 pickups/week (Compacted)	2,124.00	\$ 501.23	\$ 359.91	\$ 861.14
	2 Cubic Yard, 4 pickups/week (Compacted)	2,832.00	\$ 668.31	\$ 479.88	\$ 1,148.19
	2 Cubic Yard, 5 pickups/week (Compacted)	3,540.00	\$ 835.39	\$ 599.85	\$ 1,435.24
	3 Cubic Yard, 1 pickup/week (Compacted)	1,062.00	\$ 250.62	\$ 171.15	\$ 421.77
	3 Cubic Yard, 2 pickups/week (Compacted)	2,124.00	\$ 501.23	\$ 342.30	\$ 843.53
	3 Cubic Yard, 3 pickups/week (Compacted)	3,186.00	\$ 751.85	\$ 513.45	\$ 1,265.30

Attachment B - January 13, 2012

	Service Level	Pounds Per Unit	Disposal Fee	Collection Fee	Total Service Fee
Commercial/MF Detachable Container (compacted) (continued)	3 Cubic Yard, 4 pickups/week (Compacted)	4,248.00	\$ 1,002.46	\$ 684.60	\$ 1,687.06
	3 Cubic Yard, 5 pickups/week (Compacted)	5,310.00	\$ 1,253.08	\$ 855.75	\$ 2,108.83
	4 Cubic Yard, 1 pickup/week (Compacted)	1,416.00	\$ 334.15	\$ 233.39	\$ 567.54
	4 Cubic Yard, 2 pickups/week (Compacted)	2,832.00	\$ 668.31	\$ 466.78	\$ 1,135.09
	4 Cubic Yard, 3 pickups/week (Compacted)	4,248.00	\$ 1,002.46	\$ 700.17	\$ 1,702.63
	4 Cubic Yard, 4 pickups/week (Compacted)	5,664.00	\$ 1,336.62	\$ 933.56	\$ 2,270.18
	4 Cubic Yard, 5 pickups/week (Compacted)	7,080.00	\$ 1,670.77	\$ 1,166.95	\$ 2,837.72
	6 Cubic Yard, 1 pickup/week (Compacted)	2,124.00	\$ 501.23	\$ 307.10	\$ 808.33
	6 Cubic Yard, 2 pickups/week (Compacted)	4,248.00	\$ 1,002.46	\$ 614.20	\$ 1,616.66
	6 Cubic Yard, 3 pickups/week (Compacted)	6,372.00	\$ 1,503.70	\$ 921.30	\$ 2,425.00
	6 Cubic Yard, 4 pickups/week (Compacted)	8,496.00	\$ 2,004.93	\$ 1,228.40	\$ 3,233.33
	6 Cubic Yard, 5 pickups/week (Compacted)	10,620.00	\$ 2,506.16	\$ 1,535.50	\$ 4,041.66
Commercial and Multi-Family Detachable Container (loose)	1 Cubic Yard, 1 pickup/week	118.00	\$ 27.85	\$ 51.63	\$ 79.48
	1 Cubic Yard, 2 pickups/week	236.00	\$ 55.69	\$ 103.25	\$ 158.94
	1 Cubic Yard, 3 pickups/week	354.00	\$ 83.54	\$ 154.88	\$ 238.42
	1 Cubic Yard, 4 pickups/week	472.00	\$ 111.38	\$ 206.50	\$ 317.88
	1 Cubic Yard, 5 pickups/week	590.00	\$ 139.23	\$ 258.13	\$ 397.36
	1.5 Cubic Yard, 1 pickup/week	177.00	\$ 41.77	\$ 73.77	\$ 115.54
	1.5 Cubic Yard, 2 pickups/week	354.00	\$ 83.54	\$ 147.54	\$ 231.08
	1.5 Cubic Yard, 3 pickups/week	531.00	\$ 125.31	\$ 221.31	\$ 346.62
	1.5 Cubic Yard, 4 pickups/week	708.00	\$ 167.08	\$ 295.09	\$ 462.17
	1.5 Cubic Yard, 5 pickups/week	885.00	\$ 208.85	\$ 368.86	\$ 577.71
	2 Cubic Yard, 1 pickups/week	236.00	\$ 55.69	\$ 93.47	\$ 149.16
	2 Cubic Yard, 2 pickups/week	472.00	\$ 111.38	\$ 186.94	\$ 298.32
	2 Cubic Yard, 3 pickups/week	708.00	\$ 167.08	\$ 280.41	\$ 447.49
	2 Cubic Yard, 4 pickups/week	944.00	\$ 222.77	\$ 373.88	\$ 596.65
	2 Cubic Yard, 5 pickups/week	1,180.00	\$ 278.46	\$ 467.35	\$ 745.81
	3 Cubic Yard, 1 pickup/week	354.00	\$ 83.54	\$ 132.87	\$ 216.41
	3 Cubic Yard, 2 pickups/week	708.00	\$ 167.08	\$ 265.75	\$ 432.83
	3 Cubic Yard, 3 pickups/week	1,062.00	\$ 250.62	\$ 398.62	\$ 649.24
	3 Cubic Yard, 4 pickups/week	1,416.00	\$ 334.15	\$ 531.49	\$ 865.64
	3 Cubic Yard, 5 pickups/week	1,770.00	\$ 417.69	\$ 664.37	\$ 1,082.06
	4 Cubic Yard, 1 pickup/week	472.00	\$ 111.38	\$ 167.38	\$ 278.76
	4 Cubic Yard, 2 pickups/week	944.00	\$ 222.77	\$ 334.77	\$ 557.54
	4 Cubic Yard, 3 pickups/week	1,416.00	\$ 334.15	\$ 502.15	\$ 836.30
	4 Cubic Yard, 4 pickups/week	1,888.00	\$ 445.54	\$ 669.54	\$ 1,115.08
	4 Cubic Yard, 5 pickups/week	2,360.00	\$ 556.92	\$ 836.92	\$ 1,393.84
	6 Cubic Yard, 1 pickup/week	708.00	\$ 167.08	\$ 236.41	\$ 403.49
	6 Cubic Yard, 2 pickups/week	1,416.00	\$ 334.15	\$ 472.82	\$ 806.97
	6 Cubic Yard, 3 pickups/week	2,124.00	\$ 501.23	\$ 709.22	\$ 1,210.45
	6 Cubic Yard, 4 pickups/week	2,832.00	\$ 668.31	\$ 945.63	\$ 1,613.94
	6 Cubic Yard, 5 pickups/week	3,540.00	\$ 835.39	\$ 1,182.04	\$ 2,017.43
	8 Cubic Yard, 1 pickup/week	944.00	\$ 222.77	\$ 295.65	\$ 518.42
	8 Cubic Yard, 2 pickups/week	1,888.00	\$ 445.54	\$ 591.30	\$ 1,036.84
	8 Cubic Yard, 3 pickups/week	2,832.00	\$ 668.31	\$ 886.95	\$ 1,555.26
	8 Cubic Yard, 4 pickups/week	3,776.00	\$ 891.08	\$ 1,182.61	\$ 2,073.69
	8 Cubic Yard, 5 pickups/week	4,720.00	\$ 1,113.85	\$ 1,478.26	\$ 2,592.11
	Garbage Extra (loose cubic yard), per pickup				\$ 12.35
	Drop Box Miscellaneous Fees (per occurrence):				
	Return Trip				\$ 11.52
	Roll-out Container over 10 feet (per p/u)				\$ -
	Unlock Container (per p/u)				\$ -
	Gate Opening (per p/u)				\$ -

Attachment B - January 13, 2012

	Service Level	Pounds Per Unit	Disposal Fee	Collection Fee	Total Service Fee
Commercial and Multi-Family Garbage On-Call Extra Service (add-on to a recurring service)	One 20 gallon Garbage Cart	11.68	\$ 0.64	\$ 5.62	\$ 6.26
	One 32/35 gallon Garbage Cart	18.69	\$ 1.02	\$ 5.94	\$ 6.96
	One 60/64 gallon Garbage Cart	37.39	\$ 2.04	\$ 7.41	\$ 9.45
	One 90/96 gallon Garbage Cart	56.08	\$ 3.06	\$ 8.72	\$ 11.77
	1 Cubic Yard Container (Compacted)	354.00	\$ 19.29	\$ 22.11	\$ 41.40
	1.5 Cubic Yard Container (Compacted)	531.00	\$ 28.94	\$ 31.94	\$ 60.88
	2 Cubic Yard Container (Compacted)	708.00	\$ 38.59	\$ 40.97	\$ 79.55
	3 Cubic Yard Container (Compacted)	1,062.00	\$ 57.88	\$ 59.01	\$ 116.89
	4 Cubic Yard Container (Compacted)	1,416.00	\$ 77.17	\$ 80.12	\$ 157.29
	6 Cubic Yard Container (Compacted)	2,124.00	\$ 115.76	\$ 108.26	\$ 224.02
	1 Cubic Yard Container	118.00	\$ 6.43	\$ 15.59	\$ 22.03
	1.5 Cubic Yard Container	177.00	\$ 9.65	\$ 22.37	\$ 32.02
	2 Cubic Yard Container	236.00	\$ 12.86	\$ 28.48	\$ 41.34
	3 Cubic Yard Container	354.00	\$ 19.29	\$ 40.68	\$ 59.97
	4 Cubic Yard Container	472.00	\$ 25.72	\$ 51.53	\$ 77.26
	6 Cubic Yard Container	708.00	\$ 38.59	\$ 73.23	\$ 111.82
	8 Cubic Yard Container	944.00	\$ 51.45	\$ 92.22	\$ 143.67
Commercial and Multi-Family Recycling On-Call Extra Service (add-on to a recurring service)	One 32/35 gallon Recycling Cart	10.30	\$ -	\$ 5.94	\$ 5.94
	One 60/64 gallon Recycling Cart	20.60	\$ -	\$ 7.41	\$ 7.41
	One 90/96 gallon Recycling Cart	30.89	\$ -	\$ 8.72	\$ 8.72
	1 Cubic Yard Container (Compacted)	195.00	\$ -	\$ 22.11	\$ 22.11
	1.5 Cubic Yard Container (Compacted)	292.50	\$ -	\$ 31.94	\$ 31.94
	2 Cubic Yard Container (Compacted)	390.00	\$ -	\$ 40.97	\$ 40.97
	3 Cubic Yard Container (Compacted)	585.00	\$ -	\$ 59.01	\$ 59.01
	4 Cubic Yard Container (Compacted)	780.00	\$ -	\$ 80.12	\$ 80.12
	6 Cubic Yard Container (Compacted)	1,170.00	\$ -	\$ 108.26	\$ 108.26
	1 Cubic Yard Container	65.00	\$ -	\$ 15.59	\$ 15.59
	1.5 Cubic Yard Container	97.50	\$ -	\$ 22.37	\$ 22.37
	2 Cubic Yard Container	130.00	\$ -	\$ 28.48	\$ 28.48
	3 Cubic Yard Container	195.00	\$ -	\$ 40.68	\$ 40.68
	4 Cubic Yard Container	260.00	\$ -	\$ 51.53	\$ 51.53
	6 Cubic Yard Container	390.00	\$ -	\$ 73.23	\$ 73.23
	8 Cubic Yard Container	520.00	\$ -	\$ 92.22	\$ 92.22
Commercial and Multi-family Drop-box Collection	Non-compacted 10 cubic yard Drop-box	\$ 5.76	\$ 57.61	\$ 103.69	\$ 161.76
	Non-compacted 15 cubic yard Drop-box	\$ 5.76	\$ 69.13	\$ 103.69	\$ 173.60
	Non-compacted 20 cubic yard Drop-box	\$ 5.76	\$ 80.65	\$ 103.69	\$ 185.26
	Non-compacted 25 cubic yard Drop-box	\$ 5.76	\$ 92.17	\$ 103.69	\$ 197.01
	Non-compacted 30 cubic yard Drop-box	\$ 5.76	\$ 103.69	\$ 103.69	\$ 208.76
	Non-compacted 40 cubic yard Drop-box	\$ 5.76	\$ 115.21	\$ 103.69	\$ 232.27
	Compacted 10 cubic yard Drop-box			\$ 115.21	\$ 190.56
	Compacted 15 cubic yard Drop-box			\$ 115.21	\$ 202.31
	Compacted 20 cubic yard Drop-box			\$ 115.21	\$ 214.06
	Compacted 25 cubic yard Drop-box			\$ 115.21	\$ 225.81
	Compacted 30 cubic yard Drop-box			\$ 115.21	\$ 237.57
	Compacted 40 cubic yard Drop-box			\$ 115.21	\$ 261.07
	Drop-box dry run				\$ 48.00
Temporary Collection Hauling	4 Yard detachable container	520.00	\$ 28.34	\$ 107.51	\$ 135.85
	6 Yard detachable container	780.00	\$ 42.51	\$ 109.40	\$ 151.91
	8 Yard detachable container	1,040.00	\$ 56.68	\$ 111.29	\$ 167.97
	Non-compacted 10 cubic yard Drop-box				\$ 207.49
	Non-compacted 20 cubic yard Drop-box				\$ 207.49
	Non-compacted 30 cubic yard Drop-box				\$ 207.49
	Non-compacted 40 cubic yard Drop-box				\$ 207.49

Attachment B - January 13, 2012

	Service Level	Pounds Per Unit	Disposal Fee	Collection Fee	Total Service Fee
	Service Level		Daily Rental	Monthly Rental	Delivery Fee
Temporary Collection Container Rental and Delivery	4 Yard detachable container		\$ 4.61	\$ 46.08	\$ 80.65
	6 Yard detachable container		\$ 4.61	\$ 46.08	\$ 80.65
	8 Yard detachable container		\$ 4.61	\$ 46.08	\$ 80.65
	Non-compacted 10 cubic yard Drop-box		\$ 5.76	\$ 57.61	\$ 103.69
	Non-compacted 20 cubic yard Drop-box		\$ 5.76	\$ 80.65	\$ 103.69
	Non-compacted 30 cubic yard Drop-box		\$ 5.76	\$ 103.69	\$ 103.69
	Non-compacted 40 cubic yard Drop-box		\$ 5.76	\$ 115.21	\$ 103.69
	Miscellaneous Fees:				Per Event
	Return Trip				\$ 28.80
	Stand-by Time (per minute)				\$ 1.84
	Drop-box turn around charge				\$ 11.52
	Service				Per Hour
Hourly Rates	Rear/Side-load packer + driver				\$ 144.01
	Front-load packer + driver				\$ 144.01
	Drop-box truck + driver				\$ 144.01
	Additional Labor (per person)				\$ 57.61

**COMPREHENSIVE GARBAGE, RECYCLABLES AND
COMPOSTABLES COLLECTION AGREEMENT**

**City of Des Moines
and
CleanScapes, Inc.**

November 1, 2011 – October 31, 2018

COMPREHENSIVE GARBAGE, RECYCLABLES AND COMPOSTABLES COLLECTION CONTRACT

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Attachment A: Service Area Map

Attachment B: Contractor Initial Rates

Attachment C: Rate Modification Example

This solid waste collection contract is entered into by and between the City of Des Moines, a municipal corporation of the State of Washington ("City"), and CleanScapes, Inc., a Washington corporation ("Contractor") to provide for collection of Garbage, Compostables, and Recyclables from Single-Family Residences, Multi-Family Complexes and Commercial Customers located within the City Service Area. (Each capitalized term is hereinafter defined.)

The parties, in consideration of the promises, representations and warranties contained herein, agree as follows:

RECITALS

WHEREAS, the City has completed a competitive process to secure this new solid waste collection contract; and

WHEREAS, the Contractor represents that it has the experience, resources and expertise necessary to perform the contract services; and

WHEREAS, the City desires to enter into this contract with the Contractor for the Garbage, Recyclables and Compostables collection services;

NOW, THEREFORE, in consideration of the mutual covenants, agreements and promises herein contained, the City and Contractor do hereby agree as follows:

DEFINITIONS

Change in Control: Change in Control means any sale, merger, policy of assets, the issuance of new shares, any change in the voting rights of existing shareholders, or other change in ownership which transfers the 25% or more of the beneficial interest therein from one entity to another. Provided, however, that intracompany transfers, such as transfers between different subsidiaries or branches of the parent corporation of the Contractor, or transfers to corporations, limited partnerships, or any other entity owned or controlled by the Contractor upon the effective date of this contract shall not constitute a change in control.

City: The word "City" means the City of Des Moines, King County, Washington. As used in the Contract, it includes the official of the City holding the office of the City Manager or her/his designated representative, such as the City's Director of Planning, Building and Public Works.

City Service Area: The initial City Service Area shall be the corporate limits of the City as of the execution date of this Contract.

Commercial Customer: The term "Commercial Customer" means non-residential Customers including businesses, institutions, governmental agencies and all other users of commercial-type Garbage collection services.

Commercial Recyclables: The term "Commercial Recyclables" means aluminum cans and foil; corrugated cardboard; glass containers; recyclable plastic containers that have contained non-

hazardous products, Mixed Paper; newspaper; polycoated cartons; tin cans; and such other materials that the City and Contractor determine to be recyclable

Compostables: The word "Compostables" means Yard Debris and Food Scraps separately or combined.

Compostables Cart: The term "Compostables Cart" means a Contractor-provided 35-, 64- or 96-gallon wheeled cart provided to Compostables collection Customers for the purpose of containing and collecting Compostables.

Container: The word "Container" means any Micro-Can, Mini-Can, Cart, Detachable Container or Drop-Box Container owned and provided by the Contractor.

Contractor: The word "Contractor" means CleanScapes, Inc., which has contracted with the City to collect and dispose of Garbage and to collect, process, market and transport Recyclables and Compostables.

Curb or Curbside: The words "Curb" or "Curbside" mean on the homeowners' property, within five (5) feet of the Public Street or Private Road without blocking sidewalks, driveways or on-street parking. If extraordinary circumstances preclude such a location, Curbside shall be considered a placement suitable to the resident, convenient to the Contractor's equipment, and mutually agreed to by the City and Contractor.

Customer means all users of solid waste services, including property owners, managers and tenants.

Detachable Container: The term "Detachable Container" means a watertight metal or plastic Container equipped with a tight-fitting cover, capable of being mechanically unloaded into a collection vehicle, and that is not less than one (1) cubic yard or greater than eight (8) cubic yards in capacity.

Drop-Box Container: The term "Drop-Box Container" means an all-metal Container with ten (10) cubic yards or more capacity that is loaded onto a specialized collection vehicle, transported to a disposal or recycling site, emptied and transported back to the Customer's site.

Extra Unit: The term "Extra Unit" means excess material which does not fit in the Customer's primary Container. In the case of Can/Cart services, An Extra Unit shall be 32-gallons in volume, and may be contained in either a bundle, compostable bag, plastic bag or Garbage Can depending on commodity. In the case of Containers one cubic yard or more in capacity, an Extra Unit is one cubic yard.

Food Scraps: The term "Food Scraps" mean all Compostable pre- and post-consumer organic wastes placed in a Compostables Cart, such as whole or partial pieces of produce, meats, bones, cheese, bread, cereals, coffee grounds or egg shells, and food-soiled paper such as paper napkins, paper towels, paper plates, coffee filters, paper take-out boxes, pizza boxes, or other paper or biodegradable products specifically accepted by the Contractor's selected composting site. Food Scraps shall not include large dead animals, plastics, diapers, cat litter, liquid wastes, pet wastes

or other materials prohibited by the selected composting facility. The range of materials handled by the Compostables collection program may be changed from time to time upon the approval of the City to reflect those materials allowed by the Seattle-King County Health Department for the frequency of collection provided by the Contractor.

Garbage: The word "Garbage" means all putrescible and nonputrescible solid and semi-solid wastes, including, but not limited to, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, and discarded commodities that are placed by Customers of the Contractor in appropriate bins, bags, cans or other receptacles for collection and disposal by the Contractor. The term Garbage shall not include Hazardous Wastes, Special Wastes, Source-Separated Recyclables or Compostables.

Garbage Can: The term "Garbage Can" means a City-approved Container that is a water-tight galvanized sheet-metal or sturdy plastic Container not exceeding four (4) cubic feet or thirty-two (32) gallons in capacity; fitted with two (2) sturdy looped handles, one on each side; and fitted with a tight cover equipped with a handle. All Containers shall be rodent and insect proof.

Garbage Cart: The term "Garbage Cart" means a Contractor-provided 20-, 35-, 64- or 96-gallon wheeled cart suitable for household deposit, storage and Curbside placement and collection of Garbage. Garbage Carts shall be rodent and insect proof and kept in sanitary condition at all times.

Hazardous Waste: The term "Hazardous Waste" means any substance that is:

- A. Defined as hazardous by 40 C.F.R. Part 261 and regulated as Hazardous Waste by the United States Environmental Protection Agency under Subtitle C of the Resource Conservation and Recovery Act ("RCRA") of 1976, 42 U.S.C. § 6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments ("HSWA") of 1984; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or any other federal statute or regulation governing the treatment, storage, handling or disposal of waste imposing special handling or disposal requirements similar to those required by Subtitle C of RCRA.
- B. Defined as dangerous or extremely hazardous by Chapter 173-303 WAC and regulated as dangerous waste or extremely Hazardous Waste by the Washington State Department of Ecology under the State Hazardous Waste Management Act, Chapter 70.105 RCW, or any other Washington State statute or regulation governing the treatment, storage, handling or disposal of wastes and imposing special handling requirements similar to those required by Chapter 70.105 RCW.

King County Disposal System: The term "King County Disposal System" means the real property owned, leased or controlled by the King County Solid Waste Division, King County, Washington for the disposal of Garbage, or such other site as may be authorized by the then current King County Comprehensive Solid Waste Management Plan.

Micro-Can: The term "Micro-Can" means a water-tight plastic Container not exceeding ten gallons in capacity; fitted with two sturdy handles, one on each side; and fitted with a tight cover.

Mixed Paper: The term "Mixed Paper" means magazines, junk mail, phone books, bond or ledger grade paper, cardboard, paperback books, paperboard packaging, paper cups and other fiber-based materials meeting industry standards. Tissue paper, paper towels, food-contaminated paper or paper packaging combined with plastic, wax or foil are excluded from the definition of Mixed Paper.

Mixed-Use Building: The term "Mixed-Use Building" means a structure inhabited by both Residential and Commercial Customers.

Multi-Family Complex: The term "Multi-Family Complex" means a multiple-unit Residence with two or more attached or unattached dwellings billed collectively for collection service.

Private Road: The term "Private Road" means a privately owned and maintained way that allows for access by a service truck and that serves multiple Residences.

Public Street: The term "Public Street" means a public right-of-way used for public travel, including public alleys.

Recycling: The word "Recycling" means pertaining to the preparation, collection, process and marketing of Recyclables.

Recycling Cart: The term "Recycling Cart" means a Contractor-provided 35-, 64- or 96-gallon wheeled cart suitable for household collection, storage and Curbside placement of Source-Separated Recyclables.

Recycling Container: The term "Recycling Container" means a Contractor-provided Container suitable for on-site collection, storage and placement of Source-Separated Recyclables at Multi-Family Complexes and Commercial Customer locations.

Residence/Residential: The words "Residence" or "Residential" mean a living space, with a kitchen, individually rented, leased or owned.

Residential Recyclables: The term "Residential Recyclables" means aluminum cans and foil; corrugated cardboard; glass Containers; Mixed Paper; motor oil, newspaper; recyclable plastic Containers that have contained non-hazardous products; polycoated or aseptic cartons; scrap electronics, Scrap Metals and tin cans.

Scrap Metals: The term "Scrap Metals" means ferrous and non-ferrous metals, not to exceed two (2) feet in any direction and thirty-five (35) pounds in weight per piece. Scrap metal shall include small appliances such as microwave ovens and toasters provided that the appliances meet size and weight requirements.

Single-Family Residence: The term "Single-Family Residence" means all houses that are billed for collection service individually and located on a Public Street or Private Road.

Source-Separated: The term "Source-Separated" means certain reclaimable materials that are separated from Garbage by the generator for recycling or reuse, including, but not limited to Recyclables, Compostables and other materials.

Special Waste: The term "Special Waste" means polychlorinated biphenyl ("PCB") wastes, industrial process wastes, asbestos containing materials, petroleum contaminated soils, treated/de-characterized wastes, incinerator ash, medical wastes, demolition debris and other materials requiring special handling in accordance with applicable federal, state, county or local laws or regulations.

Yard Debris: The term "Yard Debris" means leaves, grass and clippings of woody, as well as fleshy, plants. Unflocked, undecorated holiday trees are acceptable. Materials larger than four (4) inches in diameter or four (4) feet in length are excluded. Bundles of Yard Debris up to two feet by two feet by four feet (2'x2'x4') in dimension shall be allowed and shall be secured by degradable string or twine, not nylon or other synthetic materials.

WUTC: The term WUTC means the Washington Utilities and Transportation Commission.

COMPREHENSIVE GARBAGE, RECYCLABLES AND COMPOSTABLES COLLECTION AGREEMENT

This agreement (hereafter, "Contract") is made and entered into this 13th day of May 2011, by and between the City of Des Moines, a municipal corporation (hereafter, "City"), and CleanScapes, Inc., a Washington corporation (hereafter, "Contractor").

1. TERM OF CONTRACT

The term of this Contract is seven years, starting November 1, 2011, and expiring October 31, 2018. The City may, at its sole option, extend the agreement for up to two (2) extensions, each of which shall not exceed two (2) years in duration. Any such extension shall be under the terms and conditions of this Contract, as amended by the City and Contractor from time to time. To exercise its option to extend this Contract, notice shall be given by the City to the Contractor no less than ninety (90) days prior to the expiration of the Contract term or the expiration of a previous extension.

2. SCOPE OF WORK

2.1 General Collection System Requirements

The Contractor shall collect, transfer and dispose of Garbage, Recyclables and Compostables according to the terms and conditions of this agreement; provided, that the Contractor shall not knowingly or as a result of gross negligence collect or dispose of Hazardous Waste or Special Waste as those terms are defined herein. The Contractor shall indemnify the City for any City damages cause by violation of this Section. To the extent identifiable, Customers shall remain responsible for any Hazardous Waste or Special Waste inadvertently collected and identified by Contractor. The Contractor's March 2011 proposal is hereby incorporated by reference. Any changes to equipment, materials, or practices shall be equivalent to or better than those proposed. In the event of a conflict between the Contractor's proposal and this Contract, the Contract shall prevail.

2.1.1 City Service Area

The Contractor shall provide all services pursuant to this Contract throughout the entire City Service Area.

2.1.2 Annexation

If additional territory is added to the City through annexation or other means within which the Contractor has an existing WUTC certificate or other franchise for solid waste collection at the time of annexation, the Contractor shall make collection in such annexed area in accordance with the provisions of this Contract at the unit prices set forth in this Contract. The City acknowledges that equipment, such as trucks, carts and

Containers, may take time to procure, and therefore, shall not penalize the Contractor for reasonable delays in the provision of services to annexed areas due to procurement delays that are not within the control of the Contractor. This Contract is in lieu of a franchise as provided in RCW 35A.14.900. The Contractor agrees that their certificate applicable to those annexation areas shall be cancelled effective the date of annexation by the City. The Contractor expressly waives and releases its right to claim any damages or compensation from the City, its officers, agents, or assigns arising out of the cancellation of any pre-existing permit or franchise held by the Contractor prior to annexation, and further specifically waives the right to receive any additional compensation or any rights of collection in the newly annexed territory. The term during which the Contractor will service any future annexation areas shall be seven (7) years, notwithstanding the term set forth in Section 1 of this Agreement.

If, during the life of the Contract, additional territory is added to the City through annexation within which the Contractor does not have an existing WUTC certificate or other franchise for Garbage or other collections, then, upon written notice from the City, Contractor agrees to make collections in such annexed areas in accordance with the provisions of this Contract at the unit price set forth in this Contract. The City acknowledges that equipment, such as trucks, carts and Containers, may take time to procure for distribution, and therefore, shall not penalize the Contractor for reasonable delays in the provision of services to annexed areas covered by this paragraph due to procurement delays that are not within the control of the Contractor. The City will indemnify, hold harmless and defend the Contractor from any and all claims, actions, suits, liability, loss, costs, expenses and damages, including costs and attorney fees, arising out of Contractor's service in that annexed territory under this Contract.

Annexed areas Customers shall receive the same Containers as used elsewhere in the City, in accordance with the provisions of this Contract. In the event where an annexed area is being serviced with Containers different from the City's program, the Contractor shall be responsible for timely Customer notification, removal and recycling of existing Containers and delivery of appropriate Containers to those Customers.

2.1.3 Unimproved Public Streets and Private Roads

Residences located in an area that does not allow safe access, turn-around or clearance for service vehicles will be provided service if materials are set out adjacent to the nearest Public Street or Private Road that provides safe access.

In the event that the Contractor believes that a Private Road cannot be safely negotiated or that providing walk-in service for Single-Family

Customers is impractical due to distance or unsafe conditions, the Contractor shall work with the Customer to negotiate the nearest safe and mutually convenient pick up location.

If the Contractor believes that there is a probability of Private Road damage, the Contractor shall inform the respective Customers. Contractor may require a damage waiver agreement or decline to provide service on those Private Roads. The City shall review and approve the damage waiver form prior to its use with the Contractor's Customers.

2.1.4 Hours/Days of Operation

All regular collections from Customers shall be made on Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m. The City may authorize an extension of hours or days to accommodate specific Customers or sections of routes. Saturday collection is allowed to the extent consistent with special bulky waste collections, make-up collections, and holiday and inclement weather schedules. City code noise restrictions, as amended from time to time, shall be applicable to collection services provided under this contract.

2.1.5 Employee Conduct

The Contractor's employees collecting Garbage, Recyclables and Compostables shall at all times be courteous, refrain from loud, inappropriate or obscene language, exercise due care, perform their work without delay, minimize noise, and avoid damage to public or private property. If on private property, employees shall follow the regular pedestrian walkways and paths, returning to the street after replacing empty Containers. Employees shall not trespass or loiter, cross flower beds, hedges or property of adjoining premises, or meddle with property that does not concern them or their task at hand. While performing work under the Contract, employees shall wear a professional and presentable uniform with an identifying badge with photo and company emblem visible to the average observer.

If any person employed by the Contractor to perform collection services is, in the opinion of the City, incompetent, disorderly or otherwise unsatisfactory, the City shall promptly document the incompetent, disorderly or unsatisfactory conduct in writing and transmit the documentation to the Contractor with a demand that such conduct be corrected. The Contractor shall investigate any written complaint from the City regarding any unsatisfactory performance by any of its workers. If the offending conduct is repeated, the City may require that the person be removed from all performance of additional work under this Contract.

Removal shall be addressed by the Contractor immediately, and related documentation shall be provided to the City.

2.1.6 Disabled Persons Service

The Contractor shall offer carry-out service for Garbage, Recyclables and Compostables to households lacking the ability to place Containers at the Curb, at no additional charge. The Contractor shall use qualification criteria that are fair and meet the needs of the City's disabled residents. These criteria shall comply with all local, state and federal regulations, and shall be subject to City review and approval prior to program implementation.

2.1.7 Holiday Schedules

The Contractor shall observe the same holiday schedule as do King County Transfer Stations (New Years Day, Thanksgiving Day, and Christmas Day).

When the day of regular collection is a King County Transfer Station holiday, the Contractor shall reschedule the remainder of the week of regular collection to the next succeeding workday, which shall include Saturdays. The Contractor shall not collect Residential Garbage, Recyclables or Compostables earlier than the regular collection day due to a holiday. Commercial collections shall be made one day early only with the consent of the Commercial Customer.

2.1.8 Inclement Weather and Other Service Disruptions

When weather conditions are such that continued operation would result in danger to the Contractor's staff, area residents or property, the Contractor shall collect only in areas that do not pose a danger. The Contractor shall notify the City of its collection plans and outcomes for each day that severe inclement weather is experienced as soon as practical that same business day.

The Contractor shall collect Garbage, Recyclables and Compostables from Customers with interrupted service on the first day that regular service to a Customer resumes and shall collect reasonable accumulated volumes of materials equal to what would have been collected on the missed collection day(s) from Customers at no extra charge. Following notification to the City, the Contractor will be provided temporary authorization to perform collection services after 5:00 pm and/or on Saturdays following disruptions due to weather in order to finish collection routes.

If successive weather events occur on the same scheduled collection day(s) two collection cycles in a row for a single collection day (i.e., Tuesday

Customers), an additional collection will be made on the next possible business day that same week, (i.e. not waiting for the regularly scheduled collection day for the missed area.) If multiple days are missed due to inclement weather in multiple weeks, collections shall be made on the next regularly scheduled collection day. In the event of successive service disruptions impacting entire neighborhoods, the Contractor shall provide temporary Residential Garbage collection sites using driver-staffed Drop Box Containers or other suitable equipment, with no extra charge assessed for such temporary service.

The inclement weather/disruption in service requirements in the preceding paragraph may be changed upon mutual written agreement of the Contractor and City at any time during the term of this Contract to better serve Customers.

All holiday and weather policies shall be included in program information provided to customers. On each inclement weather day, the Contractor shall release notices to the local newspapers and radio stations (including the Des Moines Highline Times and Seattle Times newspapers and KING AM, KIRO, and KOMO radio stations) notifying residents of the modification to the collection schedule. The Contractor shall use automated dialing services to inform Customers at the route level about service changes, provided that Customers shall be provided the option of opting out of automated calls.

When closure of roadways providing access or other non-weather related events beyond the Contractor's control prevent timely collection on the scheduled day, the Contractor shall make collections on the first day that regular service to a Customer resumes, collect reasonable accumulated volumes of materials equal to what would have been collected on the missed collection day(s) from Customers at no extra charge. Following notification to the City, the Contractor will be provided temporary authorization to perform collection services after 6:00 pm and/or on Saturdays following such disruptions in order to finish collection routes. Delayed or interrupted collections as described in this Section are not considered service failures for purposes of Section 4.1.

2.1.9 Suspending Collection from Problem Customers

The City and Contractor acknowledge that, from time to time, some Customers may cause disruptions or conflicts that make continued service to that Customer unreasonable. Those disruptions or conflicts may include, but not be limited to, repeated damage to Contractor-owned Containers, repeated refusal to position Garbage, Recycling and Compostables Carts properly, repeated suspect claims of timely set-out followed by demands

for return collection at no charge, repeated claims of Contractor damage to a Customer's property, or other such problems.

The Contractor shall make every reasonable effort to provide service to those problem Customers. However, the Contractor may deny or discontinue service to a problem Customer if reasonable efforts to accommodate the Customer and to provide services fail. If the Customer submits a written letter to the City appealing the Contractor decision, the City may, at its discretion, intervene in the dispute. In this event, the decision of the City shall be final. The City may also require the denial or discontinuance of service to any Customer who is abusing the service or is determined to be ineligible

2.1.10 Missed Collections

If Garbage, Recyclables or Compostables Containers are set out inappropriately, improperly prepared or contaminated with unacceptable materials, the Contractor shall place in a prominent location a notification tag that identifies the specific problem(s) and reason(s) for rejecting the materials for collection. Failure to provide proper notification to Customers of the reason for rejecting materials for collection shall be considered a missed collection and/or subject to performance fees due to lack of proper Customer notification.

The failure of the Contractor to collect Garbage, Recyclables or Compostables that has been set out by a Customer in the proper manner shall be considered a missed pick-up, and the Contractor shall collect the materials from the Customer on the same day if notified by 12:00 p.m. Monday through Friday, otherwise the collection shall occur on the next business day. The Contractor shall maintain an electronic database of all missed pick-ups (whether reported by telephone call or e-mail) and Contractor shall routinely note and provide corrective action to those Customers who experience repeated missed pick-ups. Such records shall be made available for inspection upon request by the City and shall be included with monthly reports unless otherwise directed by the City.

In the event that the Contractor fails to collect the missed pick-up within twenty-four (24) hours of receipt of notice (or on Monday in the event of notification after 12:00 p.m. on Friday), the Contractor shall collect the materials that day and shall be subject to performance fees. If the Contractor is requested by the Customer to make a return trip due to no fault of the Contractor, the Contractor shall be permitted to charge the Customer an additional fee for this service (a "return trip fee" at the rate specified in Attachment B), provided the Contractor notifies the Customer of this charge in advance.

2.1.11 Same Day Collection

Garbage, Recyclables and Compostables collection shall occur on the same regularly scheduled day of the week for Single-Family Residence Customers. The collection of Garbage, Recyclables and Compostables from Multi-Family Complexes and Commercial Customers need not be scheduled on the same day.

2.1.12 Requirement to Recycle and Compost

The Contractor shall recycle or compost all loads of Source-Separated Recyclables and Compostables collected, unless express prior written permission is provided by the City. The disposal of contaminants separated during processing is acceptable to the extent that it is unavoidable and consistent with industry standards. The Contractor's residuals from the overall processing operations at the facility (including both City and non-City material) shall not exceed 5%. Recyclables in residual stream shall not exceed 2% of the inbound Recyclables. If more than 5% of inbound materials are found to be contaminants, the Contractor will develop a plan to determine which Customers are adding contaminants in their Recyclables and then provide a public education program to remedy the situation.

The Contractor shall process Recyclables in such a manner as to meet market specifications and to minimize out-throws and prohibitives in baled material. Out-throws shall be less than 8%, prohibitives less than 1%-2% by weight of outgoing materials. The Contractor shall remove 90% or more of the inbound contaminants for disposal.

City staff shall be provided access to the Contractor's processing facilities at any time for the purposes of periodically monitoring the facilities' performance under this Section. Monitoring may include, but not limited to, taking samples of unprocessed Recyclables, breaking selected bales and measuring the out-throws and prohibitives by weight, taking samples of processed glass and metals, reviewing actual markets and use of processed materials, and other activities to ensure the Contractor's performance under this Section and to ensure that misdirected Recyclables and contamination are minimized.

Obvious contaminants included with either Source-Separated Recyclables or Compostables shall not be collected, and shall be left in the Customer's Container with a prominently displayed notification tag (per Section 2.1.10) explaining the reason for rejection.

2.1.13 Routing, Notification and Approval

The Contractor shall indicate, on a detailed map acceptable to the City, the day of the week Garbage, Recyclables and Compostables shall be collected from each Single-Family Residence.

The Contractor may change the day of collection by giving notice at least twenty-one (21) days prior to the effective date of the proposed change and must obtain advance written approval from the City. On the City's approval, the Contractor shall provide affected Customers with at least fourteen (14) days written notice of pending changes of collection day. The Contractor shall obtain the prior written approval from the City of the notice to be given to the Customer, and such approval shall not be unreasonably withheld.

2.1.14 Equipment Age/Condition

During the first year of this Contract, until October 31, 2012, the Contractor may use vehicles up to ten (10) years old with up to 200,000 accumulated miles of use. Starting November 1, 2012, the Contractor shall use vehicles that meet model year 2010 or later model year emissions standards. Back-up vehicles used fewer than thirty (30) operating days per calendar year shall not be subject to the age and emission standards that apply to regularly-used vehicles, but shall be presentable, in safe working order and shall be subject to all other conditions of this Section. The accumulated annual use of individual back-up vehicles shall be reported in the Contractor's monthly report.

All vehicles used in the performance of this Contract shall be maintained in a clean and sanitary manner, and shall be thoroughly washed at least once each week and shall be repainted as necessary.

All collection equipment shall have appropriate safety markings, including all highway lighting, flashing and warning lights, clearance lights, and warning flags, all in accordance with current statutes, rules and regulations. Equipment shall be maintained in good condition at all times. All parts and systems of the collection vehicles shall operate properly and be maintained in a condition satisfactory to the City. The Contractor shall maintain collection vehicles to ensure that no liquid wastes (such as Garbage or Compostables leachate) or oils (lubricating, hydraulic or fuel) are discharged to Customer premises or City streets. Any equipment not meeting these standards shall not be used within the City until repairs are made. All liquid spills will be immediately cleaned to the City's and Customer's satisfaction. Unremediated spills and failure to repair vehicle leaks shall be subject to performance fees as provided in Section 4.1.

All collection vehicles shall be labeled with signs on both the front and driver's side door and the rear of the vehicle which clearly indicate the vehicle inventory number. The Customer service telephone number shall be labeled on the side of the vehicle. Signs shall use lettering not less than four (4) inches high and shall be clearly visible from a minimum distance of twenty (20) feet. Signs, sign locations and the telephone number shall be subject to approval by the City. No advertising shall be allowed on Contractor vehicles other than the Contractor's name, logo and Customer service telephone number and website address. Special promotional messages may be permitted, upon the City's prior written approval. In addition, any vehicle regularly used in the City shall include a placard clearly visible at the rear of the vehicle. This placard will show, in lettering at least 12" high, an abbreviated truck designation number specific to the Contractor's operating division, for example K-1, K-2, etc., limited to a two digit numeral to aid in rapid identification of vehicles to allow more precise reporting and correction of any unsatisfactory condition related to specific vehicles. All Contractor route, service and supervisory vehicles shall be equipped with properly licensed two-way communication equipment. The Contractor shall maintain a base station or have communication equipment capable of reaching all collection areas.

2.1.15 Container Requirements and Ownership

The Contractor shall procure and maintain a sufficient quantity of Containers to service the City's Customer base, including seasonal and economic variations in Container demand. Failure to have a Container available when required by a Customer shall subject the Contractor to performance fees, as provided in Section 4.1.

Customers may elect to own or secure Containers from other sources, and shall not be subject to discrimination by the Contractor in collection services on that account. However, Containers owned or secured by Customers must be capable of being serviced safely by the Contractor's collection vehicles to be eligible for collection. The Contractor shall provide labels and collection service for compatible Customer-owned Containers. The Contractor is not required to service Customer Containers that are not compatible with the Contractor's equipment. In the event of a dispute as to whether a particular Container is compatible, the City shall make a final determination.

2.1.15.1 Micro-Cans and Garbage Cans

Customers shall use a Contractor-owned Micro-Can or Garbage Cart for small Container Garbage collection service.

Plastic bags and Garbage Cans may be used for overflow volumes of Garbage, but not as a Customer's primary Container.

If a Customer uses their own Container for excess Garbage, Contractor crews shall be expected to handle the Container in such a way as to minimize undue damage. The Contractor shall be responsible for unnecessary or unreasonable damage to Customer-owned Containers, wear and tear excepted.

2.1.15.2 Garbage, Recyclables and Compostables Carts

The Contractor shall provide Micro-Cans and 20-, 35-, 64- and 96-gallon Garbage Carts for the respective level of Garbage collection; 35-, 64- or 96-gallon Recyclables Carts; and 35, 64- and 96-gallon Compostables Carts. All Carts shall be manufactured from a minimum of 10 percent (10%) post-consumer recycled plastic, with a lid that will accommodate a Contractor affixed instructional label. Carts shall be provided to requesting Customers within seven (7) days of the Customer's initial request. Failure to do so will result in performance fees as provided in Section 4.1. All wheeled cart manufacturers, styles and colors shall be approved in writing by the City prior to the Contractor ordering a cart inventory. All Carts must have materials preparation instructions and telephone and website contact information that visually depicts allowed and prohibited materials suitable for the designated Cart either screened or printed on a sticker affixed to the lid.

All Contractor-owned wheeled carts shall: be maintained by the Contractor in good condition to allow material storage, handling, and collection; contain no jagged edges or holes; be equipped with functional wheels or rollers for movement; be equipped with functional lid; and be equipped with an anti-skid device or sufficient surface area on the bottom of the Container to prevent unwanted movement. The carts shall be labeled with instructions for proper use, including any Customer actions that would void manufacture warranties (such as placement of hot ashes in the Container causing the Container to melt or burn).

Contractor personnel shall note any damaged hinges, holes, poorly functioning wheels and other similar repair needs on Contractor-owned carts (including those for Garbage, Recycling and Compostables) and forward repair notices to the Contractor's service personnel. Cart repairs shall then be made

within seven (7) days at the Contractor's expense. Any Cart that is damaged or missing on account of accident, act of nature or the elements, fire, or theft or vandalism by other members of the public shall be replaced no later than three (3) business days after notice from the Customer or City. Replacement Carts may be new or used and reconditioned, and all Carts shall be clean and appear presentable when delivered. Unusable carts shall be retrieved by Contractor, cleaned (if necessary) and recycled to the extent possible.

In the event that a particular Customer repeatedly damages a Cart or requests more than one replacement Cart during the term of the Contract due solely to that Customer's negligence or intentional misuse, the Contractor shall forward in writing the Customer's name and address to the City. The City shall then attempt to resolve the problem. In the event that the problem continues and upon City-approval, the Contractor may charge the Customer a City-approved Cart destruction fee no greater than half of the current new Cart replacement cost.

2.1.15.3 Detachable and Drop-Box Containers

The Contractor shall furnish, deliver, and properly locate 1-, 1.5-, 2-, 3-, 4-, 6- and 8-cubic yard Detachable Containers, and 10-, 20-, 30- or 40-cubic yard uncompacted Drop-Box Containers to any Customer who requires their use for storage and collection of Garbage, Recyclables or Compostables within three (3) days of the request.

Containers shall be located on the premises in a manner satisfactory to the Customer and for collection by the Contractor. Containers shall not be placed by Contractor, or kept for use by Customer, in any City Public Street. Any Container located in any City Public Street at any time is at the Contractor's risk and not the City's. Any Container located in City Public Right of Way is in violation of this section, and shall immediately be removed upon request by the City.

Detachable Containers shall be: watertight and equipped with tight-fitting metal or plastic covers, which covers shall be closed by Contractor after every service; have four (4) wheels for Containers 2-cubic yards and under; be in good condition for Garbage, Recyclables or Compostables storage and handling; and, have no leaks, jagged edges or holes. Drop-Box Containers shall be all-metal, and if requested by a Customer, equipped with a tight-fitting screened or solid cover operated

by a functional winch system that is maintained in good repair. Each type of Detachable Container (i.e. Recyclables, Compostables or Garbage) shall be painted a color consistent with the program it is used for, subject to the requirements of Section 2.1.15.6, with color changes subject to the City's prior written approval. Containers shall be repainted as needed, or upon notification from the City.

Detachable Containers shall be cleaned, reconditioned and repainted (if necessary) before being initially supplied, or returned after repair or reconditioning, to any Customer. The Contractor shall provide an on-call Container cleaning service to Customers. The costs of on-call cleaning shall be billed directly to the Customer in accordance with Attachment B.

Containers on Customers' premises are at the Contractor's risk and not the City's. The Contractor shall repair or replace within twenty-four (24) hours any Container that was supplied by the Contractor if the City or a Health Department inspector determines that the Container fails to comply with reasonable standards or in any way constitutes or contributes to a health or safety hazard.

In the event that a particular Customer repeatedly damages a Container due to that Customer's negligence or intentional misuse, the Contractor shall forward in writing the Customer's name and address to the City. The City shall then attempt to resolve the problem. In the event that the problem continues, the Contractor may discontinue service to that Customer, on the City's prior approval.

2.1.15.4 Recycling Carts

The Contractor shall provide Recycling Carts to Customers within the City Service Area, including new Residences and annexation areas, as well as replacement Carts to existing Customers who request them because of loss, theft or damage. Carts shall be provided within seven (7) days of a Customer request.

All distributed Recycling Carts shall include information materials describing material preparation and collection requirements. Any materials published by the Contractor must be reviewed and approved by the City prior to printing and distribution by the Contractor. All Recycling Carts shall be labeled with materials preparation instructions that visually

depict allowed and prohibited materials suitable for the designated Cart either screened or printed on a sticker affixed to the lid, along with telephone and website contact information. All Recycling Carts shall be provided at the Contractor's sole expense.

The Contractor shall provide 35- or 64-gallon Recycling Carts on request to those residents requiring less capacity than provided by the default 96-gallon Recycling Cart.

In the event that a Customer intentionally damages or misuses their Recycling Cart, the Contractor may discontinue recycling service to that Customer, on the City's prior approval and/or may charge the Customer a City-approved Cart destruction fee no greater than half of the current new Cart replacement cost.

2.1.15.5 Ownership

On the termination of this Contract for any reason, all Contractor-supplied Garbage Carts, Recycling Carts and Compostables Carts purchased or obtained by the Contractor in performance of this contract, shall, at the option of the City, revert to City ownership without further compensation to the Contractor. Upon written notice, the City may elect to assign this ownership option to a third party.

Detachable Containers and Drop-Box Containers shall be purchased, delivered and maintained by the Contractor during the term of this Contract. On the termination of this Contract for any reason, the City may, at its option, purchase or assign the right to purchase the Contractor's in-place inventory of Detachable Containers or Drop-Box Containers for use by the successive contractor. In the event that Contractor's Containers are purchased or assigned, the sale price shall equal fifty percent (50%) of the average new price for each Container, based on the average price from three (3) manufacturers at the time of the termination. For the purposes of this transaction, the average prices shall include transportation from the manufacturer to the Contractor's closest service yard, but shall exclude sales or use taxes.

2.1.15.6 Container Colors and Labeling

New and replacement Contractor-provided Recycling Carts shall be blue, Compostables Carts shall be green, and Garbage Carts shall be grey or black, to be decided by the City.

Detachable Containers used for Garbage shall be green and all Detachable Containers used for Recyclables shall be blue starting June 1, 2012. The color requirements apply to both Cart bodies and lids.

The City may direct changes to cart colors at any time prior to the Contractor ordering initial or replacement carts provided the new direction from the City does not require replacement of existing inventories and the cost per unit does not increase to the Contractor. Specific Container colors shall be approved by the City prior to the Contractor's order of new Containers.

All Containers shall be labeled with up-to-date instructional information and contact information prior to delivery, including both a customer service phone number and a website address. All label designs shall be approved by the City prior to ordering by the Contractor. The location of the label on the Containers shall be subject to the City's prior approval. Labels shall be replaced by the Contractor at no additional charge when faded, damaged, out-of-date, or upon City or Customer request.

2.1.15.7 Container Weights

Micro-Cans shall not exceed twenty 20 pounds, 20-gallon Garbage Cans shall not exceed forty 40 pounds and Garbage Cans shall not exceed sixty (60) pounds in weight. Cart weights shall not exceed sixty (60) pounds for the 35-gallon size, one hundred-twenty (120) pounds for the 64-gallon size and one hundred-eighty (180) pounds for the 96-gallon size. No specific weight restrictions are provided for Detachable Containers, however, the Contractor shall not be required to lift or remove materials from a Detachable Container exceeding the safe working capacity of the collection vehicle. The combined weight of Drop-Box and contents must not cause the collection vehicle to exceed legal road weights.

2.1.16 Spillage

All loads collected by the Contractor shall be completely contained in collection vehicles at all times, except when material is actually being loaded. Hoppers and tippers on all collection vehicles shall be operated so as to prevent any blowing or spillage of materials. Any blowing or spillage of materials either caused by Contractor or that occurs during collection shall be immediately cleaned up by the Contractor at Contractor's expense. Prior to any collection vehicle leaving a collection route and/or operating

on any roads with a speed limit higher than 25 miles per hour, Contractor shall completely close any collection vehicle openings where materials may blow out, and thoroughly inspect for and contain any collected materials inadvertently spilled on top of the collection vehicle to prevent release or littering this material. Spillage not immediately cleaned up shall be cause for performance fees, as described in Section 4.1.

All vehicles used in the performance of this Contract shall be required to carry regularly-maintained and fully-functional spill kits. At a minimum, spill kits shall include absorbent pads or granules, containment booms, storm drain covers, sweepers and other similar materials sufficient to contain, control and, for minor events, appropriately clean-up any spillage or release of wind-blown materials, litter, or leaks of Contractor vehicle fluids or leachate. The Contractor shall notify the City via e-mail within two hours of any major spill or any spill that leaves a noticeable stain on City Roads or private property. Spill kits shall also include employee spill containment instructions and procedures as well as a regularly updated list of emergency contacts. The Contractor shall develop spill response procedures for review and approval by the City before initiating any work under this Contract. Prior to operating any vehicle in the City, all Contractor vehicle drivers shall be provided with hands-on training on the location, maintenance, and use of spill kits and associated containment and notification procedures. Such training shall be provided to all vehicle drivers at least annually.

All Drop-Box loads (both open and compactor) shall be properly and thoroughly covered or tarped to prevent any spillage of material prior to Contractor vehicle entering any Private Road or Public Street.

2.1.17 Pilot Programs

The City may wish to test and/or implement one or more changes to waste stream segregation, materials processing or collection technology, promotion of services, or collection frequency at some point during the term of the Contract. The City shall notify the Contractor in writing at least ninety (90) days in advance of its intention to implement a pilot program or of its intentions to utilize a new technology system on a City-wide basis. The costs (or savings) accrued by any City-initiated pilot programs shall be negotiated prior to City-wide implementation. The Contractor shall coordinate with the City and participate fully in the design, roll-out, operation and troubleshooting of such pilot programs.

Contractor-initiated pilot programs shall require prior written notification and approval by the City. Contractor-initiated pilot programs shall be performed at no additional cost to the City or the Contractor's Customers;

however, savings accrued may be subject to negotiations prior to City-wide implementation at the City's request.

Contractor-initiated surveys are allowed of businesses and/or Residences to gather information about generic service preferences or to access pilot program options or outcomes, provided that all related data and analysis is shared with the City.

2.1.18 Disruption Due to Construction

The City reserves the right to construct any improvement or to permit any such construction in any street or alley in such manner as the City may direct, which may have the effect for a time of preventing the Contractor from traveling the accustomed route or routes for collection. However, the Contractor shall, by the most expedient manner, continue to collect Garbage, Recyclables and Compostables to the same extent as though no interference existed upon the streets or alleys normally traversed. This collection shall be done at no extra expense to the City or the Contractor's Customers.

2.1.19 Contractor Planning Assistance

The Contractor shall, upon request and without additional cost, make available site planning assistance to either the City and/or property owners or their representatives. The site planning assistance shall be available for all new construction or remodeling of buildings and structures within the City Service Area, and shall address the design and planning of Garbage, Recyclables and Compostables removal areas and their location upon the site of the proposed construction or remodeling project. Contractor planning assistance for optimizing loading docks, enclosures, compactor equipment, and other similar structures or areas shall also be available for existing Customers when adjusting Garbage, Recyclables and Compostables services. Contractor planning assistance shall be provided within two working days of the Contractor receiving a written request for assistance.

2.1.20 Safeguarding Public and Private Facilities

The Contractor shall be obligated to protect all public and private improvements, facilities and utilities whether located on public or private property, including street Curbs. If such improvements, facilities, utilities or Curbs are damaged and such damage is primarily attributable to the Contractor's operations, the Contractor shall notify the City immediately in writing of all damage, and the Contractor shall repair or replace the same. If the Contractor fails to do so promptly, as determined by the City, the

City shall cause repairs or replacement to be made, and the cost of doing so shall be billed to and become the responsibility of the Contractor.

2.1.21 Company Name

The Contractor shall not use a firm name containing any words implying municipal ownership without prior written permission from the City.

2.1.22 Transition and Implementation of Contract

The Contractor's proposal section C6. Transition and Implementation Plan is incorporated by reference for this section.

The Contractor shall set up an initial implementation meeting with the City to review and modify the plan, set expectations, and schedule weekly implementation meetings. At this time, the City and Contractor shall set up a time to meet with the current contractor (Allied) in order to coordinate:

1. The data transition plan; and
2. The systematic removal of existing contractor-owned equipment and the delivery of new Containers to ensure the Customers always have access to a Garbage, Recycling and/or Compostables Container of the appropriate size.

The Contractor shall review the received Commercial and Multifamily data with Customers to confirm collection service levels and frequency, collection locations, and access issues. During the reviews, the Contractor shall introduce the benefits of waste reduction to the customer and inform them of the new embedded recycle program.

The Contractor shall work with the City to explain the expanded commingled recycling collection system and Garbage collection service placement requirements, container sizes and rates. All container decals, cart imprints and materials provided by the Contractor to Customers shall be reviewed and approved in advance by the City. The Contractor shall, at its expense, provide the following:

- (1) By August 1, 2011, the Contractor shall provide a live website dedicated to Des Moines collection services.
- (2) By September 1, 2011, the Contractor shall provide a dedicated phone line and Customer Service Representative.

- (3) By September 9, 2011, the Contractor shall mail to all Residential Customers a postcard notifying them of the delivery of new Carts, the key services of the Contract, resources for obtaining additional information, and instructions for the period of time prior to the implementation of new services.
- (4) By October 7, 2011, the Contractor shall mail to all Commercial/Multifamily Customers a brochure notifying them of the delivery of new Containers, the key services of the contract, resources for obtaining additional information, and instructions for the period of time prior to implementation of new services.
- (5) By October 28, 2010 the Contractor will deliver with the new Carts a User Guide in a plastic bag taped to the Cart that includes information on Container placement, available service levels and rates, Recyclables and Compostables preparation and collection requirements, restrictions on disposal, bulky waste recycling and disposal opportunities, day of collection and other pertinent information
- (6) Starting October 3, 2011 and continuing through October 28, 2011, the Contractor shall deliver Garbage Carts, Recycling Carts and Compostables Carts to subscribing Single-family customers. The Contractor shall deliver the same-size Garbage cart for each service as currently provided to each customer.
- (7) Starting October 1, 2011 and continuing through October 31, 2011, the Contractor shall deliver Carts, Detachable Containers and Drop-box Containers to Multifamily and Commercial Customers.
- (8) Additional staffing shall be provided for Contractor customer service lines to accommodate Customer questions, Residential service level shifting requests, and Commercial Customer Container orders during the transition period.

All dates will be reviewed with the City during the weekly implementation meetings. Dates may be modified with permission of the City as long as the start of the contract is not impacted and the Customers are never without Containers.

2.1.23 Ongoing Coordination with City and Performance Review

The Contractor's supervisory staff shall be available to meet with the City at the City's offices on request as well as on a quarterly schedule to discuss and resolve operational and Contract issues. The City may, at its option, conduct periodic performance reviews of the Contractor's performance under this Contract. The City may perform the review to confirm various aspects of the Contractor's operations and compliance with this Contract. City staff or contracted consultants may provide the review at the City's direction. The Contractor shall fully cooperate and assist with all aspects of the performance review, including access to Contractor's route and Customer service data, billing information, safety records, equipment, facilities and other applicable items. The City's scope of review under this provision is intended to focus on analysis of the Contractor's performance and Contract compliance.

The results of the performance review shall be presented to the Contractor and a plan for addressing any deficiencies shall be provided to the City within two (2) weeks of the Contractor's receipt of the review. The Contractor shall analyze and correct in good faith any deficiencies found in its performance under this Contract, including broader implementation of corrections that extend beyond the limited data or scope of a performance review to bring Contractor into more complete Contract compliance.

The Contractor's corrective plan shall address all identified deficiencies and include a timeline for corrective actions. The Contractor's corrective plan shall be subject to review and approval by the City. Upon approval of the plan, the Contractor shall implement and sustain actions that correct deficiencies. Failure to complete correction of deficiencies as outlined in the plan and/or failure to initiate good faith corrective actions within thirty (30) days shall constitute a failure to perform subject to performance fees as defined in 4.1.

The Contractor shall continually monitor and evaluate all operations to ensure compliance with this Contract. At the request of the City, the Contractor shall report its own findings from internal monthly performance measures for collection, customer service and maintenance functions. The City shall determine which of the Contractor internal performance management measures are relevant to addressing any particular deficiencies and the Contractor shall continue to report those measures until notified in writing by the City.

2.1.24 Disposal Restrictions and Requirements

All Garbage collected under this Contract, as well as residues from processing Recyclables and Compostables, shall be delivered to the King County Disposal System, unless otherwise directed in writing by the City.

Garbage containing obvious amounts of Yard Debris shall not knowingly be collected and instead prominently tagged with a notice informing the Customer that King County does not accept Yard Debris mixed with Garbage for collection. Contractor's knowing collection of Garbage mixed with visible Yard Debris shall be grounds for performance fees as provided in Section 4.1.

The Contractor shall not be required to collect hazardous materials that are either restricted from disposal or would pose a danger to collection crews. If materials are rejected for this reason, the Contractor shall leave a written notice with the rejected materials listing why they were not collected and providing the Customer with a contact for further information about proper disposal options. The Customer shall remain responsible for all costs associated with handling and disposal of hazardous materials inadvertently collected by Contractor.

Garbage collected by the Contractor may be processed to recover Recyclables, provided that the residual is disposed in accordance with the City's Interlocal Agreement with King County. In the event the Contractor elects to haul Garbage to a private processing facility, the Contractor shall charge the Customer no more than the equivalent Garbage disposal fee at a King County Disposal System transfer station and shall charge hauling fees no higher than provided for in Attachment B.

2.1.25 Biodiesel

The Contractor shall use 20% sustainable-rated biodiesel fuel in its diesel vehicles used in the performance of this Contract. The percentage requirement may be met either by using a 20% blend fuel in all diesel vehicles during March-October and 5% during November-February, or using a higher percentage in specific vehicles to achieve the same result.

The Contractor may request permission from the City to temporarily or permanently discontinue biodiesel use if the Contractor is unable to reasonably obtain biodiesel or has continued unresolvable operating problems directly related to the use of biodiesel. The City shall consider the request, provide its own investigations and provide a response to the Contractor within thirty (30) days of receiving the Contractor's request.

The Contractor shall maintain all vehicles used in Des Moines in a manner intended to achieve reduced emissions and particulates, noise levels, operating costs, and fuel use.

Upon request, the Contractor shall provide documentation and/or provide access for verification that its fleet meets the requirements of this section.

2.1.26 Violation of Ordinance

The Contractor shall report in writing immediately to the City any observed violation of the City's ordinances providing for and regulating the Containerization, collection, removal and disposal of Garbage, Recyclables and Compostables.

2.2 Collection Services

2.2.1 Single-Family Residence Garbage Collection

2.2.1.1 Subject Materials

The Contractor shall collect all Garbage placed Curbside for disposal by Single-Family Residence Customers in and adjacent to Micro-Cans, Garbage Cans/plastic bags (for Extra Units) and/or Contractor-owned Garbage Carts. The Contractor shall offer carry-out service to disabled Customers at no charge (per Section 2.1.6) and to all other Customers for the appropriate service level rate, plus the carry-out surcharge, in accordance with Attachment B. If a Customer is either eligible for, or subscribes to, carry-out service, carry-out service shall be provided for all three collection streams (Garbage, Recyclables, and/or Compostables) without duplicate surcharges.

2.2.1.2 Collection Containers

The Customer's primary Container must be a Micro-Can or Garbage Cart. Plastic bags may only be used for Extra Units, not as the Customer's primary Container. Micro-Can and Cart rental fees shall be embedded in the respective rate charged for the level of service and not separately charged or itemized.

Micro-Cans and Garbage Carts shall be delivered by the Contractor to Single-Family Residence Customers within seven (7) days of the Customer's initial request.

2.2.1.3 Specific Collection Requirements

The Contractor shall offer regular weekly collection of the following service levels:

- (1) One 10-gallon Micro-Can
- (2) One 20-gallon Garbage Cart;
- (3) One 35-gallon Garbage Cart;
- (4) One 64-gallon Garbage Cart; and
- (5) One 96-gallon Garbage Cart.

On request, the Contractor shall also offer Customers monthly collection of one 35-gallon Garbage Cart with no putrescible wastes, at a rate equal to the weekly Micro-Can service level. Customers subscribing at this service level will continue to receive regularly scheduled Curbside recycling service.

Carry-out charges shall be assessed only to those Customers who choose to have the Contractor move Containers to reach the collection vehicle at its nearest point of access. An Extra Unit charge may be assessed for materials loaded so as to lift a Cart lid in excess of six (6) inches from the normally closed position. The Contractor may charge for an overweight Container at the Extra Unit rate, provided that the Customer agrees in advance to pay for the Extra Unit rate, otherwise, the Container shall be left at the Curb with Customer notification as to why it was not collected. The Contractor shall maintain route lists in sufficient detail to allow accurate recording and charging of all Extra Unit fees. All Extra Units from Customers with a history of disputed charges shall be documented with a date and time stamped photograph. Customers shall be allowed to specify that no Extra Units be collected without prior Customer notification, which shall be provided by the Customer no less than twenty-four (24) hours prior to that Customer's regular collection.

Collections shall be made from Single-Family Residences on a regular schedule on the same day and as close to a consistent time as possible. Customers shall place Containers on or abutting Public Streets or Private Roads. The Contractor may tag inappropriately placed Containers and may discontinue service in the event of persistent inappropriate Container placement. The Contractor's crews shall make collections in

an orderly and quiet manner, and shall return Containers, in an upright position, with lids closed and attached, to their set out location and will not place Containers on streets, sidewalks, public pathways, or in places that block vehicle access to any driveways, mailboxes, or similar structures.

The Contractor shall provide a "clean-up day" twice a year, one in Spring and once in Fall, for all Single-Family Residential Garbage Customers. On each of those days, the Contractor shall collect up to 96 gallons of excess Garbage from each Customer at no additional charge. Materials shall be recycled to the extent possible

Upon one-hundred-eighty-days written notice from the City, the Contractor shall shift Single-Family Residence Garbage collection to every-other-week. In the event that the City implements this reduced collection frequency, the Single-Family Garbage rates in Attachment B shall be reduced by \$2.26/month, subject to the rate modification provisions of Section 3.3.

2.2.2 Single-Family Residence Recyclables Collection

2.2.2.1 Subject Materials

The defined list of Residential Recyclables shall be collected from all participating Single-Family Residences as part of basic Garbage collection services, without extra charge. The Contractor shall collect all Residential Recyclables from Single-Family Residences that are placed in Contractor owned Carts or are boxed or placed in a paper bag next to the Customers' Recycling Cart. Recyclables containing obvious amounts of Compostables or Garbage shall not knowingly be collected and instead prominently tagged with a notice informing the Customer of Recyclables contamination. Customers shall be contacted and provided the opportunity to either remove the contamination and have the materials collected the following collection cycle or, alternatively, have the materials collected as Garbage at the regular extra fee. Recyclables must be prepared as follows and uncontaminated with food or other residues:

Aluminum Cans:	All clean aluminum cans, pie "tins", and foil that are placed in the Recycling Cart.
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Corrugated Cardboard:	All corrugated cardboard boxes smaller than three (3) feet square, and placed in or next to the Customer's Recycling Cart.
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	Corrugated cardboard boxes larger than three (3) feet square must be flattened by Customer prior to collection.
Fats, Oils, Grease (FOG):	Up to three gallons of used cooking oil and kitchen grease that is free from contaminants and placed in clear screw-top plastic containers, labeled with the Customer's address and placed next to the Customer's Recycling Cart.
Fluorescent Tubes and CFLs	Unbroken fluorescent tubes wrapped in paper and unbroken CFLs bulbs sealed in a Ziploc bag and placed on top of the Customer's Recycling Cart.
Glass Containers:	All colored or clear jars and bottles that are rinsed and have lids removed. Incandescent light bulbs, ceramics and window glass are excluded.
Household Batteries:	Button, alkaline, and rechargeable batteries sealed in small Ziploc baggies and placed on top of the Customer's Recycling Cart.
Mixed Paper:	All Mixed Paper
Motor Oil:	Up to three gallons of motor oil that is free from contaminants and placed in clear screw-top plastic jugs, labeled with the Customer's address and placed next to the Customer's Recycling Cart.
Newspaper:	All newspaper and advertising supplements that are delivered.
Coated paper:	All clean paper cups, milk cartons, other coated food packaging, and Tetra Paks/aseptic container placed in the Recycling Cart.
Plastic Bags:	All clean dry plastic bags, (shopping, newspaper, and dry-cleaning bags) bagged together and placed in the Recycling Cart.

Plastic Containers:	All plastic bottles, cups, jugs and tubs. Other plastics, automotive or other hazardous product Containers, and lids are excluded.
Other Plastic:	Clean plastic food containers and trays,* clean LDPE stretch plastic film such as Saran Wrap, Polypropylene and PET plastic soda and water bottles; Polycarbonate water bottles such as Nalgene; Polystyrene such as grocery meat trays, plastic buckets such as 5g paint pails emptied of paint; clean Plant pots, CD cases with paper booklet removed; and household plastic items such as laundry baskets, large plastic containers, plastic furniture, and plastic toys.
Polycoated Cartons and Boxes:	All plastic coated cartons and boxes that are flattened.
PVC pipe:	All thicknesses of white PVC pipe, no longer than length of Recycling Cart.
Scrap Metal:	All ferrous and non-ferrous Scrap Metal that has no more than market-acceptable levels of wood, plastic, rubber and/or other contaminants; and meets the size requirements defined for Scrap Metals.
Tin Cans:	All food and beverage tin cans with labels removed.
Garbage Cans:	The Contractor shall also collect and recycle unwanted Garbage Cans from Customer. Customers shall label unwanted cans with a "Take" label and the Contractor shall collect those empty unwanted Garbage Cans on its Recycling collection route.

2.2.2.2 Containers

The Contractor shall be responsible for ordering, assembling, affixing instructional information onto, maintaining adequate inventories of, and distributing and maintaining Recycling

Carts. The default Recycling Cart size shall be 96-gallons for new Customers, provided that the Contractor shall offer and provide 32/35- or 96-gallon Recycling Carts on request to those Customers requiring either less or additional capacity than provided by the standard 64-gallon Recycling Cart. Recycling Carts shall include a recycling/program brochure when distributed.

Recycling Carts shall be delivered by the Contractor to new Customers or those Customers requesting replacements, within seven (7) days of the Customer's initial request.

2.2.2.3 Specific Collection Requirements

Single-Family Residence Recyclables collection shall occur every-other-week on the same day as each household's Garbage collection. Single-Family Residence Recyclables collection shall occur during the hours and days specified in Section 2.1.4. Collections shall be made from Residences on a regular schedule on the same day and as close to a consistent time as possible. The Contractor shall collect on Public Streets and Private Roads in the same location as Garbage collection service is provided. The Contractor's crews shall make collections in an orderly and quiet manner, and shall return Containers with their lids closed and attached to their set out location in an orderly manner.

The Contractor shall collect all properly prepared Single-Family Residence Recyclables from Garbage Customers. No limits shall be placed on set-out volumes, except in the case when extremely large quantities of commercially-generated materials are consistently set out at a Single-Family Residence. In this case, the Contractor shall request the resident to use a larger Recycling Cart or use commercial recycling services for the excess volumes. If the resident continues to set out commercial quantities of Recyclables, the Contractor shall notify the City for further action. In the event that large quantities of Residentially-generated cardboard (e.g. moving boxes) are set out for collection, the Contractor may collect the excess materials the following day in a separate truck, provided that clear written notification of the collection delay is provided to the Customer.

The Contractor shall collect properly packaged used motor oil from Single-Family Residential Customers. The Contractor may refuse to collect used motor oil from any Customer for any one of the following reasons: 1) the oil was not packaged in a clear, leak proof, plastic jug or bottle, securely sealed with a screw-cap; 2) the packaged oil contained substances other than used motor oil; 3) the packaged oil leaks in any way 4) the Container is not properly labeled with the Customer's name and address; or 5) there is spillage at the Customer location which is not caused by the Contractor's employees. Should the Contractor reject used motor oil for any of these reasons, a tag outlining the reason for rejection shall be left with the oil.

The City and Contractor shall cooperate on monitoring the quality of Recyclables set out for collection. Either party may inspect or sample set-out or collected Recyclables. Any deficiencies in Recyclables quality observed by City or Contractor's staff shall require educational follow-up by the Contractor to encourage maximum quality and marketability. Educational follow-up shall range from a minimum of a notice ticket or "oops tag" to involvement of management staff from either the City or Contractor as appropriate.

Upon one-hundred-eighty-days (180) written notice from the City, the Contractor shall shift Single-Family Residence Recyclables collection to weekly. In the event that the City implements this increased collection frequency, the Single-Family Garbage rates in Attachment B shall be increased by \$1.22/month, subject to the rate modification provisions of Section 3.3.

2.2.3 Compostables Collection

2.2.3.1 Subject Materials

Compostables shall be collected each collection cycle from all subscribing Single-Family Residences.

Compostables containing obvious amounts of Recyclables or Garbage shall not knowingly be collected and instead prominently tagged with a notice informing the Customer of Compostables contamination. Customers shall be contacted and provided the opportunity to either remove the contamination and have the materials collected the following collection cycle or, alternatively, have the materials collected as Garbage at the regular extra fee.

Contaminated or oversized Compostables materials rejected by the Contractor at the Curb shall be tagged in a prominent location with an appropriate problem notice explaining why the material was rejected.

2.2.3.2 Containers

A 96-gallon Compostables Cart shall be provided to all subscribers. The Contractor shall be responsible for ordering, assembling, affixing instructional information onto, maintaining inventories of, and distributing and maintaining Compostables Carts. Compostables Carts shall be labeled with instructional information, in accordance with Section 2.1.15.6. The default Compostables Cart size shall be 96-gallons, with 32/35- and 64-gallon sizes available upon request.

Extra Yard Debris material that does not fit in the initial Compostables Cart shall be bundled or placed in Kraft bags or Customer-owned Garbage Cans labeled for Yard Debris. Customers choosing to use their own Containers for excess Yard Debris shall be provided durable stickers by the Contractor that clearly identify the Container's contents as Yard Debris.

Compostables Carts shall be delivered by the Contractor to Customers within seven (7) days of the Customer's initial request. Redelivery fees shall be charged only to those Residential Customers that cancel and then restart Compostables Cart collection service within seven months of cancellation. In order for this fee to be applicable, Contractor must notify each Customer at the time they request service cancellation. The Contractor may charge a ten dollar (\$10.00) Compostables Cart cleaning and deodorizing fee, per occurrence, for each Compostables Cart cleaned and redelivered to existing Compostables collection subscribers upon their request.

2.2.3.3 Specific Collection Requirements

Compostable materials shall be collected every-other-week on the same scheduled service day as Garbage collection. Compostables in excess of 192 total gallons may be charged as Compostables Extra Units in 32 gallon increments in accordance with Attachment B, except during the two collection cycles immediately following a storm event, when

storm debris shall be accepted with regular quantities of Compostables without extra charge.

Unflocked, undecorated, natural holiday trees (Christmas Trees) will be collected at no additional cost on the first full week of scheduled Compostable materials collection each year from all Single-Family and Multifamily Residences in the City if prepared as 2x2x4 feet sections or bundles.

The Contractor shall collect on Public Streets and Private Roads, in the same location as Garbage collection is provided. The Contractor's crews shall make collections in an orderly and quiet manner, and shall return Containers in an upright position, with lids attached, to their set out location and will not place Containers on streets, sidewalks, public pathways, or in places that block vehicle access to any driveways, mailboxes, or similar structures.

Upon one-hundred-eighty-days (180) written notice from the City, the Contractor shall shift Single-Family Residence Compostables collection to weekly. In the event that the City implements this increased collection frequency, the Single-Family Compostables rate in Attachment B shall be increased by \$1.53/month, subject to the rate modification provisions of Section 3.3.

Upon one-hundred-eighty-days (180) written notice from the City, the Contractor shall embed every-other-weekly Single-Family Residence Compostables collection in Garbage rates and delivery Compostables Carts to all non-subscribing Customers. In the event that the City implements this option, the Single-Family Garbage rates in Attachment B shall be increased by \$5.25/month, subject to the rate modification provisions of Section 3.3. This option shall be exercised by the City no later than November 1, 2013 to allow the Contractor sufficient time to amortize the cost of the required additional Carts.

2.2.4 Single Family Bulky Waste Collection

2.2.4.1 Subject Materials

On-call Bulky Waste collection shall be offered, and shall be provided at the rates listed in Attachment B. Collected oversized items shall be recycled by the Contractor to the extent possible. The Contractor shall maintain a separate log

listing service date, materials collected, Customer charges, weights, and whether the item was recycled or disposed. This log shall be provided to the City on a monthly basis.

2.2.4.2 Specific Collection Requirements

On-call collection services of bulky waste such as couches, mattresses, white goods and other oversized materials must occur during the hours and days specified in Section 2.1.4, with the exception that Saturday collection is permissible if it is more convenient for Customers. The Contractor's crews shall make collections in an orderly and quiet manner.

2.2.5 Multi-Family Complex and Commercial Customer Garbage Collection

2.2.5.1 Subject Materials

The Contractor shall collect all Garbage set out for disposal by Multi-Family Complex and Commercial Customers in acceptable Containers as designated in Section 2.2.5.2.

2.2.5.2 Containers

The Contractor shall provide Containers meeting the standards described in Section 2.1.15. Multi-Family Complex and Commercial Customers shall be offered a full range of Containers and service options, including Garbage Carts, one (1) through six (6) cubic yard compacted and one (1) through eight (8) cubic-yard non-compacted Detachable Containers, and compacted or non-compacted Drop-Box Containers. The Contractor may also lease or sell compacted Drop-Box Containers and Drop-Box and Detachable Container Compactors to Customers outside of this Contract at rates negotiated between the Customer and the Contractor.

Materials in excess of Container capacity or the subscribed service level shall be collected and properly charged as Extra Units at the rates listed in Attachment B. The Contractor shall develop and maintain route lists in sufficient detail to allow accurate recording and charging of all Extra Units and documentation of service irregularities such as damaged or blocked Containers. All Extra Units and service irregularities shall be documented with a date and time stamped photograph.

The Contractor may use either or both front-load or rear-load Detachable Containers to service Multi-Family Complex and Commercial Customers. However, not all collection sites within the City Service Area may be appropriate for front-load collection due to limited maneuverability or overhead obstructions. The Contractor shall provide Containers and collection services capable of servicing all Customer sites, whether or not front-load collection is feasible at that Customer's site.

Contractor-owned Containers shall be delivered by the Contractor to requesting Multi-Family Complex and Commercial Customers within three (3) days of the Customer's initial request. Customers shall properly care for Containers on the Customer's property, shall use reasonable efforts to protect such Containers from graffiti or negligent misuse, and shall not use such Containers for other than their intended purpose.

2.2.5.3 Specific Collection Requirements

Commercial Garbage collection shall be made available to Multi-Family Complex and Commercial Customers daily, Monday through Saturday, during the times specified in Section 2.1.4. Collection at Multi-Family sites shall be limited to the same hours as Single-Family Residence collection. Collections shall be made on a regular schedule on the same day and as close to a consistent time as possible to minimize Customer confusion. The Contractor shall collect from areas mutually agreed upon by the Contractor and Customer with the least slope and best truck access possible. Containers shall be replaced after emptying in the same location as found.

The Contractor shall provide locks for Containers upon request, remove and replace Container from enclosures and position (roll-out) Containers for collection at no additional charge.

Extra charges may be assessed for materials loaded so as to lift the Garbage Can, Garbage Cart or Detachable Container lid in excess of six (6) inches from the normally closed position.

Customers may request extra collections and shall pay a proportional amount (e.g. one pick-up per week rate divided by 4.33 weeks per month) of their regular monthly rate for that service.

2.2.6 Multi-Family Complex Recyclables Collection

2.2.6.1 Subject Materials

The Contractor shall provide adequate Container capacity and collect all Recyclables from Multi-Family Complexes that are prepared in a manner similar to that described for Single-Family Residence Recyclables in Section 2.2.2.1., with the exception of used motor oil. This embedded Recyclables collection shall occur at no extra charge from base Garbage collection. The Contractor shall tag contaminated Containers, but will not collect the contaminated load as Garbage and not charge the resident or property manager a fee for contamination unless notification and correction procedures as specified by the City are completed.

2.2.6.2 Containers

The Contractor shall use Detachable Containers for recycling collection at Multi-Family sites wherever practicable and shall use Recycling Carts only at duplexes, tri-plexes, four-plexes and other sites where site constraints limit the use of Detachable Containers. Upon notice, Contractor shall equip Detachable Containers with special slotted recycling lids approved by the City.

The Contractor shall be responsible for ordering, assembling, affixing instructional information onto, maintaining inventories of, and distributing and maintaining Detachable Containers and Recycling Carts. The default Recycling Cart size shall be 96-gallons, provided that the Contractor shall offer and provide 32- or 64-gallon Recycling Carts on request to those complexes requiring either less or additional capacity than provided by the standard 96-gallon Recycling Cart. Recycling Carts shall be labeled with recycling collection requirements in accordance with Section 2.1.15.6 when distributed. The City may require that combination or common-keyed locks and multiple keys be provided by Contractor at no extra charge to limit contamination of Recycling Carts or Recycling Detachable Containers.

Recycling Carts and Containers shall be delivered by the Contractor to requesting Customers within three (3) days of the Customer's initial request. Multi-Family Complex Recycling Carts shall be relabeled periodically in accordance with Section 2.1.15.6.

2.2.6.3 Specific Collection Requirements

Multi-Family Complex recycling collection shall occur weekly or more frequently, as needed, during the hours and days specified in Section 2.1.4 for Multi-Family Complex collection. Collections shall be made on a regular schedule on the same day(s) of the week to minimize Customer confusion. The Contractor shall collect from areas mutually agreed upon by the Contractor and Customer with the least slope and best truck access possible. After emptying Containers shall be replaced in the same location as found. Multi-Family Complex Recycling Customers shall not be charged lock, gate or roll-out fees.

The Contractor shall provide locks for Containers upon request, remove and replace Container from enclosures and position (roll-out) Containers for collection at no additional charge.

When space constraints limit the provision of Containers appropriately-sized for weekly collection, the Contractor shall provide more frequent collection, as necessary, of smaller Containers to provide adequate total recycling capacity for the Multi-Family Complex site.

2.2.6.4 Multi-Family Recycling Outreach and Incentives

The Contractor shall provide ample copies of current recycling guidelines upon request of the City or Customer. The Contractor shall assist the City in the development and implementation of an annual recycling outreach and incentive plan. The plan shall include, at a minimum, a description of planned programs, tasks assignments between the City and Contractor and support costs where appropriate.

Public Education will play an important role in this process. The Contractor and the City shall work together to conduct workshops, visit with Customers, and develop and implement a high quality public education campaign. The outcomes and results of these efforts will be tracked and reported to the City by the Contractor.

2.2.7 Commercial Recycling Collection

The defined list of Commercial Recyclables shall be collected from all participating Commercial Customers as part of basic Garbage collection services, without extra charge.

The Contractor shall collect all Commercial Recyclables from Commercial Customers that are prepared in a manner similar to that described for Single Family Residential Recyclables in Section 2.2.2.1.

2.2.7.1 Subject Materials

The defined list of Commercial Recyclables shall be collected from all participating Commercial Customers as part of basic Garbage collection services, without extra charge subject to the limitations in Sections 2.2.7 and 2.2.7.3.

The Contractor shall collect all Commercial Recyclables from Commercial Customers that are prepared in a manner similar to that described for Single Family Residential Recyclables in Section 2.2.2.1. In the event of contaminated materials, the driver shall notify the Contractor, and the Contractor shall contact the Customer with specific instructions for Customer to prepare the rejected materials for collection service or authorization to collect the material as Garbage for the regular Garbage collection fee. Contractor shall notify the City immediately, through use of dispatch or route management staff, if repeated contamination occurs in Recyclables set out by any Commercial or Multi-Family Customer.

2.2.7.2 Containers

Contractor-supplied Recycling Containers shall be used for collecting Commercial Recyclables. Recycling Carts and Recycling Detachable Containers shall be distinguished from Compostables or Garbage Container colors per Section 2.1.15.6 and shall include prominent identifying labels that provide directions for the preparation of the materials to be placed in the Cart or Container.

At larger businesses, the Contractor may use Detachable Containers or Drop-Box Containers for Recyclables collection provided that they are distinguished from Containers used for Garbage collection and are equipped with prominent identifying labels.

Contractor-owned Containers shall be delivered by the Contractor to requesting Customers within three (3) days of the Customer's initial request.

2.2.7.3 Specific Collection Requirements

Commercial Recyclables collection shall be offered weekly during the hours and days specified in Section 2.2.5.3. Collections shall be made on a regular schedule on a consistent day and as close to a consistent time as possible to minimize Customer confusion. The Contractor shall collect in alleys where practical, and on streets where no alleys are present. Containers shall be replaced in the same location after emptying.

The Contractor shall provide locks for Containers upon request, remove and replace Container from enclosures and position (roll-out) Containers for collection at no additional charge.

When providing weekly Commercial Recyclables collection to a particular Customer, the Contractor shall not be required to provide Recycling Container capacity greater than 150 percent of that Customer's weekly Garbage collection volume. For example, a Customer with a weekly four (4) cubic yard Garbage container would be provided up to six (6) cubic yards of weekly Recyclables Container capacity. Any additional recycling may be fee-based as negotiated between the Customer and Contractor.

Commercial Recyclables collection Containers and service may be ordered by the Commercial Customer, the City, or the City's contracted technical assistance consultant, provided that the Contractor shall not be required to provide Commercial Recyclables collection to an unwilling party.

2.2.8 Multi-Family Complex and Commercial Customer Compostables Collection

2.2.8.1 Subject Materials

The Contractor shall provide Cart-based Compostables collection services to requesting Multifamily Complexes and Commercial Customers on a subscription fee basis. If additional capacity is required, the Customer may arrange for that service privately, either through the Contractor or another party. The provision of fee-based Commercial Compostables collection in Detachable Containers by the Contractor shall comply with the service and billing standards of this Contract, even though rates are not regulated by this Contract.

Contaminated or oversized Compostables materials rejected by the Contractor shall be tagged in a prominent location with an appropriate problem notice explaining why the material was rejected. The Contractor will contact Customers with specific instructions for Customer to make the rejected materials suitable for collection service.

2.2.8.2 Containers

The Contractor shall be responsible for ordering, assembling, affixing instructional information onto, maintaining inventories of, and distributing and maintaining Compostables Carts and Detachable Containers.

Compostables Carts and Detachable Containers shall be delivered by the Contractor to new Multi-Family Complexes or Commercial Customers within three (3) days of the City's request, following the City's provision of technical assistance to the Customer to set up the program.

2.2.8.3 Specific Collection Requirements

Compostables shall be collected weekly from Multi-Family Complex and Commercial Customers. Collections shall be made on a regular schedule on the same day(s) and as close to a consistent time as possible. Carts shall be lined by the Contractor upon initial delivery as well as after each collection cycle. The liners shall be approved by the Contractor's composting facility and shall be provided at no additional cost to the Customer. The Contractor shall also provide free cleaning of containers for each customer at least once per year.

The Contractor shall collect Containers at defined Multi-Family Complex or Commercial Customer Container spaces. The Contractor's crews shall make collections in an orderly and quiet manner, and shall return Containers with their lids closed and attached to their set out location.

Commercial and Multi-Family Customers using Compostables Collection service and the Contractor shall comply with Seattle-King County regulations for Commercial Food Scraps collection.

2.2.9 Drop-Box Container Garbage Collection

2.2.9.1 Subject Materials

The Contractor shall provide Drop-Box Container Garbage collection services to Multi-Family Complex and Commercial Customers, in accordance with the service level selected by the Customer.

2.2.9.2 Containers

The Contractor shall provide Containers meeting the standards described in Section 2.1.15. Both Customer-owned and Contractor-owned Drop-Box Containers shall be serviced, including Customer-owned compactors.

Contractor-owned Containers shall be delivered by the Contractor to requesting Customers within three (3) days of the Customer's initial request.

2.2.9.3 Specific Collection Requirements

Single-Family Residence, Multi-Family Complex and Commercial Customer Drop-Box Container collection must occur during the hours and days specified in 2.2.5.3.. Collection of Drop-Box Containers in Single-Family Residence and Multi-Family Complex areas and multi-use buildings containing Multi-Family Complexes shall be limited to the same hours as Single-Family Residence collection.

The Contractor shall provide service and equipment capability to collect full Drop-Box Containers no later than the next business day after the Customer's initial call. The Contractor shall maintain a sufficient Drop-Box Container inventory to provide empty Containers to new and temporary Customers within three (3) business days after the Customer's initial call.

Mileage fees shall be assessed only when Customer-directed disposal/recycling sites are more than ten (10) road miles by the shortest route from a particular Customer's location, and then only on the additional mileage above twenty (20) miles round-trip. The Contractor shall obtain prior permission from the Customer to use disposal/recycling sites which would result in additional mileage charges.

2.2.10 Temporary Container Customers

The Contractor shall provide temporary 2-, 4-, and 6-cubic yard Detachable Containers and 10-, 20-, 30-, and 40-cubic yard Drop-Boxes to Single-Family Residence, Multi-Family Complex and Commercial Customers on an on-call basis. Temporary service shall include all Customers requesting Container service of less than ninety (90) days duration, including existing Customers on permanent service who temporary request an extra Container for less than ninety (90) days. The charges for temporary Detachable Container service listed in Attachment B shall include delivery, collection and disposal. Disposal charges for temporary Drop-Box Containers shall be billed in addition to the delivery, rental and hauling charges listed in Attachment B. Rental charges shall be itemized and charged separately, at the rates listed in Attachment B. The Contractor may charge a deposit to be paid in advance of service equal to the average disposal fee for the size of temporary Container ordered if the creditworthiness of the individual Customer is in doubt.

2.2.11 Municipal Services

In the event that the City is restricted from accepting the services described in this section at no charge, the Contractor shall be separately and specifically paid for these services at Contract rates and the Contractor shall pay the City \$88,033.92 per year, as adjusted by the provisions of Section 3.3.1, in exchange for no longer providing these services at no additional cost.

2.2.11.1 Street Litter and Recycling

The Contractor shall provide weekly Garbage and Recyclables collection for street litter or recyclables receptacles (including the provision of plastic bags to line the receptacles) within the City.

2.2.11.2 City Facilities and Parks

The Contractor shall provide weekly Garbage, Recyclables and Compostables collection to all City-owned municipal facilities without charge. Those facilities include, but are not limited to the following:

FACILITY	ADDRESS
Des Moines City Hall Campus	21650 11th Avenue South
Police Service Center	21900 11 th Avenue South
Police – South Station	27041 Pacific Hwy S #C8
Public Works Service Center	2255 South 223 rd Street
Marina North Lot	22307 Dock Avenue South
Redondo Boat Launch	Redondo Beh. Dr. S./Redondo Way S.
Activity Center	2045 South 216 th Street
Field House Park	1000 South 220 th Street
Beach Park	22030 Cliff Avenue South
Steven J. Underwood Park	21800 20 th Avenue South
Wooten Park	28202 9 th Avenue South
Zenith Park	S. 240 th St./16 th Ave. S.
Sonju Park	24728 16 th Avenue South

At any time during the term of this Contract, the City may add facilities in addition to those listed above. Additional municipal facilities added during the term of the Contract shall also be provided collection, including new facilities developed within the City Service Area, as well as municipal facilities in future annexation areas covered by this Contract. In the event that the number of facilities increases by more than 10% above those listed above, the Contractor's rates shall be adjusted to reflect the increased cost to Contractor in providing such services.

The Contractor shall provide litter container collection at City parks a minimum of five (5) days per week for all City parks, with up to three parks designated by the City provided collection seven (7) days per week. The City may reduce the collection frequency at some or all parks during the November through February.

On occasion, the City will pay the Contractor in accordance with charges listed in Attachment B for services that involve a third party, when such third party accumulates Garbage as part of performing services for the City. For example, the City would pay Contractor for the disposal of roof replacement debris removed from a City facility. Regular Garbage generated on an ongoing basis at all City facilities will otherwise be collected by the Contractor without charge to the City.

2.2.12 City-Sponsored Community Events

The Contractor shall provide Garbage and Recycling services for City-sponsored special events at no charge to the City or users. Container capacity shall be coordinated with event staff to ensure that sufficient Container capacity and collection frequency is provided by the Contractor. These events shall include, but not be limited to:

- Fireworks over Des Moines
- Waterland Parade

At any time during the term of this Contract, the City may add City-Sponsored Community Events in addition to those listed above, provided that if the City adds more than one event every year, the Contractor may negotiate compensation for those additional events. In the event that the total volume of materials collected by Contractor from City-Sponsored Community Events increases by more than 20% above the baseline volume for such events established in the first year of this Contract, then Contractor's rates shall be adjusted to reflect the increased cost to Contractor in providing such services.

2.2.13 Other Solid Waste Collection Services

The Contractor may occasionally provide other regularly scheduled or one-time services related to solid waste collection in the City not specifically delineated under this Contract. In that event, the Contractor shall notify the City and propose a Customer rate for the service. Upon prior approval of the City, the Contractor may proceed to offer that service.

2.2.14 Mandatory Collection

In the event that the City extends mandatory collection requirements to all Single-family Customers, the Contractor shall reduce its Single-family Garbage collection rates by \$0.54 per household per month. This amount shall be modified by the Contract escalator provided for in Section 3.3.1 until the time this option is implemented. Upon notification by the City, the Contractor shall work with the City to develop a mandatory collection implementation plan which shall address transitional and enforcement issues in advance of the implementation date.

2.3 Management

2.3.1 Responsibility of Participants

2.3.1.1 Contractor's Responsibilities

Consistent with the responsibilities set forth otherwise in this Contract, the Contractor shall be responsible for:

- Collecting Garbage in the City Service Area and delivering the Garbage to the King County Disposal System, unless otherwise directed by the City, and shall ensure that the Contractor handles Garbage in accordance with the City's interlocal agreements governing solid waste management.
- Collecting construction/demolition waste in the City Service Area and delivering the waste to fully permitted recycling, disposal or transfer sites in compliance with King County's Comprehensive Solid Waste Management Plan.
- Collecting, processing and marketing Recyclables and Compostables collected by the Contractor in the City Service Area.
- Providing cart and Container assembly, maintenance, painting, stickering/labeling and re-stickering/labeling and delivery services listed or required in this Contract.
- Performing customer service, including answering telephone calls and e-mails, providing information on services, establishing Customer accounts and providing appropriate Customer support.
- Billing, receiving, posting Customer payments and deposits, and adding educational information to bills, if requested by the City.
- Procuring all equipment and bearing all start-up, operating maintenance, and transition costs for collection and processing or disposal of Garbage, Recyclables and Compostables, including proper safety equipment and insurance for vehicles and workers.
- Providing and supervising all labor to accomplish the scope of services required under this Contract, including labor to

collect materials, maintain and distribute equipment and related customer service functions.

- Operating a maintenance facility to house and service collection equipment and acquiring all necessary land use, building, operating, and business permits and licenses.
- Submitting all informational materials for public release to the City for review and approval prior to release.
- Complying with all applicable laws.
- Meeting all non-discrimination and OSHA (Federal Occupational Safety and Health Act of 1970)/WISHA (Washington Industrial Safety and Health Act of 1973) standards, and all environmental standards and regulations.
- Providing a safe working environment and comprehensive liability insurance coverage as set forth in Section 6.4, and providing proof of this insurance to the City annually.
- Providing a valid Contractor's performance and payment bond in accordance with Section 6.5, and providing proof of this bond to the City annually.
- Securing the prior written approval of the City and surety before assigning or pledging money, or assigning, subcontracting or delegating duties.
- Providing route maps to the City indicating the day of week for each service.
- Submitting collection day changes to the City for review and approval prior to notice being provided to Customers and the change taking place.
- Submitting prompt notices to the media regarding modifications to the collection schedule due to inclement weather.
- Maintaining Containers, vehicles and facilities in a clean, properly labeled and sanitary condition.
- Meeting all City reporting, inspection and review requirements.

- Providing outreach materials and programs, and assistance with distribution and outreach as required in this Contract.
- Providing operating and safety training for all personnel, including spill response training for all drivers.
- Notifying the City of intended changes in management not less than sixty (60) days prior to the date of change. New management shall also attend an introductory meeting scheduled by the City during the sixty (60) day notification period. Exception shall be made for termination for cause or voluntary termination, in which case the Contractor shall notify the City within twenty-four (24) hours of the termination.

2.3.1.2 City's Responsibilities

Consistent with the responsibilities set forth otherwise in this Contract, the City shall be responsible for:

- Overall project administration and final approval of Contractor services and activities.
- Reviewing and approving Contractor compensation adjustments due to changes in County disposal fees or price indices.
- Directing and overseeing public education and outreach with the cooperation and assistance of the Contractor.
- Monitoring and evaluating collection operations with the cooperation and assistance of the Contractor.
- Reviewing and approving all assignment, pledging, subcontracting or delegation of money or duties.
- Reviewing and approving collection days and rate changes.
- Reviewing and approving holiday schedule changes.
- Reviewing and approving all written or other informational materials used in the City by the Contractor.
- Conducting performance reviews of the Contractor with the Contractor's cooperation and assistance.

- Holding periodic operations meetings with the Contractor, as necessary.

2.3.2 Customer Service and Billing

The Contractor shall be responsible for providing all customer service functions, including: answering Customer telephone calls and e-mail requests, informing Customers of current services and charges, handling Customer subscriptions and cancellations, receiving and resolving Customer complaints, dispatching Drop-Box Containers and special collections, correlating service levels to current invoices, all Customer billing, and maintaining and regularly updating a user-friendly website. These functions shall be provided at the Contractor's sole cost, with such costs included in the Customer charges (see Attachment B).

2.3.2.1 Office Location

The Contractor shall maintain a principal office in King or Pierce County within twenty (20) miles of the City limits. The Contractor's office and customer service assistance shall be accessible by a local area code and phone number, specifically for use during this contract as the Contractor's primary customer service line. On the termination of this Contract for any reason, the Contractor shall relinquish its rights for use of this phone number to the City or its assignee, effective the day of termination. The Contractor's office hours shall be open at a minimum from 8 a.m. to 5 p.m. daily, except Saturdays, Sundays and recognized holidays. Representatives shall be available at the Contractor's local office during office hours for communication with the public and City representatives. Customer calls shall be taken during office hours by a person, not by voice mail.

The Contractor shall maintain an emergency telephone number for use by City staff outside normal office hours. The Contractor shall have a representative, or an answering service to contact such representative, available at said emergency telephone number during all hours other than normal office hours.

2.3.2.2 Customer Service Requirements

2.3.2.2.1 Customer Service Representative Staffing

During office hours, the Contractor shall maintain sufficient staff to answer and handle complaints

and service requests from multiple incoming telephone calls simultaneously. If incoming telephone calls necessitate, the Contractor shall increase staffing levels as necessary to meet Customer service demands. The Contractor shall also maintain sufficient staff to answer and handle complaints and service requests made by letter or e-mail. If staffing is deemed to be insufficient by the City based on agreed-upon performance measures in Section 2.2.3.2.3, the Contractor shall increase staffing levels to meet contract performance criteria

The Contractor shall provide additional staffing during the transition and implementation period, and especially from six (6) weeks prior to the commencement of new services, through the end of the fourth month after the commencement of new services, to ensure that sufficient staffing is available to minimize Customer waits and inconvenience. The Contractor shall receive no additional compensation for increased staffing levels during the transition and implementation period. Staffing levels during the mobilization, transition and implementation period shall be subject to prior City review and approval.

2.3.2.2.2 Service Recipient Complaints and Requests

The Contractor shall record all complaints and service requests, regardless of how received, including date, time, Customer's name and address (if the Customer is willing to give this information), method of transmittal, and nature, date and manner of resolution of the complaint or service request in a computerized daily log. Any telephone calls received via the Contractor's non-office hours answering service shall be recorded in the log the following business day. The Contractor shall make a conscientious effort to resolve all complaints within twenty-four (24) hours of the original call or e-mail, and service requests within the times established throughout this Contract for various service requests. If a longer response time is necessary for complaints or requests, the reason for the delay shall be noted

in the log, along with a description of the Contractor's efforts to resolve the complaint or request.

The customer service log shall be available for inspection by the City, or its designated representatives, during the Contractor's office hours, and shall be in a format approved by the City. The Contractor shall provide a copy of this log in an electronic format to the City with the monthly report.

The Contractor shall provide sufficient field service/sales staff and route manager personnel to accurately set-up accounts and visit Customers at their service location as needed – for example during roll-out of service changes that impact multiple accounts, or during establishment of new Recycling or Compostables collection service changes. The Contractor's field service/sales staff shall be able to describe to Customers any related service procedures and Container or equipment needs, and be able to calculate any related rate impacts that would arise from implementing service change options. The Contractor's field service/sales staff shall also be responsible for completion of outreach and tracking specified in Section 2.3.5, including related required annual reporting.

2.3.2.2.3 Handling of Customer Calls

All incoming telephone calls shall be answered promptly and courteously, with an average speed of answer of less than twenty (20) seconds. No telephone calls shall be placed on hold for more than two (2) minutes, and on a monthly basis, no more than 10% of incoming telephone calls shall be placed on hold for more than twenty (20) seconds. A summary of these discrete performance measures will be provided as part of required monthly reporting. A Customer shall be able to talk directly with a customer service representative when calling the Contractor's Customer service telephone number during office hours. An automated voice mail service or phone

answering system may be used when the office is closed.

2.3.2.2.4 Corrective Measures

Upon the receipt of Customer complaints in regards to busy signals or excessive delays in answering the telephone, the City may request and the Contractor shall submit a plan to the City for correcting the problem. Once the City has approved the plan, the Contractor shall have thirty (30) days to implement the corrective measures, except during the transition and implementation period, during which time the Contractor shall have one (1) week to implement corrective measures. Corrective measures shall be implemented without additional compensation to the Contractor. Failure to provide corrective measures shall be subject to performance fees.

2.3.2.2.5 Internet Website

The Contractor shall provide a Customer-friendly Internet website accessible twenty-four (24) hours a day, seven (7) days a week, containing information specific to the City's collection programs, including at a minimum, contact information, collection schedules, material preparation requirements, available services and options, rates, inclement weather service changes and other relevant service information for its Customers. The website shall include an email function for Customer communication with the Contractor, and the ability for Customers to submit service requests on-line. E-mailed Customer service requests shall be answered the next business day after receipt. The website shall offer Customers the option to pay their service bills on-line through a secured bill payment system. Website content and design shall be submitted for City approval a minimum of three (3) days prior to planned roll-out of website changes, and website content and design shall continue to be subject to the City's approval throughout the term of this Contract. The Contractor shall update the website monthly, and

more often if necessary, and provide links to the City's website. The website shall include contact information translated into Spanish. The Contractor's website shall minimize "pop-up" windows, and not include adware, spyware or third party tracking "cookies."

2.3.2.2.6 Full Knowledge of Programs Required

The Contractor's customer service representatives shall be able to accurately describe all collection services available to City Customers, including the various services available to Single-Family Residence, Multi-Family Complex and Commercial Customers. For new Customers, customer service representatives shall explain all Garbage, Recyclables, Compostables and Food Scrap collection options available depending on the sector the Customer is calling from. For existing Customers, the representatives shall explain new services and options, and resolve recycling issues, collection concerns, missed pickups, Container deliveries, and other Customer concerns. Customer service representatives shall be trained to inform Customers of all Recyclables, Compostables and Food Scrap preparation specifications. Policy questions resolvable by the City shall be immediately forwarded to the City for response. The Contractor's customer service representatives shall have real-time electronic access to customer service data and history to provide efficient and high-quality customer services.

2.3.3 Contractor's Customer Billing Responsibilities

The Contractor shall be responsible for all billing functions related to the collection services provided under this Contract. All Single-Family Residence Customers shall be billed at least quarterly, and Multi-Family Complex and Commercial Customers shall be billed monthly. Customers may be billed prior to receiving service, but the due date (or past due date) shall be no sooner than the last day of service provided under that billing cycle. The bill's due date shall be no sooner than fifteen (15) business days after the date the bill is mailed. The Contractor may make account adjustments for over- or under-charges, provided that under-charges may

only be charged for services provided within ninety (90) days of the bill date.

Billing and accounting costs associated with Customer invoicing shall be borne by the Contractor, and are included in the service fees in Attachment B. The Contractor may bill to Customers late payments and NSF ("bounced") check charges, as well as the actual third party costs of bad debt collection. Late fees shall not exceed one percent (1%) per month and NSF charges shall not exceed twenty dollars (\$20.00) per NSF check or actual bank charges, whichever is greater.

Single-Family Residential Customers may temporarily suspend service due to vacations or other reasons for as long and as often as desired in one (1) week increments and be billed pro-rata for actual services received.

All Single-Family Residence Recyclables collection costs and revenues shall be included in the Garbage collection rate and shall not be charged or itemized separately. Subscription Compostables services shall be itemized separately. All Multi-Family Complex Recyclables collection costs and revenues shall be included in the Garbage collection rate and shall not be charged or itemized separately, except as directed at the City's sole discretion. Commercial Customer and Multi-Family Complex Compostables services shall be itemized and charged separately. No surcharges (such as environmental or fuel surcharges) shall be added to invoices for Garbage, Recyclables or Compostables collection, including Commercial Recycling collection, unless specifically authorized in writing by the City.

The Contractor shall be responsible for the following:

- Generating combined Garbage, Recyclables and Compostables collection bills. Bills must include a statement indicating the Customer's current service level, current charges and payments, and appropriate taxes and fees as well as the Contractor's customer service contact information. Space shall be made available on bills for including City contact information at the City's request.
- Accepting, processing and posting payment data each business day.
- Maintaining a system to monitor and report Customer subscription levels, record Extra Unit Garbage and Compostables collected, place an additional charge on the Customer's bill for the excess collection, and charge for additional services requested and delivered. This system shall maintain a Customer's historical account data for a period of not less than two years.

- Accepting and responding to Customer requests for service level changes, missed or inadequate collection services, and additional services.
- Collecting unpaid charges from Customers for collection services.
- Implementing rate changes as specified in Section 3.1 and 3.3.
- Including lines/space for customer service messages on Customer bills.
- Including Contractor phone numbers for customer service on Customer bills.
- Contractor will provide a discount to Single Family Customers that choose to use a paperless invoicing and bill paying process. The Contractor will notify the Customer of their invoice and accept payment either through a credit card payment feature of the Contractor's website or through the Customer's online banking services. The Customer discount shall be no less than the appropriate current single ounce first class rate as set by the US Postal Service.
- All Customers in any grouping targeted for receipt of printed educational or outreach materials shall be included in Contractor's mass-mailings of such materials regardless of Customer's billing method status (such as web-based invoicing) or Customer's mail receipt method (such as use of a Post Office Box rather than standard curbside mail service).

The Contractor shall be required to have procedures in place to backup and minimize the potential for the loss or damage of the account servicing (customer service, service levels and billing history) database. The Contractor shall ensure that a daily backup of the account servicing database is made and securely stored off-site. The Contractor shall also provide the City with a copy of the customer service database via e-mail or other electronic medium on a quarterly basis. The City shall have unlimited rights to use the customer service database to develop targeted educational and outreach programs, analyze service level shifts or rate impacts, and/or to provide information to successor contractors.

Upon five (5) business days written notice, the Contractor shall provide the City with a paper and/or electronic copy at the City's discretion of the requested Customer information and history, including but not limited to Customer names, service and mailing addresses, contact information, service levels and current account status. City requests for information pertaining to five or fewer accounts shall be provided within one business day.

As set forth in detail below, the Contractor shall provide monthly and annual reports to the City. In addition, the Contractor shall allow the City access to pertinent operations information related to compliance with the obligations of this Contract, such as vehicle maintenance logs, disposal, Compostables and recycling facility certified weight slips, and Customer charges and payments.

2.3.4 Reporting

The Contractor shall provide weekly, monthly and annual reports to the City. In addition, the Contractor shall allow City staff access to pertinent operations information such as disposal facility certified weight slips and vehicle maintenance logs.

2.3.4.1 Weekly Reports

On a weekly basis, by the end of the day each Monday, the Contractor shall provide the City with a list of Customer-initiated service stops logged the previous week. The Contractor shall provide the Customer name, address, service level, phone number and the date of the service stop. The City shall use this information to enforce its mandatory collection requirements.

2.3.4.2 Monthly Reports

On a monthly basis, by the 15th of each month, the Contractor shall provide a report containing information for the previous month. Reports shall be submitted in electronic format approved by the City and shall be certified to be accurate by the Contractor. At a minimum, reports shall include:

- (1) A log of complaints and resolutions for all collection services and sectors. At a minimum, the complaint log shall include Customer name and/or business name, Customer's service address, contact telephone number, date of complaint, a description of the complaint, a description of how the complaint was resolved, the date of recovery/resolution and any additional driver's notes or comments.
- (2) A tabulation of the number of single family, commercial and multi-family accounts by service level/Container size and service frequency.
- (3) A compilation of program participation statistics including: a summary of multi-family and commercial

participation in recycling programs, set-out statistics for Residential Garbage, Compostables and Recyclables collection services, and log of bulky items.

- (4) A compilation of total monthly and year-to-date summaries of Garbage, Recyclables and Compostables quantities by collection sector.
- (5) A summary of Recyclables quantities by collection sector and by commodity, including processing residues disposed and market prices.
- (6) A summary of disposal or tipping facility locations and associated quantities for Garbage, Recyclables and Compostables as well as any changes in processing procedures, locations or tipping fees.
- (7) A list of dates, Customer names and addresses for whom a free special recycling collection has been made (Section 2.2.2.3).
- (8) A description of any vehicle accidents infractions, or insurance claims against Contractor.
- (9) A description of any changes to collection routes, Containers, vehicles (including the identification of back-up vehicles not meeting contract standards with the truck number and date of use), customer service or other related activities affecting the provision of services; and
- (10) Call Center performance as outlined in Section 2.3.2.2.

If collection vehicles are used to service more than one Customer sector or jurisdiction, the Contractor shall develop an apportioning methodology that allows the accurate calculation and reporting of collection quantities. The apportioning methodology shall be subject to prior review and approval by the City and shall be periodically verified through field testing by the Contractor.

2.3.4.3 Annual Reports

On an annual basis, by the last working day of January, the Contractor shall provide an electronic report containing the following information:

- (1) A consolidated summary and tabulation of the monthly reports, described above.
- (2) A discussion of highlights and other noteworthy experiences, along with measures taken to resolve problems, increase efficiency, and increase participation in Compostables and Recyclables collection programs.
- (3) A discussion of promotion and education efforts and accomplishments.
- (4) An inventory of current collection, delivery, spare and other major equipment, including make, model, year, and accumulated miles.
- (5) A list of multi-family and commercial recycling sites pursuant to Section 2.3.5.

2.3.4.4 Ad Hoc Reports

The City may request from the Contractor up to six (6) ad-hoc reports each year, at no additional cost to the City. These reports may include customer service database tabulations to identify specific service level or participation patterns or other similar information. Reports shall be provided in the City-defined format and software compatibility. These reports shall not require the Contractor to expend more than one hundred (100) staff hours per year to complete.

If requested by the City, the Contractor shall provide daily route information for all service sectors and collection streams for the purpose of evaluating potential collection system changes during the term of the Contract. Information received by the City and in the Contractor's possession shall be subject to existing laws and regulations regarding disclosure, including the *Public Records Act*, Chapter 42.56 RCW and shall be subject to the provisions of Section 6.8 below.

2.3.5 Promotion and Education

The Contractor shall have primary responsibility for providing service-oriented information and outreach to Customers and implementing on-going recycling promotion, at the direction of the City. The Contractor shall also incorporate general waste reduction, minimization and reuse elements in to its promotion and education program.

The Contractor shall maintain a complete list of all Multi-Family Complex sites within the City Service Area, and the status of each site's participation in Contractor-provided services. The Contractor shall annually contact, by telephone or site visit, the manager or owner of each site to encourage participation and inform the manager or owner of all available services and ways to decrease Garbage generation. Printed informational materials discussing waste prevention and recycling service options shall be prepared and distributed to support contact with Multi-Family Complex and Commercial Customer sites. This contact shall be coordinated with City and King County promotional efforts. The Contractor shall include with its annual report the list of Multi-Family Complex and Commercial Customer sites; Garbage, recycling and Compostables status; Container sizes, service frequency, and types; Customer contact dates and outcome of such contacts; and suggestions for increasing participation or other program improvements.

The Contractor shall keep the public informed of programs and encourage participation through an Annual Service Update. Each fall, the Contractor shall provide an Annual Service Update for each service sector, the format, content and timeframe of which shall be subject to prior review and approval by the City. The Annual Service Update shall be mailed to all Customers and, at a minimum, shall include an informational brochure indicating rates, all services available, preparation and other service requirements, contact information, inclement weather and other policies, a collection schedule calendar applicable to each recipient's routes and other useful Customer information.

The Contractor shall develop, print, periodically update and maintain sufficient quantities of new Customer information materials, the format and content of which shall be subject to prior review and approval by the City. Upon approval, materials shall be mailed to every new Customer prior to the Customer's first billing and shall, at a minimum, include a statement of applicable rules and service policies, rates, services and preparation requirements, collection days in calendar format, Contractor customer service information and City contact information. Contractor's materials shall be TTY accessible and Contractor shall provide alternative language formats upon request.

The Contractor shall permit the City to insert, at no charge, single-sheet information bulletins into Customer bills. When the insert is beyond one page and increases Contractor cost, the City shall pay the incremental difference. The City and Contractor shall work cooperatively for timely inclusion of such materials.

2.3.6 Field Monitoring

The City may periodically monitor collection system parameters such as participation, Container condition, Container weights, waste composition and Customer satisfaction. The Contractor shall assist the City by coordinating the Contractor's operations with the City's field monitoring to minimize inconvenience to Customers, the City and the Contractor.

2.3.7 Transition to Next Contractor

The Contractor shall be expected to work with the City and any successive contractor(s) in good faith to ensure a minimum of Customer disruption during the transition period. Container removal and replacement shall be coordinated between the Contractor and a successive contractor to occur simultaneously in order to minimize Customer inconvenience.

The Contractor shall provide a detailed updated Customer list, including Customer name, service address, mailing address, and collection and Container rental service levels to the successive contractor within seven (7) days request of the City.

The parties recognize that a failure to comply with this provision will damage the City, but that determination of such damage will be difficult and burdensome; therefore, the parties agree that in the event of a breach of this provision the Contractor, or the Contractor's surety, shall pay the City one hundred thousand dollars (\$100,000.00) for the material breach of this contract provision. Payment shall be made within twenty (20) business days of the end of this contract.

3. COMPENSATION

3.1 Compensation to the Contractor

3.1.1 Rates

The Contractor shall be responsible for billing and collecting funds from Single-Family Residence, Multi-Family Complex and Commercial Customers in accordance with the charges for services listed in Attachment B. The Contractor may reduce or waive at its option, but shall not exceed, the charges listed in Attachment B. The Contractor shall charge Drop-box Customers the actual disposal cost plus ten (10) percent to reflect the Contractor's costs and margin related to handling the pass-through disposal component of that service. These payments shall comprise the entire compensation due to the Contractor. In no event shall the City be responsible for money that the Contractor, for whatever reason, is unable to collect.

3.1.2 Itemization on Invoices

City, King County and Washington State solid waste, utility and/or sales taxes shall be itemized separately on Customer invoices and added to the charges listed in Attachment B. The Contractor shall not charge separately for the collection of Source-Separated Recyclables other than Commercial Recyclables above the limit of the included embedded Commercial Recyclables program as defined in Section 2.2.7.3. The City administrative fee shall not be itemized separately on Customer invoices.

3.1.3 Discontinuing Service for Nonpayment

The Contractor may use any legal means, including appropriate lien rights, to enforce Customer payment obligations and may discontinue service to non-paying Customers provided that such Customers are provided with ten (10) days prior written notice that service will be discontinued for nonpayment. The Contractor may charge a one-time twenty dollar (\$20.00) cart redelivery fee to Customers who want to restart service who have previously had their service terminated for nonpayment and had carts removed. The cart redelivery fee shall be applied as a flat charge, regardless of the number of carts delivered (e.g. Garbage, Recyclables and Compostables).

3.2 Compensation to the City

The Contractor shall pay to the City a one-time contract signing fee of Forty Thousand dollars (\$40,000.) to cover City staff and consultant costs of procuring this Contract.

The Contractor shall also pay to the City a thirteen percent (13%) city fee, based on gross receipts received during the prior month on or before the fifth day of each month during the term of this Contract, starting on November 1, 2011. The Contractor shall remit the city fee received on all payments received under this Contract, including Customer payments received after the termination date of this Contract. Itemized taxes such as the City's utility tax, the King County hazardous waste fee and State Refuse tax are excluded from the definition of gross receipts.

The rates included in Attachment B, as modified during the term of this Contract, include the city fee and Customers shall not be separately charged an itemized city fee.

The Contractor shall fully participate with any City billing audit to confirm the Contractor's actual receipts during any accounting period during the term of the Contract. The audit shall be confined to confirming customer billing rates, Contractor receipts for services provided under this Contract, and bad debt recovery..

The administrative fee may be changed by the City in any year, provided that the change is synchronized with the annual Contractor rate modification described in Section 3.3. The City shall notify the Contractor of the new administrative fee for the following year by September 1st, and the Contractor shall itemize and include the appropriate adjustment in its Rate Adjustment Statement provided October 1st of each year. In the event that the administrative fee is adjusted, either up or down, the Contractor shall add or subtract an amount equivalent to the state excise tax (1.8% in 2010), as may be adjusted from time to time by the State of Washington.

In addition, the Contractor shall be responsible for payment of all applicable permits, licenses, fees and taxes as described in Section 6.13, Permits and Licenses.

3.3 Compensation Adjustments

3.3.1 Annual Rate Adjustment

The Contractor's collection service charges, excluding waste disposal fees, for each level of service shall increase or decrease every year by an inflation adjustment factor based on three indices. The three indices and their weights are:

1. the consumer price index (CPI) for Urban Wage Earners and Clerical Workers for the Seattle-Tacoma-Bremerton Area, Series ID No. CWURA423SAO, or successor indices, which will have a weight of 42%,
2. the Northwest Pipeline Corp., Canadian Border (SUMAS) monthly index as published by Platts Inside FERC'S Gas Market Report or successor index, which will have a weight of 8% and,
3. the Employment Cost Index (ECI) for Private Industry, in current dollars, not seasonally adjusted, December 2005=100, for service providing industries, Series ID No. CIU201S0000000001 (B,H), which will have a weight of 50%.

The first inflation adjustment shall occur on January 1, 2012. The inflation adjustment factor, for the calendar year beginning January 2013, and for each subsequent calendar year, will be calculated by taking the weighted average, based on the weights above, of the percentage difference between the three indices' values according to the following methodology:

CPI – The trailing twelve month average CPI (measured from July to June) of each year versus the base period's trailing twelve month average value.

Fuel – The trailing twelve month average spot price of each year (July-June) per MMBtu versus the base period's twelve month trailing average spot price.

ECI – The trailing four quarter average value as of the second quarter (Q2) of each year versus the trailing four quarter average value as of the second quarter (Q2) in the base period.

The initial base period is 2011.

The non-disposal component of all rates in Attachment B shall be multiplied by this calculated inflation adjustment factor and added to the current non-disposal component of all rates in order to determine the new adjusted rate. Adjustments to the Contractor's collection service charge shall be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) shall not be considered when making adjustments.

The Contractor's calculations shall be provided to the City no later than September 1st prior to the Adjustment Date and the City shall have thirty (30) days to confirm the Contractor's rate modification calculations. On City approval, which shall not be unreasonably withheld or delayed, the new rates shall take effect on January 1st of the next year, and Customers shall be notified in November, at least forty-five (45) days prior to the date adjusted rates become effective. Should ratepayers not receive timely notification due to missed deadlines, rate calculation errors by the Contractor, or rate disapproval by the City, implementation of the new rates shall be delayed by one month without opportunity for recovery of lost revenue.

3.3.2 Disposal Fee Adjustments

Disposal Fee adjustments shall be made to Contractor collection rates to reflect increases or decreases in King County disposal fees for solid waste. In the event of a change in disposal fees, the disposal fee component of rates charged to Customers shall be adjusted, based on Container content weights specified in Attachment B of this Contract.

Specific examples of rate modifications due to Inflation Index and disposal fee changes are provided in Attachment C.

3.3.3 Changes in Disposal/Processing Sites and Tipping Fees

The Contractor assumes all risk for the processing and marketing of Recyclables and Compostables. If the Contractor is required by the City to use processing sites or markets other than those being used at the initiation of this Contract, the Contractor may submit a detailed proposal for a rate adjustment to reflect any additional costs or savings to the Contractor. The City and Contractor agree to negotiate in good faith any changes to the rates to offset these costs or savings.

If the County's Bow Lake and Algona Transfer Stations become unavailable for more than one week and the Contractor is required to haul Garbage to an alternative County disposal location in excess of ten (10) miles from the intersection of Kent-Des Moines Road and 16th, the Contractor shall be allowed a temporary surcharge on Customer bills equivalent to \$2.50 per mile per truck trip above the ten (10) mile limit. The eligible distance shall be based on measuring the road distance between the referenced intersection and the transfer section, minus ten (10) miles. The result shall be multiplied by \$2.50 and shall be the compensation for each truck load of Garbage delivered to the alternative site by the Contractor. The Contractor's allocation of the surcharge to each service level shall be reviewed and approved by the City prior to implementation.

3.3.4 Other Modifications

The Contractor shall not adjust or modify rates due to employee wage increases, the value of Recyclables, Garbage collection service level shifts, or other changes affecting the collection system. At the time of the City's decision to extend this Contract through invoking contract extension options, the Contractor can present a request for relief for any adverse market changes that have occurred during the previous period of the Contract. The City is under no obligation to give consideration for those adverse changes as a condition for invoking the contract extension option.

If new City, King County, Washington State or Federal taxes are imposed or the rates of existing taxes are changed after the execution date of this Contract, and the impact of these changes results in increased or decreased Contractor costs in excess of five thousand dollars (\$5,000) annually, the Contractor and City shall enter into good faith negotiations to determine whether compensation adjustments are appropriate and if so, to determine the amount and the method of adjustment. Any adjustment in Contractor charges will coincide with the annual rate adjustment process described in this Section 3.3.

3.4 Change in Law

Changes in federal, state or local laws or regulations or a continuing Force Majeure event that results in a detrimental change in circumstances or a material hardship for the Contractor in performing this Contract may be the subject of a request by the Contractor for a rate adjustment, subject to review and approval by the City, at the City's reasonable discretion. If the City requires review of the Contractor's financial or other proprietary information in conducting its rate review, at the request of the Contractor, the City shall retain a third-party to review such information at the Contractor's expense, and may take any other steps it deems appropriate to protect the confidential nature of the Contractor's documents and preserve the Contractor's ongoing ability to remain competitive.

4. FAILURE TO PERFORM, REMEDIES, TERMINATION

The City expects high levels of Customer service and collection service provision. Performance failures shall be discouraged, to the extent possible, through automatic performance fees for certain infractions and through Contract default for more serious lapses in service provision. Section 4.1 details infractions subject to automatic or performance fees, and Section 4.2 details default provisions and procedures.

4.1 Performance Fees

The Contractor may be subject to performance fees for the following acts or omissions if documented in an incident report presented by the City to the Contractor. The City reserves the right to make periodic, unscheduled inspection visits or use other means to determine the Contractor's compliance with the Contract. Deductions for misses will not be applied for collections prevented by weather or holiday rescheduling or collections missed due to labor disruptions during the first week of the disruption. Performance fees are as follows:

ACTION OR OMISSION	AMOUNT
Collection before or after the times specified in Section 2.1.4, except as expressly permitted by the City.	Two Hundred Fifty Dollars (\$250) per truck route (each truck on each route is a separate incident).

Repetition of complaints on a route after notification, including, but not limited to, failure to replace Containers in designated locations, spilling, not closing gates, not replacing lids, use of profanity, creation of excessive noise, collection of Commercial Containers in Residential areas outside hours specified herein for Residential areas, crossing or driving over planted areas, observed reckless driving, or similar violations.	Twenty-Five dollars (\$25) per incident, not to exceed thirty (30) complaints per truck per day.
Failure to collect spilled materials.	Twice the cost of cleanup to the City or King County, plus Five Hundred Dollars (\$500) per incident.
Failure to maintain placards on service vehicles as required by Section 2.1.14	Two Hundred Fifty Dollars (\$250) per vehicle, per day.
Curable Leakage from Contractor vehicles or vehicle contents, observed by the City, its agents or photographed by Customers.	Two Hundred Fifty Dollars (\$250) per vehicle, per day, plus clean up costs.
Failure to collect missed materials within one (1) business day after notification.	One Hundred Dollars (\$100) per incident to a maximum of Five Hundred Dollars (\$500) per truck per day on Single-Family Residence routes and no maximum for Multi-Family Complex and Commercial Customer routes.
Missed collection of entire block segment of Single-Family Residences (excluding collections prevented by inclement weather).	One Hundred Fifty Dollars (\$150) per block segment if collection is performed the following day; Five Hundred Dollars (\$500) if not collected by the following day.
Collection as Garbage or disposal as Garbage of Source-Separated Recyclables or Compostables in clearly identified Containers, bags or boxes.	One Hundred Dollars (\$100) per incident, up to a maximum of One Thousand Dollars (\$1,000) per truck, per day.
Collection of Garbage containing visible quantities of Yard Debris.	Twenty-Five Dollars (\$25) per incident.

Rejection of Garbage, Recyclables or Yard Debris without providing documentation to the Customer of the reason for rejection.	Twenty-Five Dollars (\$25) per incident.
Failure to deliver Detachable Containers to new Commercial Customers within three (3) business days.	Fifty Dollars (\$50) per Container per day.
Failure to deliver carts, Detachable Containers, or Drop-Box Containers within three (3) business days of request to Multi-Family Complex or Commercial Customers.	Fifty Dollars (\$50) per Container per day.
Failure to deliver Garbage, Recycling or Compostables Carts within seven (7) days of request to Single-Family Residence Customers.	Fifteen Dollars (\$15) per Container per day.
Delivery or use of incorrectly labeled or colored Container	Twenty-five Dollars (\$25) per Container per day.
Substantial misrepresentation by Contractor in records or reporting.	Five Thousand Dollars (\$5,000) per incident.
Failure to provide required reports on time.	Two Hundred Fifty Dollars (\$250) per incident.
Failure to maintain clean and sanitary Containers, vehicles, and facilities.	Fifty Dollars (\$50) per incident, up to maximum of One Thousand Dollars (\$1,000) per inspection.
Landfilling or incineration of Recyclables or Compostables in violation of Section 2.1.11 without the express written permission of the City.	One Thousand Dollars (\$1,000) per vehicle, per incident.
Failure to meet recycling processing performance requirements of Section 2.1.11.	One Thousand Dollars (\$1,000) per month, for any occurrence during that month.
Failure to meet customer service ring and on-hold time performance customer service requirements.	Two Hundred Fifty Dollars (\$250) per incident.

Failure to include instructional/promotional materials when Garbage, Recycling and/or Compostables Carts are delivered.	Fifty Dollars (\$50) per incident.
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The parties acknowledge the difficulty in anticipating actual damages to remedy the damage. The parties further agree that the performance fees listed in this Section represent a reasonable estimate of the loss likely to result from the remedy for the damage.

Nothing in this Section shall be construed as providing an exclusive list of the acts or omissions of the Contractor that shall be considered violations or breaches of the Contract and, except for those listed breaches set forth above, the City reserves the right to exercise any and all remedies it may have with respect to these and other violations and breaches. The performance fees schedule set forth here shall not affect the City's ability to terminate this Contract as described in Section 4.2.

Performance fees, if assessed during a given month, shall be invoiced by the City to the Contractor. Performance fees may be levied only if documented in an incident report presented by the City to the Contractor. Performance fees shall only be assessed after the Contractor has been given the opportunity, but has failed to rectify the deficiencies of which it has been notified. The Contractor shall pay the City the invoiced amount within thirty (30) days of billing. Failure to pay performance fees shall be considered a breach of this Contract.

Any performance fees imposed under this Section may be appealed by the Contractor to the City. The Contractor shall be allowed to present evidence as to why the amount of performance fees should be lessened or eliminated. The decision of the City shall be final.

4.2 Contract Default

The Contractor shall be in default of this Contract if it violates any provision of this Contract. In addition, the City reserves the right to declare the Contractor to be in default in the event of any violation, which shall include, but not be limited to, the following:

- (1) The Contractor fails to commence the collection of Garbage, Recyclables or Compostables, or fails to provide any portion of service under the Contract on November 1, 2011 or for a period of more than five (5) consecutive days at any time during the term of this Contract.
- (2) The Contractor fails to obtain and maintain any permit required by the City, King County, or any federal, state or other regulatory body in order to collect materials under this Contract.

- (3) The Contractor's noncompliance creates a hazard to public health or safety.
- (4) The Contractor repeatedly or persistently acts or fails to act in a manner that is subject to performance fees in excess of ten thousand dollars (\$10,000.00) during any consecutive twelve (12) month period.
- (5) The Contractor fails to maintain, in good standing, surety and insurance required by this Contract.

The City reserves the right to pursue any remedy available at law for any default by the Contractor. In the event of default, the City shall give the Contractor ten (10) days prior written notice of its intent to exercise its rights, stating the reasons for such action. However, if an emergency shall arise that does not allow ten (10) days prior written notice, the City shall immediately notify the Contractor of its intent to exercise its rights immediately. If the Contractor cures the stated reason within the stated period, or initiates efforts satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the City may opt to not exercise its rights for the particular incident. If the Contractor fails to cure the stated reason within the stated period, or does not undertake efforts satisfactory to the City to remedy the stated reason, then the City may at its option terminate this Contract.

If the Contractor abandons or violates any portion of this Contract, fails to fully and promptly comply with all its obligations, or fails to give any reason satisfactory to the City for noncompliance, and fails to correct the same, the City, after the initial ten (10) days notice, may declare the Contractor to be in default of this Contract and notify the Contractor of the termination of this Contract. A copy of said notice shall be sent to the Contractor and surety on its performance bond.

Upon receipt of such notice, the Contractor agrees that it shall promptly discontinue the services provided under this Contract. The surety may, at its option, within ten (10) days from such written notice, assume the services provided under this Contract that the City has ordered discontinued and proceed to perform same, at its sole cost and expense, in compliance with the terms and conditions of the Contract, and all documents incorporated herein. Pending consideration by the surety of said option to assume the services provided under this Contract, the City may employ such work force and equipment as it may deem advisable to continue the services provided under this Contract. The cost of all labor, equipment and materials necessary for such services provided under this Contract shall be paid by the Contractor in full.

In the event that the surety fails to exercise its option within the ten (10) day period, the City may complete the services provided under this Contract or any part thereof, either through its own work force or by contract, and to procure other vehicles, equipment and facilities necessary for the completion of the same, and to charge the same to the Contractor and/or surety, together with all reasonable costs incidental thereto.

The City shall be entitled to recover from the Contractor and its surety as damages all expenses incurred, including reasonable attorney's fees, together with all such additional sums as may be necessary to complete the services provided under this Contract, together with any further damages sustained or to be sustained by the City.

If City employees provide Garbage, Compostables and/or Recyclables collection, the actual incremental costs of City labor, overhead and administration shall serve as the basis for a charge to the Contractor.

4.3 Availability of Collection Vehicles

All vehicles, Facilities, equipment and property used by the Contractor shall be listed in an inventory supplied to the City and updated annually ("Contractor's Inventory"). Unless an approved replacement or substitute is provided, all vehicles, Facilities, equipment and property identified in the Contractor's Inventory for use in the performance of this Contract shall be available for the City's use in the case of default in collecting Solid Waste, Recyclables and Compostables in the City for the duration of this Contract; when provided, this Section applies to any replacement or substitute. Rent for the City's use of Contractor's Inventory shall be negotiated between the parties based upon the historical cost of the inventory less any accumulated depreciation. Disputes shall be resolved in accordance with this Contract.

5. NOTICES

All notices required or contemplated by this Contract shall be personally served or mailed (postage prepaid and return receipt requested), addressed to the parties as follows:

To City: City Manager
 City of Des Moines
 21630 11th Avenue S, Suite D
 Des Moines, WA 98198

To Contractor: CleanScapes, Inc.
 5939 4th Ave S
 Seattle, WA 98108

6. GENERAL TERMS

6.1 Collection Right

The Contractor shall be the exclusive provider with which the City shall contract to collect Garbage, Compostables and Recyclables and construction/demolition materials placed in Contractor-owned Containers and set out in the regular collection locations within the City Service Area. When asked by the Contractor, the City shall make a good faith effort to protect this right of the Contractor; however, the City shall not be obligated to join or instigate litigation to protect the right of the Contractor.

The Contractor may independently enforce its rights under this Contract against third party violators, including but not limited to seeking injunctive relief, and the City shall use good faith efforts to cooperate in such enforcement actions brought by Contractor (without obligating the City to join any such litigation). Such efforts may include but not be limited to cease and desist letters, assistance with documenting violations and other activities as City staff time allows.

This contract provision will not apply to: Garbage, Recyclables or Compostables self-hauled by the generator; Source-Separated Recyclables hauled by common or private carriers (including drop-off recycling sites) from Commercial premises that contain at least ninety percent (90%) recyclable materials; construction/demolition waste hauled by self-haulers or construction contractors in the normal course of their business; Garbage, Recyclables or Compostables handled by retailers or maintenance services who provide ancillary services unrelated to Curb collection services (e.g. carpet installers, furniture delivery/pick-up, site clean-up services which include loading/sweeping, etc.); Compostables generated and hauled by private landscaping services; or Compostables hauled by common or private carriers from Commercial premises that contain at least ninety percent (90%) Compostable materials.

The Contractor shall retain responsibility for Garbage, Recyclables, construction/demolition materials and Compostables once these materials are placed in Contractor-owned Containers and the Contractor shall have no responsibility for these materials prior to the time they are placed in Contractor-owned Containers. The Contractor shall retain revenues it gains from the sale of Recyclables, construction/demolition materials or Compostables. Likewise, a tipping or acceptance fee charged for Recyclables, construction/demolition materials or Compostables shall be the financial responsibility of the Contractor.

The City shall work with the Contractor, other haulers and processors, and other regional governments to develop a reasonable definition of what constitutes legitimate construction/ demolition recycling for the purposes of interpreting collection authorities. Once a reasonable recycling threshold or "test" is developed with King County, the City and Contractor shall negotiate and amend this Agreement accordingly.

6.2 Access to Records

The Contractor shall maintain in its local office full and complete operations, Customer, financial and service records that at any reasonable time shall be open for inspection and copying for any reasonable purpose by the City. In addition, the Contractor shall, during the Contract term, and at least five (5) years thereafter, maintain in an office in Washington State reporting records and billing records pertaining to the Contract that are prepared in accordance with Generally Accepted Accounting Principles, reflecting the Contractor's services provided under this Contract. Those Contractor's accounts shall include but shall not be limited to all records, invoices and payments under the Contract, as adjusted for additional and

deleted services provided under this Contract. The City shall be allowed access to these records for audit and review purposes.

The Contractor shall make available copies of certified weight slips for Garbage, Recyclables and Compostables on request within two (2) business days of the request. The weight slips may be requested for any period during the term of this Contract.

The Contractor shall allow the City to interview any person and to review any evidence in the Contractor's possession or control that may assist the City in determining whether and by what amount: (1) the Contractor is entitled to reimbursement or increased rates under the contract; (2) the City is entitled to a reduction in rates under the contract; or (3) the Contractor is in compliance with the contract.

6.3 Contractor to Make Examinations

The Contractor has made its own examination, investigation and research regarding proper methods of providing the services required under this Contract, and all conditions affecting the services to be provided under this Contract, and the labor, equipment and materials needed thereon, and the quantity of the work to be performed as set forth by the Contract. The Contractor agrees that it has satisfied itself based on its own investigation and research regarding all of such conditions, that its conclusion to enter into this Contract is based upon such investigation and research, and that it shall make no claim against the City because of any of the estimates, statements or interpretations made by any officer or agent of the City that may be erroneous.

With the exception of Force Majeure events or as otherwise provided in this Contract, the Contractor assumes the risk of all conditions foreseen and unforeseen, and agrees to continue to provide services under this Contract without additional compensation under whatever circumstances may develop other than as provided herein.

6.4 Insurance

The Contractor shall procure and maintain, for the duration of the Contract, insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the services provided under this Contract hereunder by the Contractor, their agents, representatives, employees or subcontractors. The cost of such insurance shall be paid by the Contractor. Failure to make insurance payments and to keep policies current shall be cause for contract default in accordance with Section 4.2.

No Limitation. Contractor's maintenance of insurance as required by the agreement 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.

6.4.1 Minimum Scope of Insurance

Contractor shall obtain insurance that meets or exceeds the following 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. The policy shall be endorsed to provide contractual liability coverage. The City shall be named as an additional insured under the Contractor's Automobile Liability insurance policy with respect to the work performed for the City, using ISO additional insured endorsement CG 20 48 02 99 or a substitute endorsement providing equivalent 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, 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. 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 additional 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 11 85 or a substitute endorsement providing equivalent coverage.
- (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- (4) Contractor's Pollution Liability Pollution Legal Liability insurance covering losses caused by pollution conditions that arise from the operations of the Contractor.
- (5) Hazardous Waste Hauling. To the Automobile Liability Minimum Scope of Insurance, add Pollution Liability coverage at least as broad as that provided under ISO Pollution Liability-Broadened Coverage for Covered Autos Endorsement CA 99 48 and the Motor Carrier Act Endorsement (MCS 90) shall be attached.

6.4.2 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 \$5,000,000 per accident.
- (2) Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
- (3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- (4) Contractor's Pollution Liability The Pollution Legal Liability insurance shall be written in an amount of at least \$3,000,000 per loss, with an annual aggregate of at least \$3,000,000. Coverage may be written on a claims-made basis.

6.4.3 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. In the event the deductibles or self-insured retentions are not acceptable to the City, the City reserves the right to negotiate with the Contractor for changes in coverage deductibles or self-insured retentions; or alternatively, require the Contractor to provide evidence of other security guaranteeing payment of losses and related investigations, claim administration and defense expenses.

6.4.4 Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability, and Contractor's Pollution Liability coverage:

- (1) The Contractor's insurance coverage shall be the primary insurance with respect to the City, its officials, employees and volunteers. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Contractor's insurance and shall not contribute with it.
- (2) Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

6.4.5 Acceptability of Insurers

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

6.4.6 Verification of Coverage

The Contractor shall furnish the City with original certificates including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work.

6.4.7 Subcontractors

The Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor before commencement of the work. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Contractor.

6.4.8 ACORD Form

The policy shall be endorsed to provide the following revised language at the bottom of the ACORD Form:

Replace: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company shall endeavor to mail thirty (30) days written notice to the below named Certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company."

With the following: "Should any of the above described policies be canceled, lapse, or be reduced as to coverage before the expiration date thereof, the issuing company shall mail thirty (30) calendar days prior written notice to the below named Certificate holder and Additional Insured, the City of Des Moines, by certified mail."

6.5 Performance Bond

The Contractor shall provide and maintain at all times a valid Contractor's Performance and Payment Bond or bonds, letter of credit or other similar instrument acceptable to and approved in writing by the City in the amount of five hundred thousand dollars (\$500,000.00). The bond, letter of credit or other similar instrument shall be issued for a period of not less than one year, and the Contractor shall provide a new bond, letter of credit or similar instrument, and evidence satisfactory to the City of its renewability, no less than sixty (60) calendar days prior to the expiration of the bond, letter of credit or other similar instrument then in effect. The City shall have the right to call the bond, letter of credit or other similar instrument in full in the event its renewal is not confirmed prior to five (5) calendar days before its expiration. Failure to make bond payments and to keep the bond current shall be cause for contract default in accordance with Section 4.2.

6.6 Indemnification

6.6.1 Indemnify and Hold Harmless

The Contractor shall indemnify, hold harmless and defend the City, its elected officials, officers, employees, volunteers, agents and representatives, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, including costs and attorney's fees in defense thereof, or injuries, sickness or death to persons, or damage to property, which is caused by or arises out of the Contractor's exercise of duties, rights and privileges granted by the Contract, provided, however, that the Contractor's obligation to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from concurrent willful or negligent acts or actions of the Contractor and the City shall apply only to the extent of the Contractor's negligence.

6.6.2 Notice to Contractor; Defense

In the event an action is brought against the City for which indemnity may be sought against the Contractor, the City shall promptly notify the Contractor in writing. The Contractor shall have the right to assume the investigation and defense, including the employment of counsel and the payment of all expenses. On demand of the City, the Contractor shall at its own cost and expense defend, and provide qualified attorneys acceptable to the City under service contracts acceptable to the City to defend, the City, its officers, employees, agents and servants against any claim in any way connected with the events described in Section 6.6.1. The City shall fully cooperate with the Contractor in its defense of the City, including consenting to all reasonable affirmative defenses and counterclaims asserted on behalf of the City. The City may employ separate counsel and

participate in the investigation and defense, but the City shall pay the fees and costs of that counsel unless the Contractor has agreed otherwise. The Contractor shall control the defense of claims (including the assertion of counterclaims) against which it is providing indemnity under this Section, and if the City employs separate counsel the City shall assert all defenses and counterclaims reasonably available to it.

6.6.3 Industrial Insurance Immunity Waiver

With respect to the obligations to hold harmless, indemnify and defend provided for herein, as they relate to claims against the City, its elected officials, officers, employees, volunteers, agents and representatives, the Contractor agrees to waive the Contractor's immunity under industrial insurance, Title 51 RCW, for any injury, sickness or death suffered by the Contractor's employees that is caused by or arises out of the Contractor's negligent exercise of rights or privileges granted by the Contract. This waiver is mutually agreed to by the parties.

6.7 Payment of Claims

The Contractor agrees and covenants to pay promptly as they become due all just claims for labor, supplies and materials purchased for or furnished to the Contractor in the execution of this contract. The Contractor shall also provide for the prompt and efficient handling of all complaints and claims arising out of the operations of the Contractor under this contract.

6.8 Confidentiality of Information

Under Washington State law, the documents (including but not limited to written, printed, graphic, electronic, photographic or voice mail materials and/or transcriptions, recordings or reproductions thereof) prepared in performance of this Contract (the "documents") and submitted to the City are public record subject to mandatory disclosure upon request by any person, unless the documents are exempted from public disclosure by a specific provision of law.

If the City receives a request for inspection or copying of any such documents, it shall promptly notify the Contractor at the notice address set forth in Section 5 herein and shall give the Contractor ten (10) working days from the date of the mailing of such notice to obtain an injunction prohibiting or conditioning the release of the documents. The City assumes no contractual obligation to enforce any exemption.

6.9 Assignment of Contract

6.9.1 Assignment or Pledge of Moneys by the Contractor

The Contractor shall not assign or pledge any of the moneys due under this Contract without securing the written approval of the surety on the

performance bond and providing at least thirty (30) calendar days prior notice to the City of such assignment or pledge together with a copy of the surety's approval thereof. Such assignment or pledge, however, shall not release the Contractor or its sureties from any obligations or liabilities arising under or because of this Contract.

6.9.2 Assignment, Subcontracting, Delegation of Duties and Change in Control

The Contractor shall not assign or subcontract any of the work or delegate any of its duties under this Contract without the prior written approval of the City and submittal of proof of insurance coverage.

When requested, approval by the City of a subcontract or assignment shall not be unreasonably withheld. In the event of an assignment, subcontracting or delegation of duties, the Contractor shall remain responsible for the full and faithful performance of this Contract and the assignee, subcontractor, or other obligor shall also become responsible to the City for the satisfactory performance of the work assumed. The City may condition approval upon the delivery by the assignee, subcontractor or other obligor of its covenant to the City to fully and faithfully complete the work or responsibility undertaken.

In addition, the assignee, subcontractor or obligor shall sign a separate statement agreeing to abide by all terms and conditions of this Contract. The City may terminate this Contract if the assignee, subcontractor or obligor does not comply with this clause. Furthermore, the assignee, subcontractor or obligor shall be subject to a one (1) year evaluation period during which the City may terminate this Contract on the basis of any material breaches of the terms binding the Contractor.

For the purposes of this contract, any Change in Control of the Contractor shall be considered an assignment subject to the requirements of this section. Nothing herein shall preclude the City from executing a novation, allowing the new ownership to assume the rights and duties of the contract and releasing the previous ownership of all obligations and liability. Assignment of this Contract to a subsidiary or affiliate of the Contractor shall not require the City's consent.

6.10 Laws to Govern/Venue

This Contract shall be governed by the laws of the State of Washington both as to interpretation and performance. Venue shall be in Superior Court in the State of Washington for King County.

6.11 Compliance With Law

The Contractor, its officers, employees, agents and subcontractors shall comply with applicable federal, state, county, regional or local laws, statutes, rules, regulations or ordinances, including those of agencies having jurisdiction over the subject matter of this Contract, in performing its obligations under the Contract. Such compliance shall include abiding by all applicable federal, state and local policies to ensure equal employment opportunity and non-discrimination. The Contractor shall comply with all applicable laws pertaining to employment practices, employee treatment and public contracts.

Conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health Act of 1973 (WISHA), and standards and regulations issued under these Acts from time-to-time must be complied with, including ergonomic and repetitive motion requirements. The Contractor must indemnify and hold harmless the City from all damages assessed for the Contractor's failure to comply with the Acts and Standards issued therein. The Contractor is also responsible for meeting all pertinent local, state and federal health and environmental regulations and standards applying to the operation of the collection and processing systems used in the performance of this Contract.

The Contractor is specifically directed to observe all weight-related laws and regulations in the performance of these services, including axle bridging and loading requirements.

6.12 Non-Discrimination

The Contractor will not discriminate against any employee or applicant for employment because of age, race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action 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 apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, any required notices setting forth the provisions of this non-discrimination clause.

The Contractor understands and agrees that if it violates this non-discrimination provision, this Contract may be terminated by the City and further that the Contractor shall be barred from performing any services for the City now or in the future, unless

a showing is made satisfactorily to the City that discriminatory practices have terminated and that recurrence of such action is unlikely.

6.13 Permits and Licenses

The Contractor and subcontractors shall secure a City business license if required and pay fees and taxes levied by the City. The Contractor shall have or obtain all permits and licenses necessary to provide the services herein at its sole expense.

The Contractor shall be solely responsible for all taxes, fees and charges incurred, including, but not limited to, license fees and all federal, state, regional, county and local taxes and fees, including income taxes, property taxes, permit fees, operating fees, surcharges of any kind that apply to any and all persons, facilities, property, income, equipment, materials, supplies or activities related to the Contractor's activities under the Contract, business and occupation taxes, workers' compensation and unemployment benefits.

6.14 Relationship of Parties

The City and the Contractor expressly agree that the full extent of the relationship between the Contractor and the City is that the Contractor is at all times an independent contractor of the City with respect to this Contract. The implementation of services shall lie solely with the Contractor. No agent, employee, servant or representative of the Contractor shall be deemed to be an employee, agent, servant or representative of the City.

6.15 Contractor's Relationship with Customers

The Contractor shall not separately contract with Customers for any services covered under this contract. The Contractor is specifically allowed to negotiate separate agreements with Customers for compactor leasing, Commercial Recyclables collection, Commercial Compostables collection, or other related services not included in this contract, provided that Customers are provided separate invoices for those services and that the Contractor makes it clear to Customers that those services are not provided under this City contract. These separate agreements must be in writing and shall in no way supersede this contract. These separate agreements cannot have durations any longer than the final date of this contract's term, since the City may, at its sole option, regulate similar or identical services in the successor to this contract.

6.16 Bankruptcy

It is agreed that if the Contractor is adjudged bankrupt, either voluntarily or involuntarily, then this Contract, at the option of the City, may be terminated effective on the day and at the time the bankruptcy petition is filed.

6.17 Right to Renegotiate/Amendment

The City shall retain the right to renegotiate this Contract or negotiate contract amendments based on City policy changes, state statutory changes or rule changes in King County, Washington State or federal regulations regarding issues that materially modify the terms and conditions of the Contract. The City may also renegotiate this Contract should any Washington State, King County or City rate or fee associated with the Contract be held illegal or any increase thereof be rejected by voters. In addition, the Contractor agrees to renegotiate in good faith with the City in the event the City wishes to change disposal locations or add additional services to the Contract and to provide full disclosure of existing and proposed costs and operational impacts of any proposed changes.

This Contract may be amended, altered or modified only by a written amendment, alteration or modification, executed by authorized representatives of the City and the Contractor.

6.18 Force Majeure

Provided that the requirements of this Section are met, Contractor shall not be deemed to be in default and shall not be liable for failure to perform under this Contract if Contractor's performance is prevented or delayed by acts of terrorism, acts of God including landslides, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, wars, blockades, public riots, explosions, unavailability of required materials or disposal restrictions, governmental restraint or other causes, whether of the kind enumerated or otherwise, that are not reasonably within the control of the Contractor ("Force Majeure"). If as a result of a Force Majeure event, Contractor is unable wholly or partially to meet its obligations under this Contract, it shall promptly give the City written notice of the Force Majeure event, describing it in reasonable detail. The Contractor's obligations under this Contract shall be suspended, but only with respect to the particular component of obligations affected by the Force Majeure event and only for the period during which the Force Majeure event exists.

6.19 Illegal Provisions/Severability

At the discretion of the City, if any provision of this Contract shall be declared illegal, void, or unenforceable, the other provisions shall not be affected, but shall remain in full force and effect.

6.20 Waiver

No waiver of any right or obligation of either party hereto shall be effective unless in writing, specifying such waiver, and executed by the party against whom such waiver is sought to be enforced. A waiver by either party of any of its rights under this Contract on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

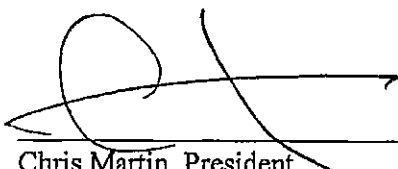
6.21 Entirety

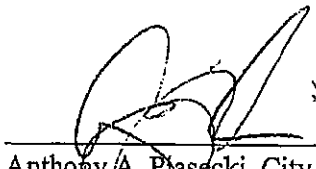
This Contract and the attachments attached hereto and incorporated herein by this reference, specifically Attachments A-C, represent the entire agreement of the City and the Contractor with respect to the services to be provided under this Contract. No prior written or oral statement or proposal shall alter any term or provision of this Contract.

WITNESS THE EXECUTION HEREOF on the day and year first herein above written.

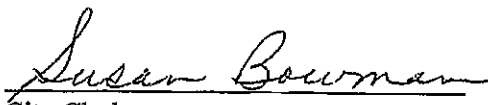
CleanScapes, Inc.

CITY OF DES MOINES

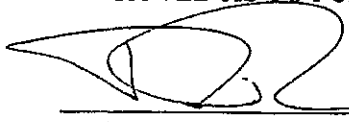
By: 
Chris Martin, President

By: 
Anthony A. Plasecki, City Manager
Des Moines, WA

ATTEST:


Acting City Clerk,

APPROVED AS TO FORM:

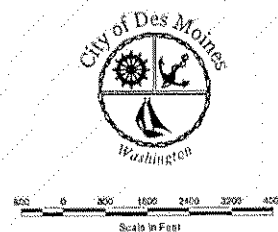
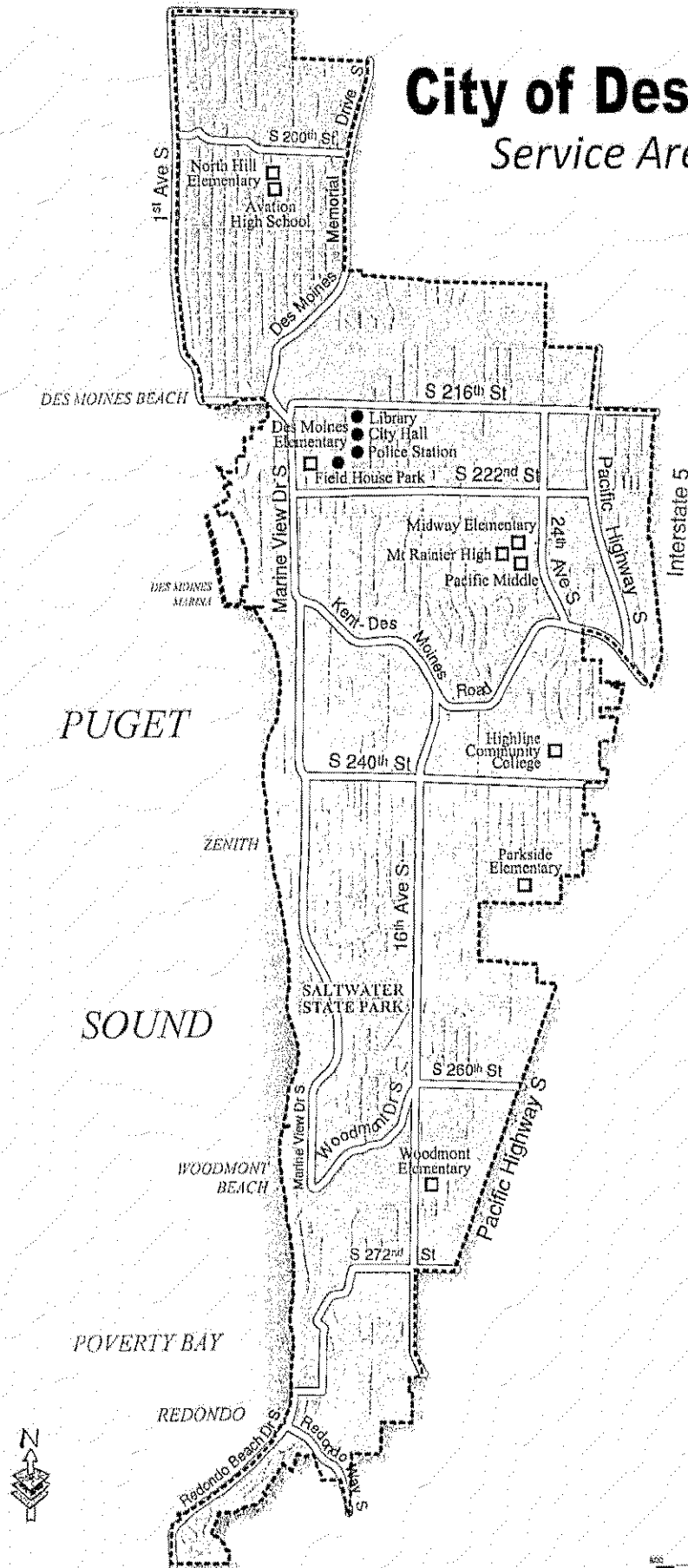

Assistant City Attorney,

Attachments:

- A. Service Area Map
- B. Contractor Rates
- C. Rate Modification Examples

City of Des Moines

Service Area Map



Attachment A

Attachment B

		Pounds Per Unit	Disposal Fee	Collection Fee	Total Service Fee
Monthly	32/35 gallon Garbage Cart	22.22	\$ 1.06	\$ 7.30	\$ 8.36
Weekly Residential Curbside Service	One 10 gallon Garbage Microcan	5.13	\$ 1.06	\$ 7.30	\$ 8.36
	One 20 gallon Garbage Cart	12.08	\$ 2.48	\$ 10.07	\$ 12.55
	One 32/35 gallon Garbage Cart	19.32	\$ 3.97	\$ 12.76	\$ 16.73
	One 60/64 gallon Garbage Cart	38.64	\$ 7.95	\$ 17.16	\$ 25.11
	One 90/96 gallon Garbage Cart	57.96	\$ 11.92	\$ 21.55	\$ 33.47
	Extras (32 gallon equivalent)				\$ 4.61
	Miscellaneous Fees:				
	EoW Yard Debris service				\$ 8.13
	96 Gallon Extra Yard Waste Cart Rental				\$ 1.73
	Return Trip				\$ 6.91
	Carry-out Charge, per 25 ft. per month				\$ 4.61
	Drive-in Charge, per month				\$ 6.91
	Overweight/Oversize container (per p/u)				\$ 3.46
	Redelivery of containers				\$ 11.52
	Cart Cleaning (per cart per event)				\$ 11.52
	Sunken Can Surcharge per month				\$ 8.64
On-Call Bulky Waste Collection	White Goods, except refrigerators		\$ 20.00	\$ 37.61	\$ 57.61
	Refrigerators/Freezers		\$ 20.00	\$ 37.61	\$ 57.61
	Sofas, Chairs		\$ 20.00	\$ 37.61	\$ 57.61
	Mattresses		\$ 20.00	\$ 37.61	\$ 57.61
Weekly Commercial and Multi-Family Can and Cart	One 20 gallon Garbage Cart	11.68	\$ 2.40	\$ 19.82	\$ 22.22
	1 32/35 gallon Garbage Cart	18.69	\$ 3.84	\$ 20.69	\$ 24.53
	1 60/64-gallon Garbage Cart	37.39	\$ 7.69	\$ 25.27	\$ 32.96
	1 90/96-gallon Garbage Cart	56.08	\$ 11.53	\$ 29.25	\$ 40.78
	Extras (32 gallon equivalent)				\$ 4.61
	Miscellaneous Fees:				
	Weekly Yard Debris/Foodwaste service				\$ 16.13
	64/96 Gallon Yard Extra Waste Cart Rental				\$ 1.73
	Return Trip				\$ 6.91
	Carry-out Charge, per 25 ft. per p/u				\$ 1.73
	Drive-in Charge, per month (per p/u)				\$ 6.91
	Gate and/or unlock fee (per p/u)				\$ 1.73
	Container roll-out, >10 feet (per p/u)				\$ 3.46
	Overweight/Oversize container (per p/u)				\$ 3.46
	Redelivery of container				\$ 11.52
	Cart Cleaning (per cart per event)				\$ 11.52
Weekly Commercial/MIF Detachable Container (compacted)	1 Cubic Yard Container	354.00	\$ 72.81	\$ 65.85	\$ 138.66
	1.5 Cubic Yard Container	531.00	\$ 109.21	\$ 94.38	\$ 203.59
	2 Cubic Yard Container	708.00	\$ 145.62	\$ 119.97	\$ 265.59
	3 Cubic Yard Container	1,062.00	\$ 218.43	\$ 171.15	\$ 389.58
	4 Cubic Yard Container	1,416.00	\$ 291.24	\$ 233.39	\$ 524.63
	6 Cubic Yard Container	2,124.00	\$ 436.85	\$ 307.10	\$ 743.95
Commercial and Multi-Family Detachable Container (loose)	1 Cubic Yard, 1 pickup/week	118.00	\$ 24.27	\$ 51.63	\$ 75.90
	1 Cubic Yard, 2 pickups/week	236.00	\$ 48.54	\$ 103.25	\$ 151.79
	1 Cubic Yard, 3 pickups/week	354.00	\$ 72.81	\$ 154.88	\$ 227.69
	1 Cubic Yard, 4 pickups/week	472.00	\$ 97.08	\$ 206.50	\$ 303.58
	1 Cubic Yard, 5 pickups/week	590.00	\$ 121.35	\$ 258.13	\$ 379.48
	1.5 Cubic Yard, 1 pickup/week	177.00	\$ 36.40	\$ 73.77	\$ 110.17
	1.5 Cubic Yard, 2 pickups/week	354.00	\$ 72.81	\$ 147.54	\$ 220.35
	1.5 Cubic Yard, 3 pickups/week	531.00	\$ 109.21	\$ 221.31	\$ 330.52
	1.5 Cubic Yard, 4 pickups/week	708.00	\$ 145.62	\$ 295.09	\$ 440.71
	1.5 Cubic Yard, 5 pickups/week	885.00	\$ 182.02	\$ 368.86	\$ 550.88
	2 Cubic Yard, 1 pickups/week	236.00	\$ 48.54	\$ 93.47	\$ 142.01
	2 Cubic Yard, 2 pickups/week	472.00	\$ 97.08	\$ 186.94	\$ 284.02
	2 Cubic Yard, 3 pickups/week	708.00	\$ 145.62	\$ 280.42	\$ 426.04
	2 Cubic Yard, 4 pickups/week	944.00	\$ 194.16	\$ 373.89	\$ 568.05
	2 Cubic Yard, 5 pickups/week	1,180.00	\$ 242.70	\$ 467.36	\$ 710.06
	3 Cubic Yard, 1 pickup/week	354.00	\$ 72.81	\$ 132.87	\$ 205.68
	3 Cubic Yard, 2 pickups/week	708.00	\$ 145.62	\$ 265.73	\$ 411.37
	3 Cubic Yard, 3 pickups/week	1,062.00	\$ 218.43	\$ 398.62	\$ 617.05
	3 Cubic Yard, 4 pickups/week	1,416.00	\$ 291.24	\$ 531.49	\$ 823.73

	3 Cubic Yard, 5 pickups/week	1,770.00	\$ 364.04	\$ 664.37	\$ 1,028.41
	4 Cubic Yard, 1 pickup/week	472.00	\$ 97.08	\$ 167.38	\$ 264.46
	4 Cubic Yard, 2 pickups/week	944.00	\$ 194.16	\$ 334.77	\$ 528.93
	4 Cubic Yard, 3 pickups/week	1,416.00	\$ 291.24	\$ 502.15	\$ 793.39
	4 Cubic Yard, 4 pickups/week	1,888.00	\$ 388.31	\$ 669.54	\$ 1,057.85
	4 Cubic Yard, 5 pickups/week	2,360.00	\$ 485.39	\$ 836.92	\$ 1,322.31
	6 Cubic Yard, 1 pickup/week	708.00	\$ 145.62	\$ 236.41	\$ 382.03
	6 Cubic Yard, 2 pickups/week	1,416.00	\$ 291.24	\$ 472.82	\$ 764.06
	6 Cubic Yard, 3 pickups/week	2,124.00	\$ 436.85	\$ 709.22	\$ 1,146.07
	6 Cubic Yard, 4 pickups/week	2,832.00	\$ 582.47	\$ 945.63	\$ 1,528.10
	6 Cubic Yard, 5 pickups/week	3,540.00	\$ 728.09	\$ 1,182.04	\$ 1,910.13
	8 Cubic Yard, 1 pickup/week	944.00	\$ 194.16	\$ 295.65	\$ 489.81
	8 Cubic Yard, 2 pickups/week	1,888.00	\$ 388.31	\$ 591.30	\$ 979.61
	8 Cubic Yard, 3 pickups/week	2,832.00	\$ 582.47	\$ 886.95	\$ 1,469.42
	8 Cubic Yard, 4 pickups/week	3,776.00	\$ 776.63	\$ 1,182.61	\$ 1,959.24
	8 Cubic Yard, 5 pickups/week	4,720.00	\$ 970.79	\$ 1,478.26	\$ 2,449.05
	Extra loose cubic yard, per pickup				\$ 11.52
	Drop Box Miscellaneous Fees (per occurrence):				
	Return Trip				\$ 11.52
	Roll-out Container over 10 feet (per p/u)				\$ -
	Unlock Container (per p/u)				\$ -
	Gate Opening (per p/u)				\$ -
Commercial and Multi-family Drop-box Collection	Service Level (based on pick ups)	Daily Rent	Monthly Rent	Delivery Charge	Haul Charge
	Non-compacted 10 cubic yard Drop-box	\$ 5.76	\$ 57.61	\$ 103.69	\$ 161.76
	Non-compacted 15 cubic yard Drop-box	\$ 5.76	\$ 69.13	\$ 103.69	\$ 173.51
	Non-compacted 20 cubic yard Drop-box	\$ 5.76	\$ 80.65	\$ 103.69	\$ 185.26
	Non-compacted 25 cubic yard Drop-box	\$ 5.76	\$ 92.17	\$ 103.69	\$ 197.01
	Non-compacted 30 cubic yard Drop-box	\$ 5.76	\$ 103.69	\$ 103.69	\$ 208.76
	Non-compacted 40 cubic yard Drop-box	\$ 5.76	\$ 115.21	\$ 103.69	\$ 232.27
	Compacted 10 cubic yard Drop-box			\$ 115.21	\$ 190.56
	Compacted 20 cubic yard Drop-box			\$ 115.21	\$ 214.06
	Compacted 25 cubic yard Drop-box			\$ 115.21	\$ 225.81
	Compacted 30 cubic yard Drop-box			\$ 115.21	\$ 237.57
	Compacted 40 cubic yard Drop-box			\$ 115.21	\$ 261.07
Temporary Collection Hauling	Service Level	Pounds Per Unit	Disposal Fee	Collection Fee	Haul Charge
	4 Yard detachable container	520.00	\$ 24.70	\$ 107.51	\$ 132.15
	6 Yard detachable container	780.00	\$ 37.05	\$ 109.40	\$ 146.38
	8 Yard detachable container	1,040.00	\$ 49.40	\$ 111.29	\$ 160.60
	Non-compacted 10 cubic yard Drop-box				\$ 207.38
	Non-compacted 20 cubic yard Drop-box				\$ 207.38
	Non-compacted 30 cubic yard Drop-box				\$ 207.38
	Non-compacted 40 cubic yard Drop-box				\$ 207.38
	Service Level		Delivery Fee	Daily Rental	Monthly Rental
	4 Yard detachable container		\$ 80.65	\$ 4.61	\$ 46.08
	6 Yard detachable container		\$ 80.65	\$ 4.61	\$ 46.08
	8 Yard detachable container		\$ 80.65	\$ 4.61	\$ 46.08
	Non-compacted 10 cubic yard Drop-box		\$ 103.69	\$ 5.76	\$ 57.61
Temporary Collection Container Rental and Delivery	Non-compacted 20 cubic yard Drop-box		\$ 103.69	\$ 5.76	\$ 80.65
	Non-compacted 30 cubic yard Drop-box		\$ 103.69	\$ 5.76	\$ 103.69
	Non-compacted 40 cubic yard Drop-box		\$ 103.69	\$ 5.76	\$ 115.21
	Miscellaneous Fees:				Per Event
	Return Trip				\$ 28.80
	Stand-by Time (per minute)				\$ 1.84
	Drop-box turn around charge				\$ 11.52
	Service				Per Hour
	Rear/Side-load packer + driver				\$ 144.01
Hourly Rates	Front-load packer + driver				\$ 144.01
	Drop-box Truck + driver				\$ 144.01
	Additional Labor (per person)				\$ 57.61

Attachment C Rate Modification Examples

The collection and disposal components of the Customer charges listed in Attachment B will be adjusted separately, as appropriate. The collection component of Customer charges will be adjusted annually, pursuant to this Section and as described below. The disposal component of the Customer charges listed in Attachment B will be adjusted only if the City receives notification from the County of a pending disposal fee adjustment, and will not become effective until the new disposal charges become effective and are actually charged to the Contractor. Formulas for both collection and disposal rate adjustments are provided in the examples below:

Collection Component Adjustment

January-December 2013 Rates

Collection Component Fee Adjustment Components and Weights

Inflation Adjustment Component	Current Period Value	Base Period Value	% change to Base Period	Component Weighting	Weighted Average
CPI-W [1]	228	224	1.79%	42%	0.75%
Fuel [2]	4.5	4.25	5.88%	8%	0.47%
Labor [3]	115	113	1.77%	50%	0.88%
Inflation Adjustment Factor					2.11%

Example 1:

2012 32 Gallon Cart Collection (collection component) Fee: \$10.00

2013 Inflation Adjustment Factor (calculated as above): 2.11%

2013 32 Gallon Cart Collection (collection component) Fee: $(\$10.00 \times 2.11\%) + \$10.00 = \$10.21$

Example 2:

2012 30 cubic yard Drop Box Haul Fee: \$150.00

2013 Inflation Adjustment Factor (calculated as above): 2.11%

2013 30 cubic yard Drop Box Haul Fee: $(\$150.00 \times 2.11\%) + \$150.00 = \$153.17$

Step 1:

$$A = ODC \times \frac{NTF}{OTF}$$

Step 2:

$$NDC = A + [(A - ODC) \times CETR]$$

Where NDC = The new disposal charge component of the customer rate for a particular service level; and

NTF = The new disposal fee, dollars per ton; and

ODC = The old disposal charge component of the customer rate for a particular service level;

OTF = The old disposal fee, dollars per ton; and

A = Pre-excise tax adjusted disposal component; and

CETR = Current excise tax rate (the current State excise tax rate; 0.018 used for this example).

For example, using the initial one 35-gallon cart rates in Attachment B: if the disposal fee will increase from \$95 to \$105 per ton starting on January 1, 2012, the old disposal component is \$3.97, and the State Excise Tax rate is 0.018, the January 2012 disposal component for one 35-gallon cart per week Residential Curbside service would be:

$$\text{New Disposal Component} = [\$3.97 \times (105/95)] \text{ plus excise tax adjustment of } \$0.01 = \$4.40$$

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT:

Intergovernmental Policies and Positions

ATTACHMENTS:

1. 2011 Intergovernmental Policies and Positions
2. Association of Washington Cities 2012 Major Priorities

FOR AGENDA OF: January 12, 2012

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: January 5, 2012

CLEARANCES:

[] _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: AP

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 2012.

Suggested Motion

"I move to adopt the 2012 Intergovernmental Policies and Positions as submitted."

Alternative Motion

"I move to adopt the 2012 Intergovernmental Policies and Position 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 senator 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 January 2011.

Discussion

The 2012 State Legislative session will begin on January 9th and the U.S. Congress will soon return to Washington, D.C. to begin its work. 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 2011. Also attached for Council's information are Association of Washington Cities' (AWC) 2012 major priorities as adopted by its Board of Directors. Council may want to add positions in opposition to the State taking any of the revenues currently shared with cities (in particular liquor revenues) and in support of any of the issues outlined in the AWC major priorities, particularly those that aid economic development, such as tax increment financing.

Alternatives

Council may chose not to make any changes to the current intergovernmental relations policies and positions.

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
2011 Intergovernmental Policies and Positions

A. 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.

B. Intergovernmental Positions

1. Metropolitan King County
 - a. 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.
 - b. Any King County budget or service reductions should treat residents of incorporated and unincorporated areas equally.
 - c. King County Metro should provide the following transit services to Des Moines residents.
 - (1) Existing routes
 - (2) Metro should restore service lost to cutbacks in 2000.
 - (3) Provide looped service to the Woodmont and Redondo areas of Des Moines.
 - (4) Provide Dial-a-Ride service to the citizens of Des Moines.
 - (5) Continue to fund the Access transit program.
 - (6) Continue to fund the Senior Services Des Moines/Normandy Park Shuttle
 - d. The City supports development of the Lake to Sound Trail System in south King County.

- e. 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.
 - f. 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.
 - g. The City supports re-initiation of 24-hour booking at the Regional Detention Center in Kent.
 - h. King County should respect previous agreements regarding regional governance.
2. State of Washington
- a. Des Moines supports restoration of and additional funding for the planning acquisition, restoration and development of recreational and boating facilities and wildlife habitat.
 - b. The City supports additional state funding for local criminal justice needs and training.
 - c. Des Moines supports added state funding to meet local and regional transportation maintenance and capacity needs.
 - d. 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.
 - e. Any electric utility deregulation should not result in increases for local rate payers and should provide for consumer aggregation options for bulk purchases. (This policy also applies at the federal level.)
 - f. The City supports tort reform that reduces municipal liability and exposures.
 - g. The City opposes legislation that preempts local zoning control.

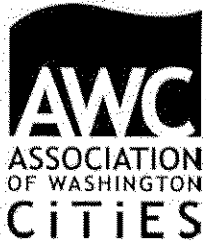
- h. Des Moines supports legislation that treats City leases of DNR aquatic lands equal to Port leases and opposes legislation that increases the City's current lease rate.
- i. The City opposes personnel and labor relations legislation which diminishes its management rights or mandates additional unfunded programs and benefits. (This policy also applies at the federal level.) Des Moines supports legislation providing civil immunity from reference checks.
- j. The City supports continued improvements to high speed passenger rail travel from Portland to Vancouver, B.C. to reduce dependence on planes and automobiles.
- k. The City supports legislation which would abolish the 1889-1890 right-of-way vacation by operation of law statutes.
- l. 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.
- m. 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.)
- n. The City opposes any legislation which reduces the authority of cities to annex territory.
- o. The City opposes legislation which reduces the authority of cities to assume special purpose districts.
- p. 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.
- q. The City opposes legislation that would reduce municipal control over city streets and rights-of-way.
- r. The City supports legislation to elect Port commissioners by district.
- s. The City opposes mandatory requirements for affordable housing, housing growth, and residential density targets.

- t. 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.
- u. The City supports legislation to increase the local share of municipal court fines and forfeits.
- v. The City supports legislation to allocate surplus LEOFF I pension funds to local government to assist in meeting LEOFF I medical and long term care obligations.
- w. Des Moines supports full state funding for Shoreline Management Plan updates.
- x. 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.
- y. 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.
- z. 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.
- aa. 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.
- bb. The City supports flexible use of Real Estate Excise Taxes.
- cc. The City supports State tax policies that assist cities in meeting infrastructure needs for new development in airport noise impacted areas.
- dd. The City supports amendments to binding interest arbitration criteria as outlined in the Association of Washington City's 2011 legislative priorities.

- ee. The City supports the Association of Washington City's 2011 proposals to manage public records requests.
3. Federal
- a. Utility deregulation – see Policy B.2.e.
 - b. 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. See also Policy B.2.m.
 - c. Personnel – see Policy B.2.i.
 - d. The City supports continued Community Development Block Grant funding.
 - e. 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.
 - f. The City supports increasing federal funding of emergency preparedness for local first responders
4. Interjurisdictional and Regional
- a. The City is open to the consideration of Des Moines as a site for a future passenger-only ferry.
 - b. 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.
 - c. The City supports construction of a bridge over I-5 at South 240th Street.
 - d. The City supports completion of the higher speed south access route from the SR-509 extension to the south end of the airport during Phase I of the project, to be funded by the Port of Seattle.

- e. 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.
- f. Des Moines supports the development and implementation of a comprehensive regional and state Emergency Management, Response, and Communication System.
- g. 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.
- h. 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.
- i. 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.
- j. The City supports either a light rail alignment on or east of the SR 99 center median, or along 30th Avenue South, provided a light rail stop is added in the vicinity of South 216th Street; or the designation of the west margin of Interstate 5 as the light rail corridor through Pacific Ridge.
- k. The City supports retention of local control over its roads.
- l. 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.
- m. The City supports continued coordination with utility and other special districts to plan for capital improvements within the City limits.
- n. 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.

Adopted by the
Des Moines City Council
At an open public meeting
January 6, 2011



Board of Directors adopts 2012 major priorities

Help our communities drive job growth

- Invest in building and maintaining critical infrastructure, thus creating jobs. For example, the Public Works Trust Fund should be held harmless or enhanced.
- Reform the SEPA process to streamline it and better align it with other environmental reviews, reducing regulatory costs and spurring development that will create jobs.
- Enable tax increment financing authorities to support public-private economic development partnerships that will foster job-creating growth.
- Support workforce training and education programs, such as the Governor's aerospace initiative.

Give cities revenue flexibility to meet community needs

- Continue revenue sharing that helps pay for public safety and other critical services.
- Ease restrictions on how local governments can spend their own revenue to best meet local needs, and preserve local taxing authority that reflects community priorities.
- Explore new opportunities for funding local priorities.

Reform policies and regulations to reduce costs and uncertainty

- Pursue greater regulatory flexibility to reflect reduced resources. For example, the state should ensure that stormwater regulations are both financially and technologically feasible.
- Address public records abuses that drive up local costs without enhancing real transparency or the public's right to know.
- Resist transferring state responsibilities to local government without adequate funding or resources.
- Provide more clarity on the medical marijuana law to give local government better guidance on how to address this issue.
- Look for opportunities to address unsustainable personnel costs, such as modifying binding interest arbitration.

AWC contact

Dave Williams, Director of State &
Federal Relations
davew@awcnet.org
(360) 753.4137

Attachment 2

City of Des Moines
2011 Intergovernmental Policies and Positions

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Des Moines
supports a
~~state~~ state
law changing
our aquatic
lands 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



DATE January 12, 2012

[illegible]

REQUEST TO INSTRUCT CITY STAFF TO
PREPARE ORDINANCE TO CHANGE USE
FROM COMMERCIAL TO RESIDENTIAL.

*Pictures of Building where single commercial condominium
unit is located.*

Address of Condominium Unit and Size of Condominium unit.

Signed Petition from Neighbors supporting requested change.





Zenith View Pointe

Property Address:

23840 7th Ave S Unit # B 101

Size of Condominium unit: 1700 Square Feet

Letter to the City Council

January 12, 2012

Dear City Council Members

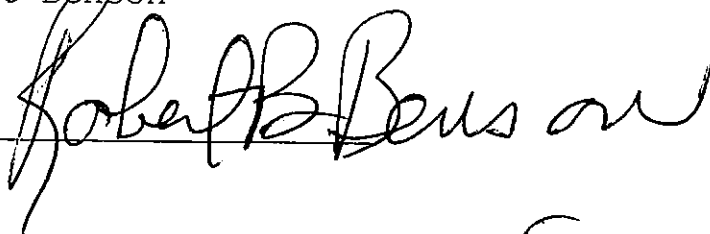
As a long term resident and owner of real estate property that is located next door to Zenith View Pointe Condominiums I am in support for requested change of use,

requested change will permit residential use instead of commercial use,

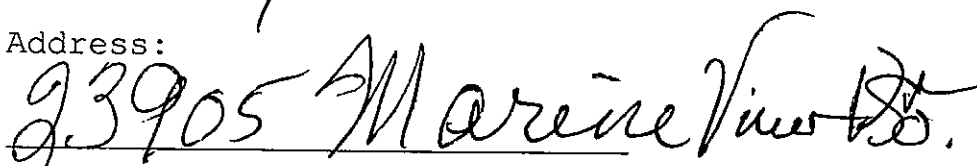
Residential use will limit on site traffic and will be consistent with character of the existing neighborhood.

Name: Robert Benson

Signature:

A handwritten signature in cursive script that reads "Robert Benson". The signature is written over a horizontal line.

Address:

A handwritten address in cursive script that reads "23905 Marine View Dr.". The address is written over a horizontal line.

Des Moines, WA 98198

Letter to the City Council of Des Moines,

27 Sept. 2011

The four residents of Zenith View Pointe condominiums support the request to add multi-family use in the mix use zoning. As both property owners and residents we greatly value this wonderful enclave of properties overlooking Puget Sound. We agree that it would be consistent with existing property use and set to permit multi-family use, rather than introducing a business operation. Thank you very much for your consideration.

Name: Rick Sanford

Signature: Rick D. Sanford

23840 7th Ave, South, Unit A-101

Des Moines, WA 98198

President, Zenith View Pointe Homeowners Association

Name: Kathy Martinson

Signature: Kathleen M. Martinson

23840 7th Ave, South, Unit A-102

Des Moines, WA 98198

Name: Lynne Miller

Signature: Lynne Miller

23840 7th Ave, South, Unit B201

Des Moines, WA 98198

Name: _____

Signature: _____

23840 7th Ave, South, Unit _____

Des Moines, WA 98198

agree that it would be consistent with existing property use and set to permit multi-family use, rather than introducing a business operation. Thank you very much for your consideration.

Name:

TERESA BANKS

Signature:

[Signature]

23840 7th Ave, South, Unit B-301

Des Moines, WA 98198

President, Zenith View Pointe Homeowners Association

Name:

EVERGREEN INV. & WA LLC

Signature:

[Signature] - MEMBER

23840 7th Ave, South, Unit B-101

Des Moines, WA 98198

Name: _____

Signature: _____

A black and white photograph of a coastal town, likely Seattle, with a dense forest of evergreen trees on a hill in the background. The town is built on a slope, and the foreground shows a body of water.

^{the}Marina District Wayfinding Project

Robert Franco-Tayar
Brian Greer
Kimo Jordan
Mathan Retik

CEP 460 Autumn 2011
University of Washington
Prepared for Des Moines Planning Dept.

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Project Background

[Executive Summary]

Scope

Our project focuses on improving connectivity in Des Moines' Marina District by designing a system of kiosks, directional signs, and pedestrian infrastructure improvements that will enhance the city's unique character while complementing its existing assets. We selected the individual components of the wayfinding system from the Planning Commission's Comprehensive Wayfinding Program (included on following page) based on our skill sets and the limited time available to us. We envision this system as a foundation from which the city can build upon as the downtown area further develops.

Methods

Through GIS, historical research, primary inventory of pedestrian corridors, social ecology mapping, and community interviews, we endeavored to provide a comprehensive overview of the strengths and challenges in Des Moines' Marina District and design a wayfinding system accordingly. We designed the system using elements from Gig Harbor's, Edmonds', and Anacortes' respective downtowns for inspiration. When compiling the report, we used ArcGIS to create maps, Adobe Illustrator to prepare the spatial data for visual presentation, and Adobe InDesign to create the report layout, organization, and sequencing.

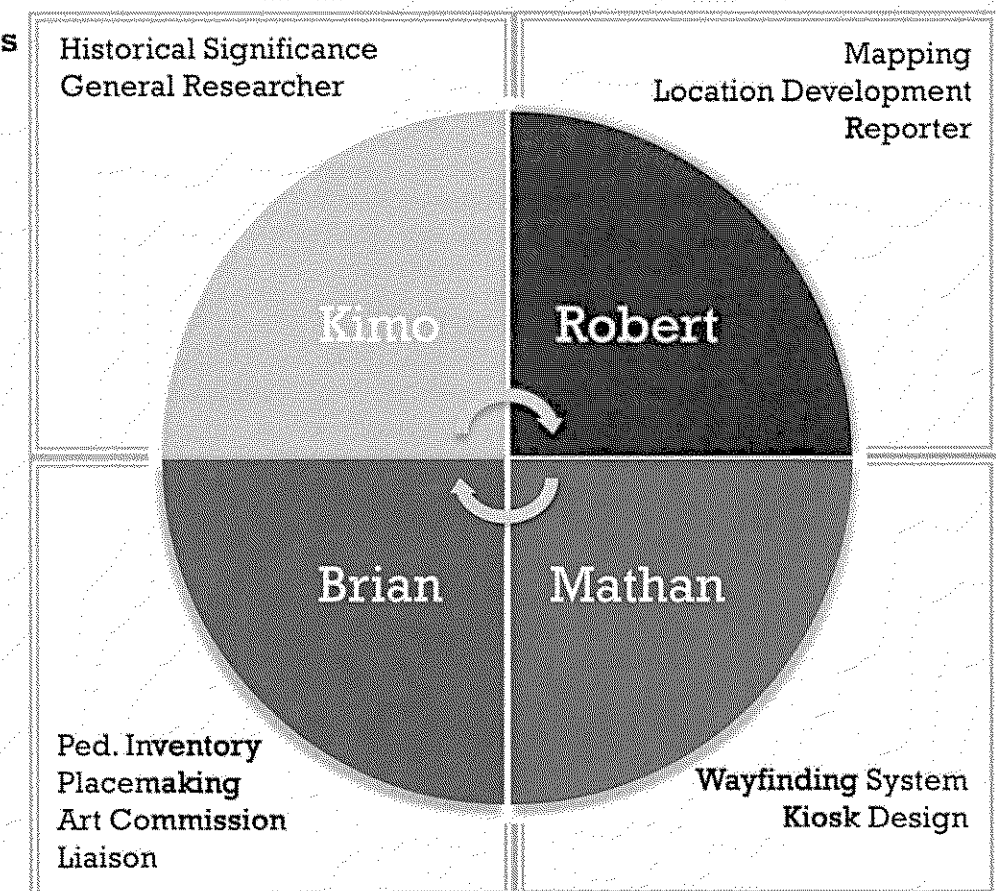
Report Findings

We found that the downtown area contains a crucial connectivity gap between the marina and Marine View Drive. There are a number of different causes, the most critical being a lack of development on 6th and 7th Avenues, ambiguous or inconsistent pedestrian infrastructure, and no direct travel path from Central Downtown to the fishing pier or boardwalk. Our recommendations aim to rectify or mitigate some of these adverse conditions while also complimenting Des Moines' nautical identity.

Report Organization

Our report will begin with an examination of the context of our wayfinding system. We will address the city's vision for its downtown area, taking into account its desire that the Marina District serve as a destination for tourists and residents alike. We will also inventory the area's assets and the challenges that our wayfinding system will encounter. Following this, we will present our recommendations and illustrations of how the system will actually work. Some components include kiosk placement, content, and design concepts, as well as a new downtown business directory. Finally, we will examine our wayfinding system's role in enhancing the downtown area's sense of place and make recommendations regarding infrastructural improvements affecting connectivity, and art placement designed to improve the user experience.

Team Roles



Project Background

[Program Overview]

City of Des Moines Comprehensive Wayfinding Program

Project Overview

The purpose of the project is to develop a comprehensive wayfinding signage system for the City that will be installed following a phased implementation plan.

- Design a clear, attractive wayfinding system that directs people to and through the Marina District and helps them discover new attractions and celebrate Des Moines' cultural heritage and waterfront amenities.
- Work with the Des Moines Arts Commission and community to create a simple theme that enhances the uniqueness of the Marina District identity and diversity.
- Install directional signs, kiosks, banners and gateway signs to guide tourists to the Marina District (Phase 1) and other points of interest in Des Moines (later phases).
- Develop website, tourism map and other marketing materials to promote local activities, businesses and amenities such as waterfront parks, trails, Marina, historic landmarks, specialty shops, restaurants and motels and encourage repeat visitors.

Wayfinding Goals and Objectives

Wayfinding elements will project a consistent image for the entire city; reduce visual clutter; and promote active living, walking, bicycling, and use of transit. Project objectives include:

- Develop a vehicular and pedestrian wayfinding system for destinations throughout the City with a focus on the Marina District.
- Develop a wayfinding system that will create an overall identity for the City, that is compatible with the desired maritime character, and that will also help to differentiate emerging districts.
- Provide highway tourism signage for I-5, state routes, and primary bicycle trails, and possibly major destinations just outside City boundaries (i.e., Sea-Tac Airport).
- Incorporate elements that promote active living, walking, bicycling, and use of transit.
- Incorporate parks, regional trails, recreation facilities and public buildings and historic sites into City interpretive signage (i.e., Des Moines Activity Center, Steven J. Underwood Park, Des Moines Field House Park, Des Moines Beach Park Historic District/Event Center, Des Moines Creek Trail, Saltwater State Park, Redondo Beach, City Hall, Libraries, Mt. Rainier Pool. Note - a joint parks and trails map is being prepared as part of our HEAL Grant).
- Ensure guide signs are designed consistent with Section 2D.50 Community Wayfinding Signs of the Federal Highway Administration 2009 Manual on Uniform Traffic Control Devices (MUTCD) at: <http://mutcd.fhwa.dot.gov/pdfs/2009/part2d.pdf>.
- Address ADA guidelines and considerations in the design of the program.
- Provide signage that will direct visitors to parking lots and garages (as these facilities develop in the future).

The comprehensive wayfinding signage system will consist of the following parts:

- City Gateways (on SR 99 at S 216th St, Kent-Des Moines Rd and S 272nd St)
- Marina District Gateways (at Marine View Dr/S 216th St and KDM/Marine View Dr/S 227th St);
Note - the design should build upon the work completed for the DM Gateway Project
- Destination Identity Signs:
 - I-5, SR-99, S 216th St, Kent-Des Moines Rd (Phase 1)
 - Highline Community College, S 272nd Street and Redondo (Phase 2)
- Destination Directional Signs:
 - Marina District – Shopping, Marina, Farmers Market, Beach Park, DM Creek Trail, Saltwater State Park (Phase 1)
 - Redondo – recreation area/boardwalk/boat launch and MAST Facility (Phase 2)
 - Destination/Active Parks and Recreation Facilities and Public Buildings (Phase 3)
- Pedestrian Directional Signs:
 - Marina District – Marine View Drive, S 223rd St, Cliff Ave, S. and 5th Ave. S, S 227th St. and 7th Ave S, Marina (Phase 1)
 - HCC, Redondo, Saltwater State Park, other points of interest (Phase 2)
- Interpretive Signs:
 - Fishing Pier, Beach Park, DM Creek Trail to include integration of previously developed Beach Park History signage (Phase 1)
 - Redondo pier and boardwalk (Phase 2)
- Interpretive Kiosks (Marina District – programming of kiosk, Marine View Drive S/S 216th, 11th Ave S/S 216th, Pacific Ridge, Highline Community College/S 240th Street, Redondo)
- Parking Identity and Directional Signs (Phase 2)



Indicates Des Moines Planning Commission objectives incorporated into the scope of our project.

Project Background

[Context]

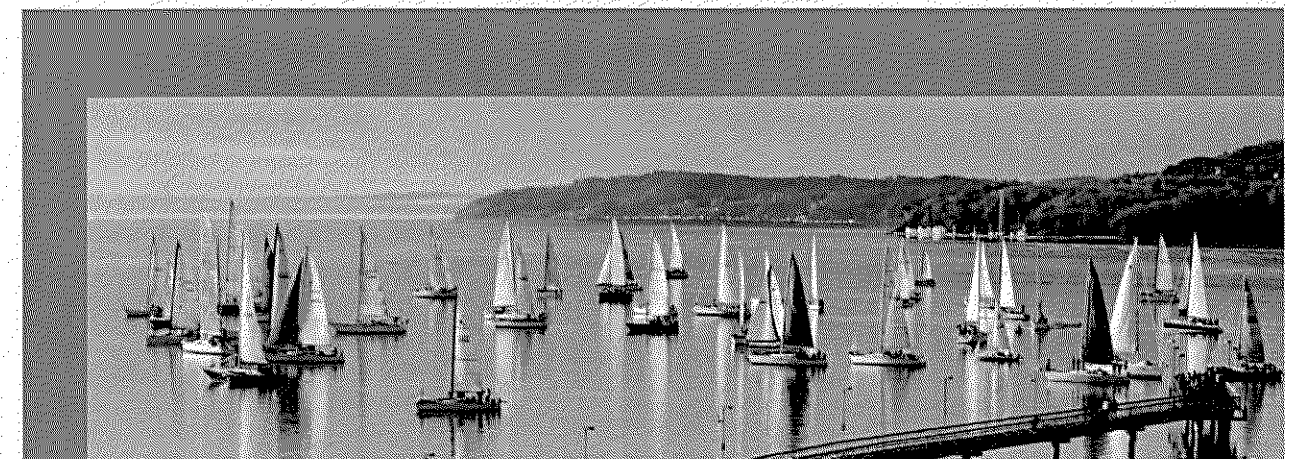
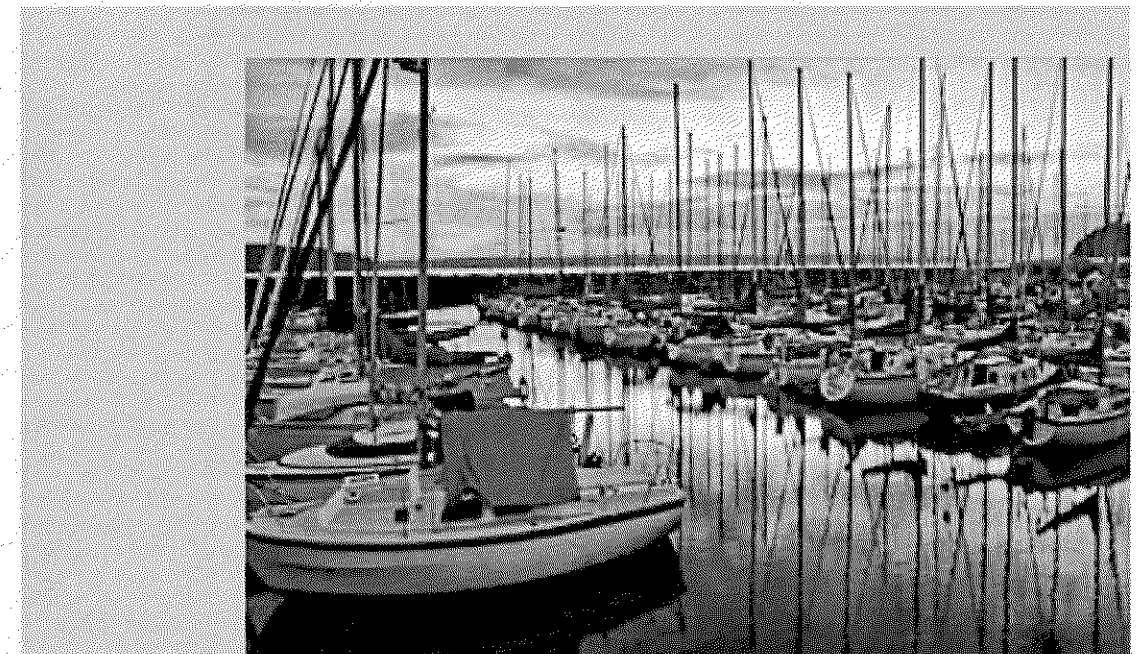
The future of the City's Marina District, formerly known as the downtown, is bright.
-City of Des Moines

"It is also a city shaped by its geography. Bordering Puget Sound, the city and its inhabitants have always had a maritime orientation."
- One Hundred Years of the "Waterland" Community

"Creates a destination that will support tourism by linking business areas flanking Marine View Drive and 7th Avenue South with City assets and amenities found and planned for within the Des Moines Marina and Beach Park."
-City of Des Moines

"Des Moines, Washington is a city of pioneers."
- One Hundred Years of the "Waterland" Community

"An old fashioned waterfront village; home to restaurants, a major grocery store and unique shops to explore in this pedestrian friendly neighborhood."
- destinationdesmoineswa.org



Project Background

[Social Ecology Map]

Nodes denote:

- Places of interest
- Social gathering
- Public assets
- Restaurants and pubs

Node size accounts for:

- Social impacts
- Frequency of use
- Historical significance

The social ecology map illustrates the chasm that exists between Marine View Drive and the waterfront, as well as the lack of amenities along 223rd (the main access point to the Marina for North and Central Downtown).

- Public Spaces
- Restaurants & Pubs
- Retail & Business



the Pedestrian experience

[Overview]

The Pedestrian Experience is a catalog of the existing conditions pedestrians will experience as they move throughout the Marina District. Four designations were chosen that relate to how a pedestrian might feel in a given location. For the purpose of this exercise lighting was not a consideration but certainly could be explored to enhance the understanding of the pedestrian corridors.

Pedestrian Friendly designation represents paths that have been clearly defined for pedestrian use. Characteristics present in this designation include: sidewalks, crosswalks and markings that separate auto use from pedestrian use.

Undefined Path designation represents areas along travel corridors that don't clearly define a space for the pedestrian user to travel. Characteristics present in this designation include: no crosswalks, no sidewalks and no markings that separate auto use from pedestrian use.

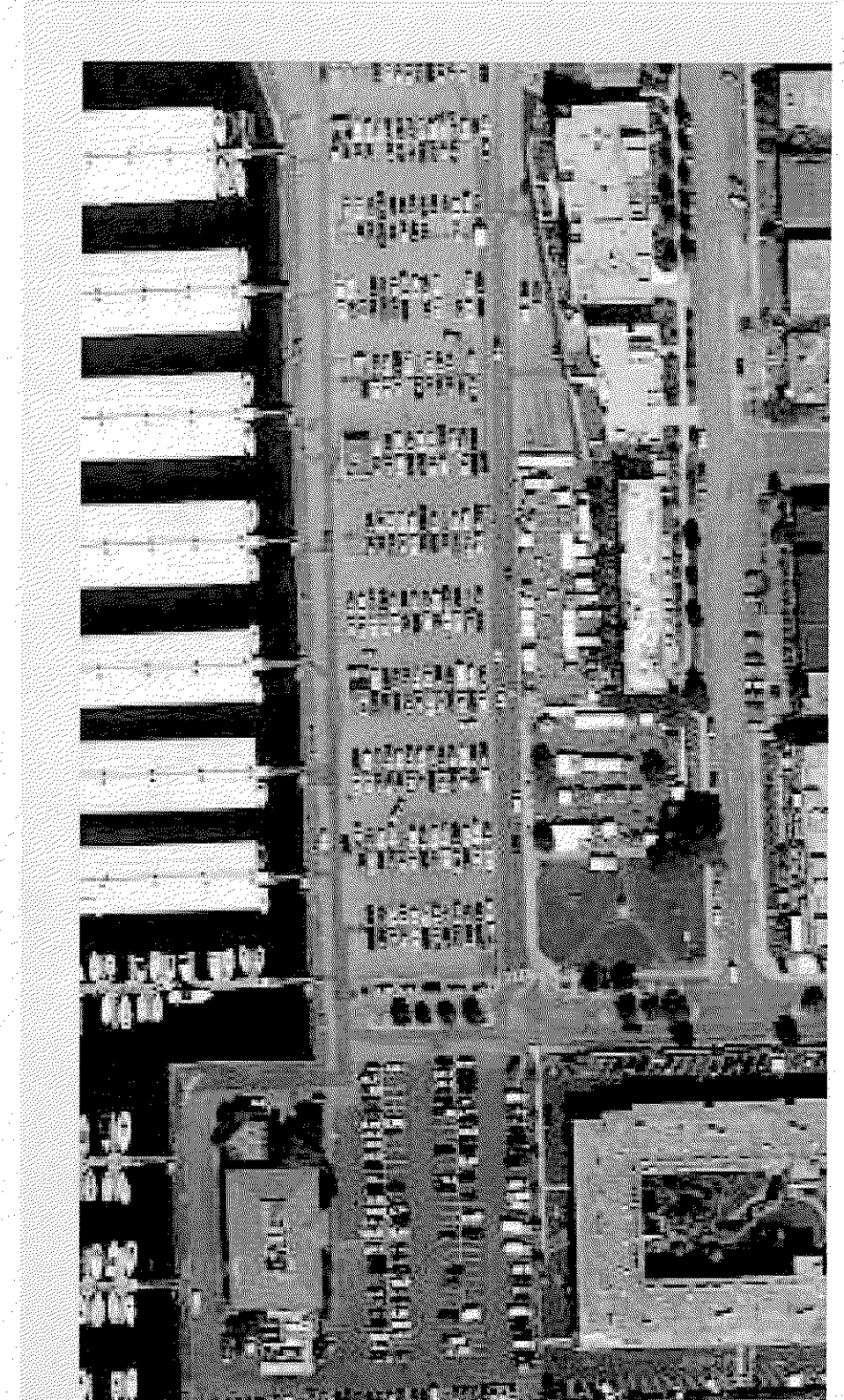
Parking Lot designation represents space that separates a pedestrian user from directly accessing the Marina Boardwalk area of interest from the business core or vice versa.

Marina Boardwalk designation represents the Marina Boardwalk which acts as a point of interest and a corridor for pedestrian travel along the waterfront.



the Pedestrian experience

[Examples]



the Pedestrian experience

[Corridors | North]



north marina district

The north side of the Marina District has adequate sidewalks and crosswalks that enhance the pedestrian experience. It is also characterized by the Des Moines Creek Trail which allows for in city hiking and connectivity to the SeaTac area.

- Pedestrian Friendly
- Undefined Path
- Parking Lot
- Marina Boardwalk

the Pedestrian experience

[Corridors | Central]



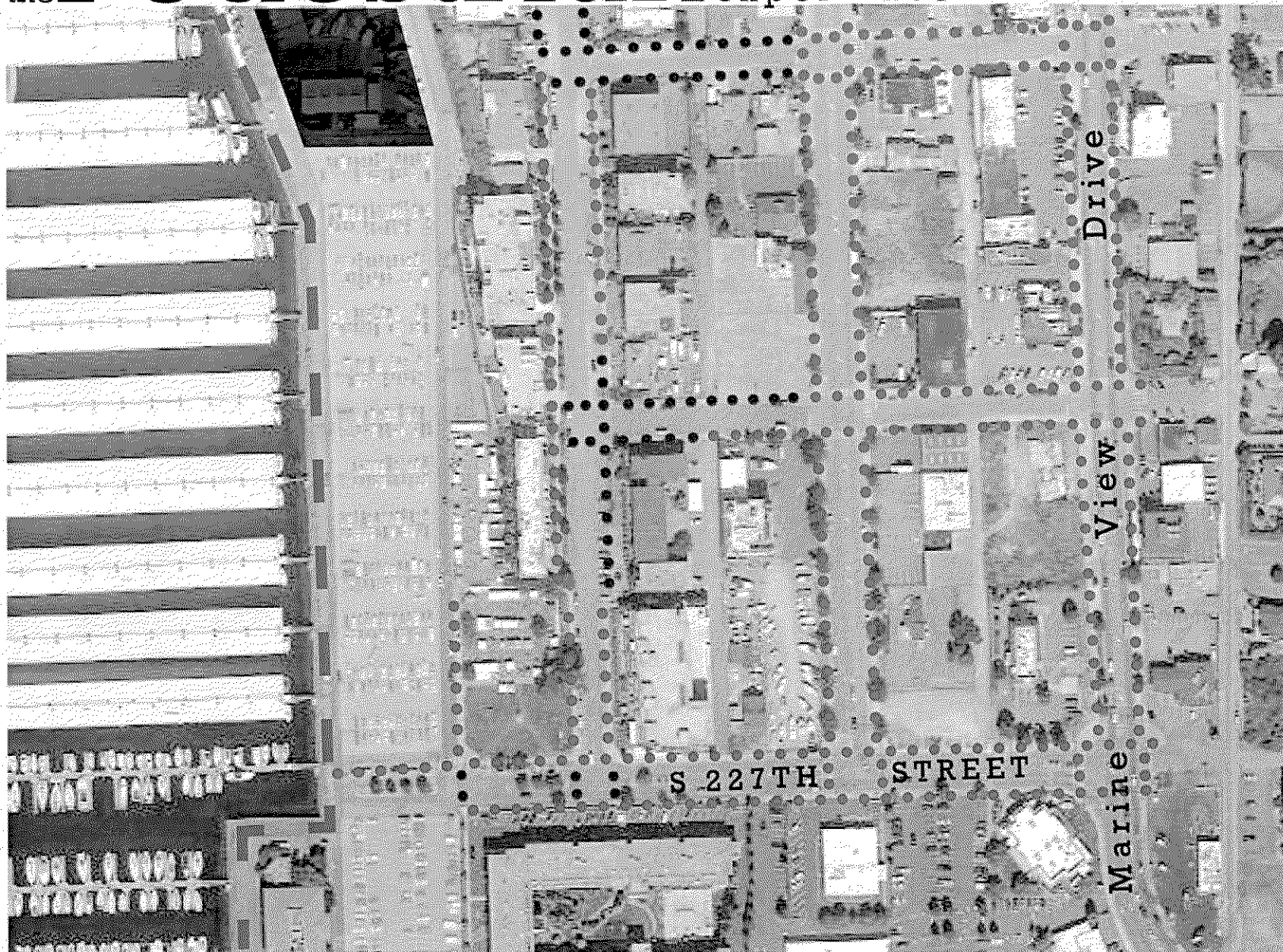
central marina district

The central zone in the marina district has the highest concentration of pedestrian unfriendly corridors. This zone also features terrain that is more challenging for pedestrian travel from the business core to marina floor. This zone may have the highest influence over the pedestrian experience given its central location.

- Pedestrian Friendly
- Undefined Path
- Parking Lot
- Marina Boardwalk

the Pedestrian experience

[Corridors | South]



south marina district

The southern end of the Marina District boasts an easy pedestrian access way on south 227th to the marina floor. The 227th corridor has adequate sidewalks and crosswalks all the way from Marine View Drive to the marina boardwalk, especially so when using the north side of the road. The challenge in this zone is directing users from Marine View Drive or 7th when their trip starts north of 226th. One might be tempted to direct pedestrians to the staircase down to the marina floor just south of 225th; however, this route crosses undefined paths and presents a less desirable experience.

- Pedestrian Friendly
- Undefined Path
- Parking Lot
- Marina Boardwalk

the Wayfinding system

[Overview]

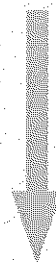
Three Goals:

The Wayfinding System aims to connect the the core business strip on Marine View Drive with the isolated waterfront Marina and Beach Park.

Vehicle Signs direct incoming vehicles to the largely invisible Marina and Beach Park, and make new visitors aware of their existence.

Pedestrian Kiosks advertise activities, events, businesses and heritage while providing direction between the waterfront and business strip.

Direct Vehicles
to Marina



**Vehicle
Signs**

Direct Pedestrians
to and from Marina



Map

Promote Activites
and Heritage



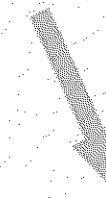
Directory

History
Activities
Calendar

Pedestrian Kiosks



Directory
+
Map



Information:
History,
Activities,
Calendar

the Wayfinding system

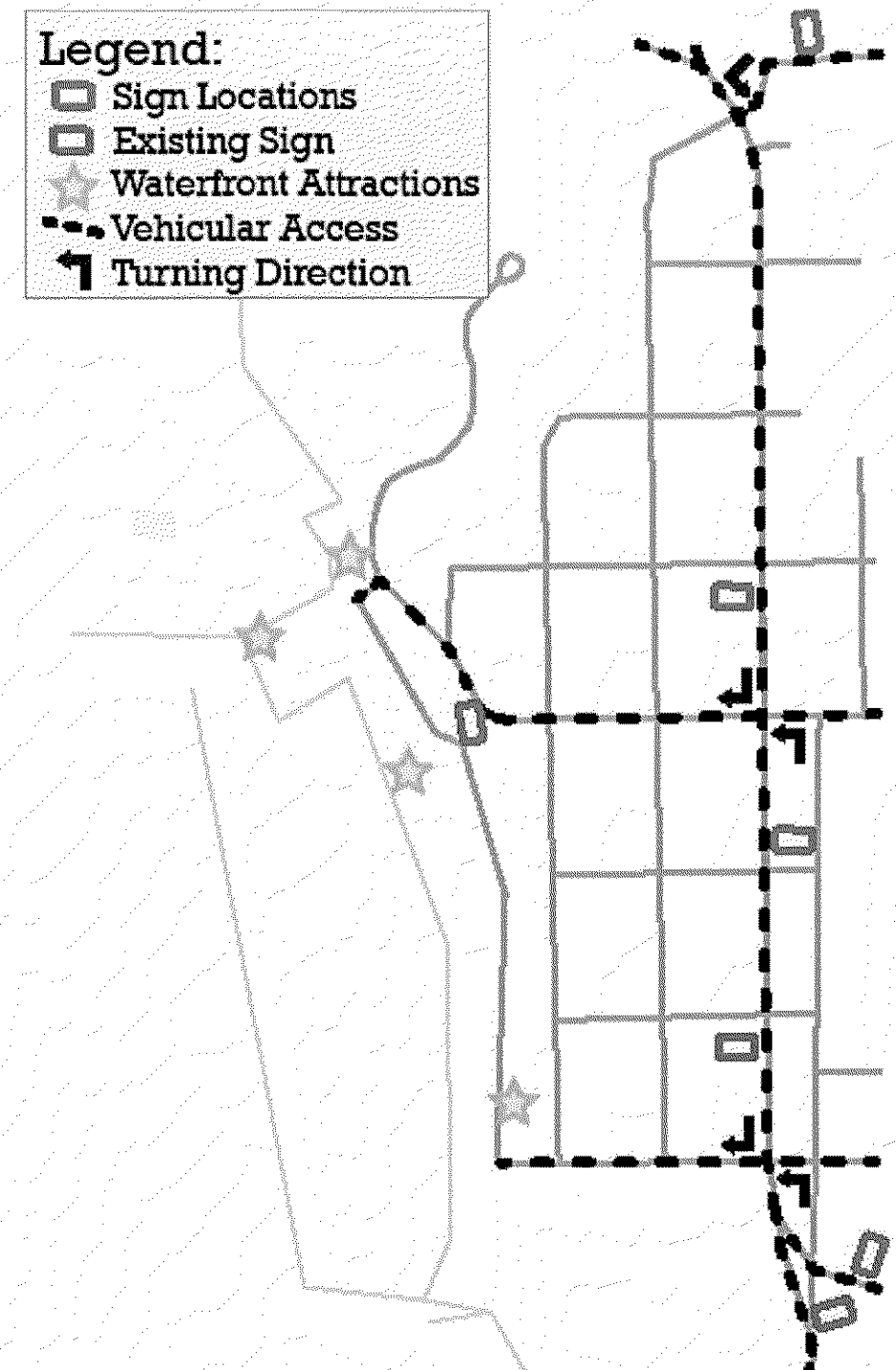
[Vehicle Sign Placement]

Criteria for Locations:

- Gateways from major arterials
- Affixed to light poles
- On same side of street as vehicle
- Does not duplicate existing sign
- Capture drivers who miss initial sign
- Allow drivers time to prepare to turn

Possible Issues:

- State route codes limit visual appeal
- May divert drivers from businesses
- Does not advertise activities



the Wayfinding system

[Kiosk Design Concepts]

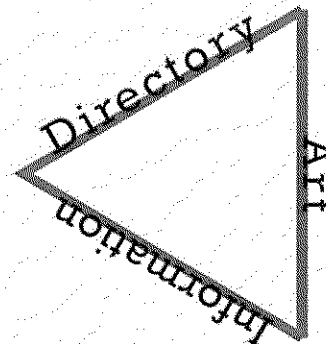
Footprints

Compact



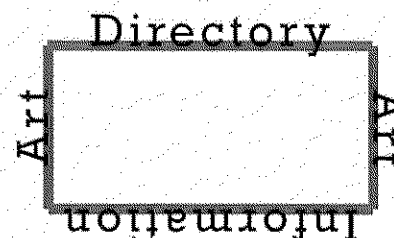
Maintains minimum passage on narrow sidewalk. Allows passers-by to read without obstructing foot traffic. Lacks additional space for art.

Triangle



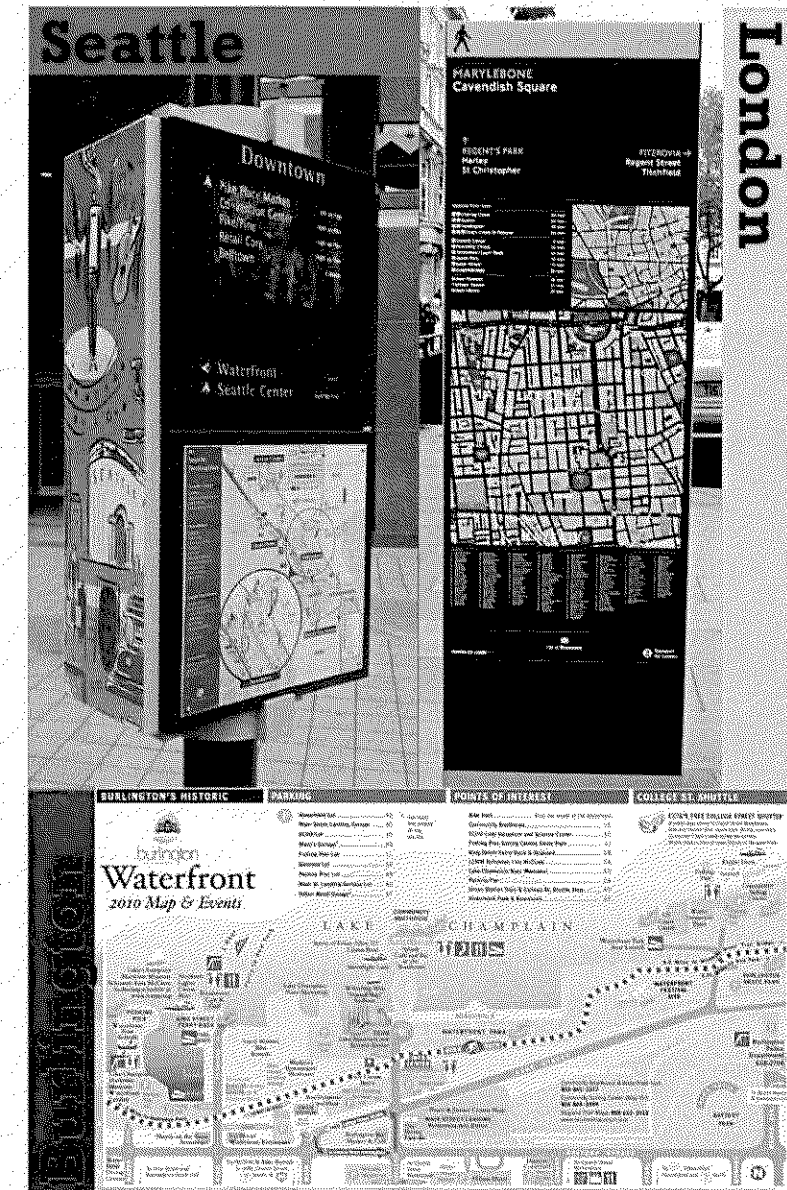
Provides appealing volume with opportunity for art facing street, while allowing non-obstructive placement. Content visible from all directions except for street.

Rectangle



Combines maximum presence in larger areas, with multiple decorative surfaces. May only take up marginally more space than other options.

Inspiration



the Wayfinding system

[Kiosk Content | Directory]

Elements

Map with footprints color-coded and cross-referenced with directory. Text on map only to name roads.

Goals

Make pedestrians aware of waterfront activities, downtown businesses, and key services. Enhance connectivity by directing exploration. Advertise and Publicize.

Criteria

Activities and Services should be comprehensive. Inclusion of businesses in other categories may be selected by committee or selected on a sponsorship basis.

Methods

All businesses are colored according to key. Businesses included in directory are indicated on map with corresponding numbers. Recommended pedestrian pathways from Marine View Drive are darker.

Issues

In the interest of visual clarity and ease of use, information on map should be limited to absolute essentials. Which information is most important?

Des Moines Marina District Directory



Activities & Services

- (1) Marine Beachwalk & Fishing Pier
- (2) Des Moines Clock Tower
- (3) Marine Hardware Store's Office
- (4) Des Moines Beach Park Amphitheater
- (5) Farmers' Market Square
- (6) Marine Inn Hotel
- (7) Des Moines Cinema
- (8) CSR Marine South

Parks & Plazas

- (1) Des Moines Beach Park
- (2) Big Catch Plaza
- (3) South Marine Park
- (4) Overlook Park

Drinks & Snacks

- (1) Marine View Espresso
- (2) The Scratch & Vine
- (3) Des Moines Dog House
- (4) All Star Sports Bar
- (5) Auntie Anne's Ice Cream Shoppe
- (6) Voodoo Pub
- (7) Reuben
- (8) Lighthouse Bar
- (9) Blue Vanilla Bakery
- (10) Biscuits

Restaurants

- (1) Anthony's HomePort
- (2) Wally's Chowder House & Bar
- (3) Red Rabbit
- (4) Anthony's Thai Restaurant & Bar
- (5) Mandala Kitchen
- (6) Spicy's Gyro & Bar
- (7) New Tokyo Teppan
- (8) Athens Pies & Pita
- (9) Kallina

Shopping & Other

- (1) B & B Meats and Seafood
- (2) Carby Collins
- (3) Zenith Holland Gardens
- (4) Des Moines Yacht Club
- (5) Quality Food Center
- (6) Marine View Market

See Back for Info & Events

Des Moines Beach Park Activities

Des Moines Beach Park, formerly known as Covenant Beach Bible Camp, is a 20 acre site located in a wooded valley featuring 635 of beach on Puget Sound.

Explore all 15 miles of the Des Moines Creek Trail, a paved trail, great for walking, running and biking that wind through a lush valley.

Our 200 foot fishing pier includes a washing station with cleaning instructions for flounder

Piece of History:

In 1909 the "Daring" was built and launched by a local company Crawford and Reid in Tacoma - she served her days as part of the "Mosquito Fleet" serving communities up and down the coast of Puget Sound transporting both people and freight.



This December in Des Moines

- 3rd - Lighted Boat Parade at Des Moines Yacht Club
- 5th - Tree Lighting at Big Catch Plaza
- 6th - Christmas Ships Bonfires at Redondo 8:50-9:10pm
- 10th - Boeing Employees Choir Sings at United Methodist Church
- 15th - Christmas Ships Bonfires at Des Moines Beach Park 7:10-7:30pm
- 17th - Breakfast with Santa at the Senior Center, 9am & 10:45am seating times

Des Moines Creek Trail

Explore all 15 miles of the Des Moines Creek Trail, a paved trail, great for walking, running and biking that wind through a lush valley.

Des Moines Beach Park

Des Moines Beach Park, formerly known as Covenant Beach Bible Camp, is a 20 acre site located in a wooded valley featuring 635 of beach on Puget Sound.

During the 1970's the Des Moines City council enlisted the help of Jean-Michel Cousteau to construct an artificial reef around the marina. 500 lbs. of quarry rock, 36,000 tires, 30 loads of concrete, and over 200 porcelain items ranging from toilets to bathtubs and sinks made for a good home for developing sea life.



This December in Des Moines

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Waterfront [Location Specific]

Downtown [Generic]

the Wayfinding system

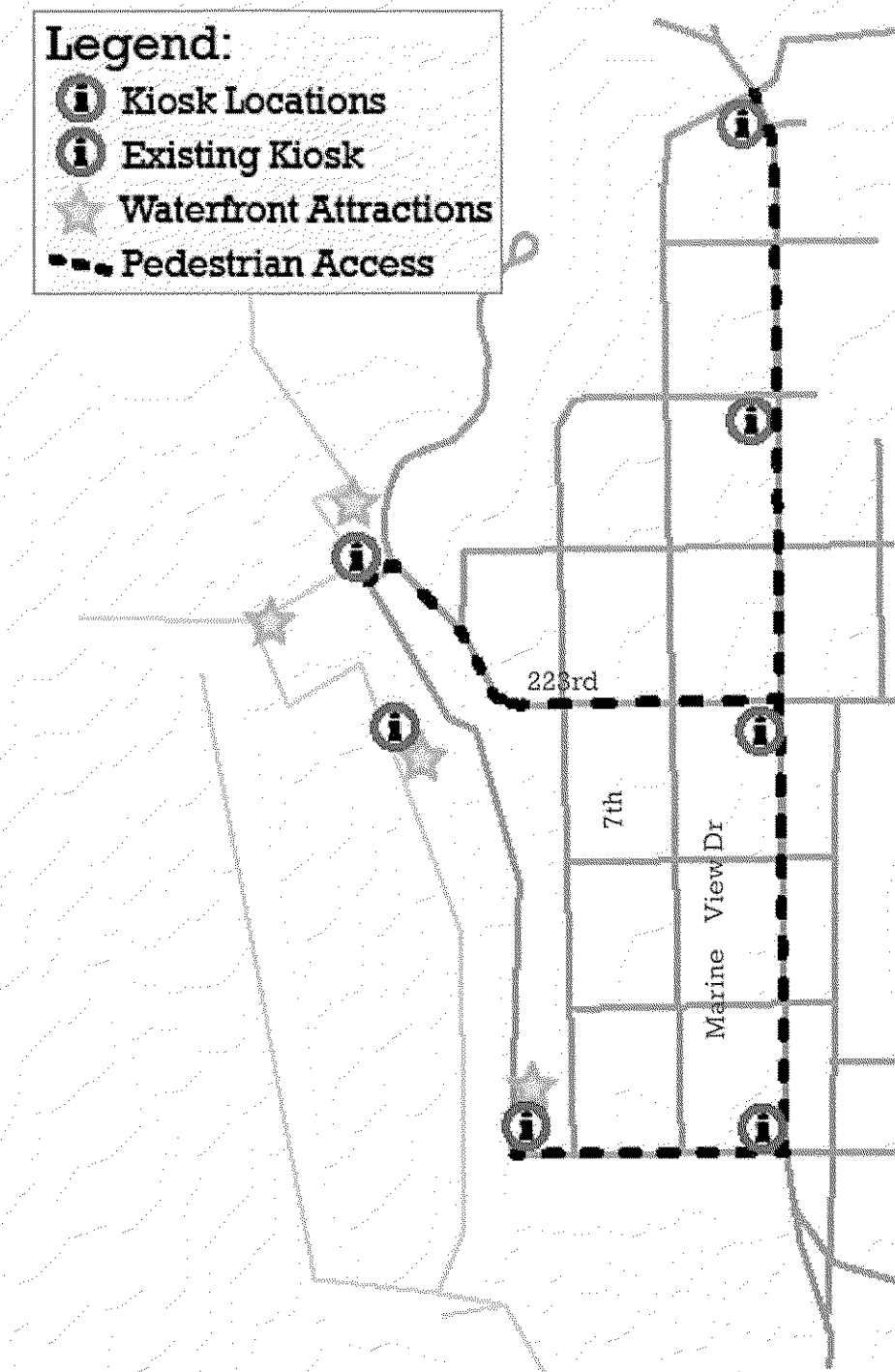
[Kiosk Placement]

Criteria for Locations:

- Nodes of activity or gathering
- High visibility
- Bus stops
- Intersections of paths
- Intercept pedestrians entering waterfront
- Existing kiosk at Marina: duplicate information

Issues:

- Redundancy/Exact placement
- Catering to present vs. future
- Puts peds on busy street
- Lack of public space near businesses

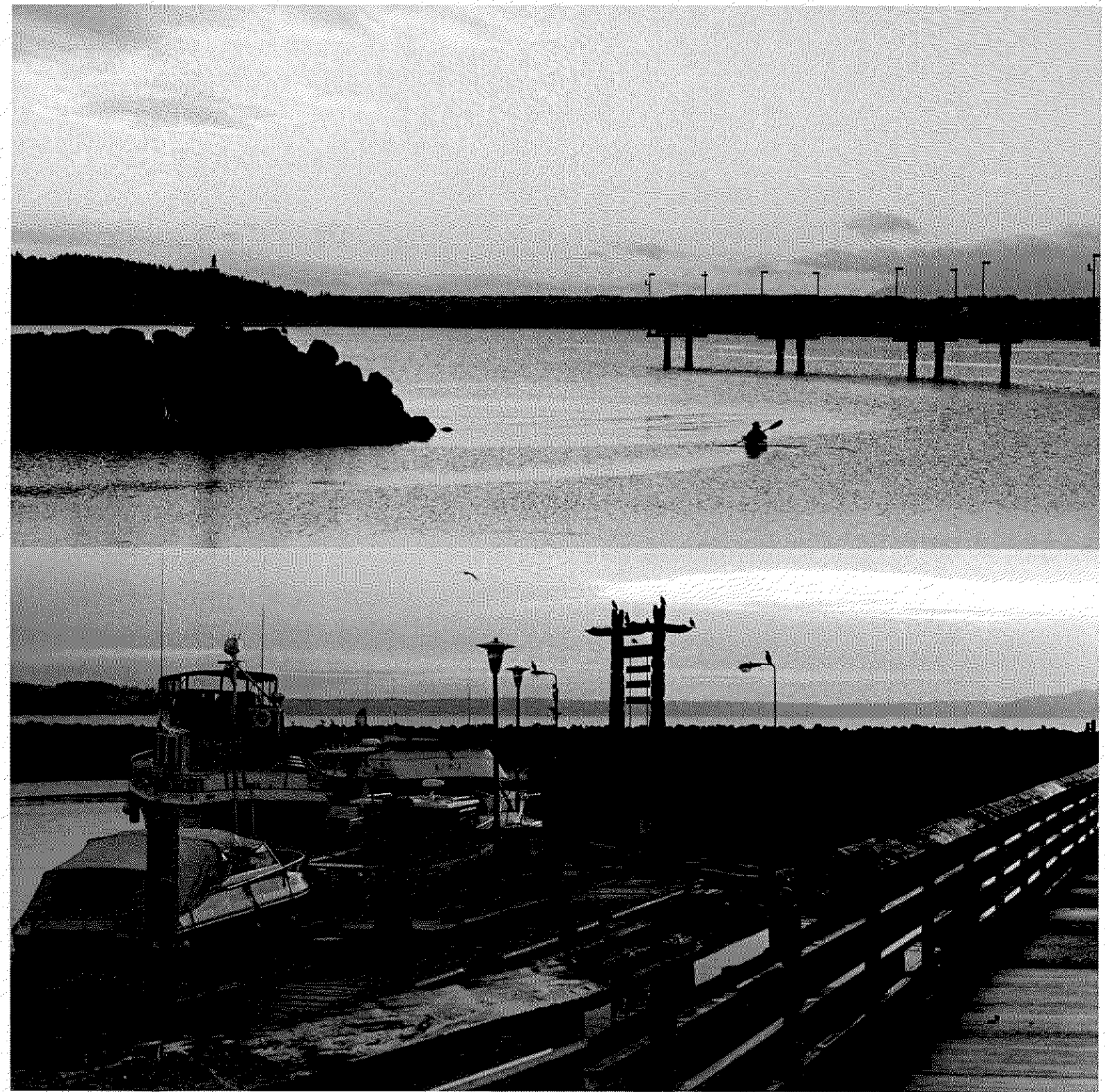


experiencing Place

[Purpose]

We have conducted this project with the understanding that signs and kiosks are not a complete solution for navigating a district. A legible streetscape and strong sense of place can be powerful tools for attracting visitors and guiding them through the urban fabric.

Throughout the duration of the project our team made observations about the character of the Des Moines Marina District, its assets and challenges as we envisioned them. This section is devoted to identifying elements that could add to and enhance the user experience. We have identified infrastructure improvements that will promote connectivity and add to public space. Also identified are existing artistic expressions and potential future placement of art installations.



experiencing Place

“Marina Way” Renaming

Currently, the name of 223rd street provides no indication that this street is different to any other, yet it leads to the Marina and Beach Park. Changing the name of this street to Marina Way would mark it as the center of town, while informing passers-by of the Marina hidden nearby and complementing the district’s nautical heritage.

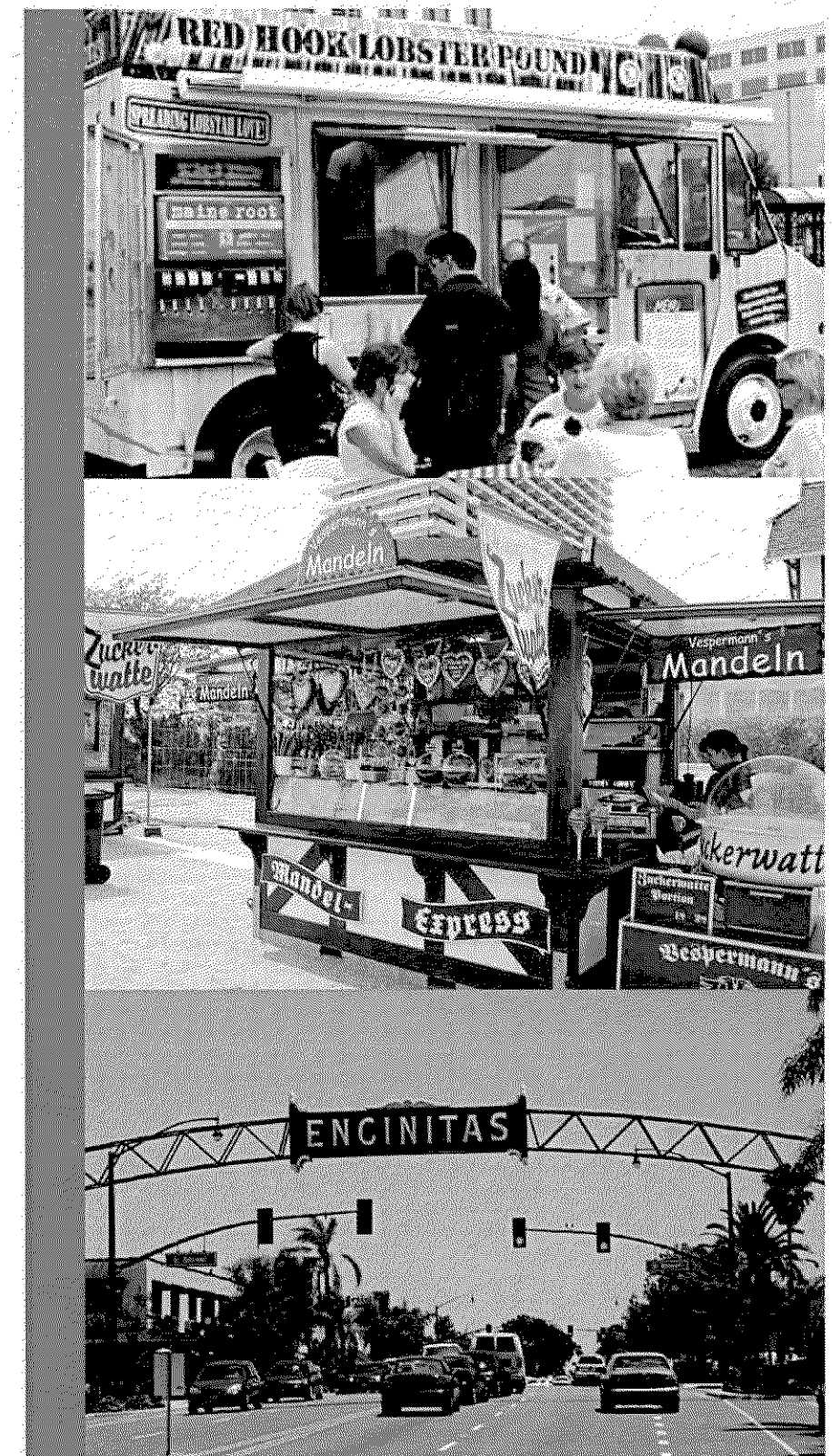
Trucks and Stalls

Food trucks and stalls have proven to be a cheap, effective and flexible way to activate and enliven under-utilized spaces. Their presence on the Marina floor could add to year-round appeal and local culture.

Gateways and Landmarks

By defining and marking its center and its limits, a previously underdefined district can assert itself and take form in the visitor’s mind.

[Recommendations | Identity+Culture]



experiencing Place

Marina Stairwalk

The current northern path to the Marina veers to the right down Cliff Avenue, while a city-owned right of way continues west down a steep escarpment to the Marina. Though it now lies below a hidden lookout, this location used to allow direct access to the Marina down a stairwalk.

Re-establishment of a staircase from top of Cliff Avenue and South 223rd down to the Marina floor could serve to establish a main pedestrian corridor and act as the most centrally located public space in the Marina District. By simplifying access to the heart of the Marina with a visually striking but appropriately scaled staircase, a memorable new landmark could help to form a local identity while vastly improving connectivity.



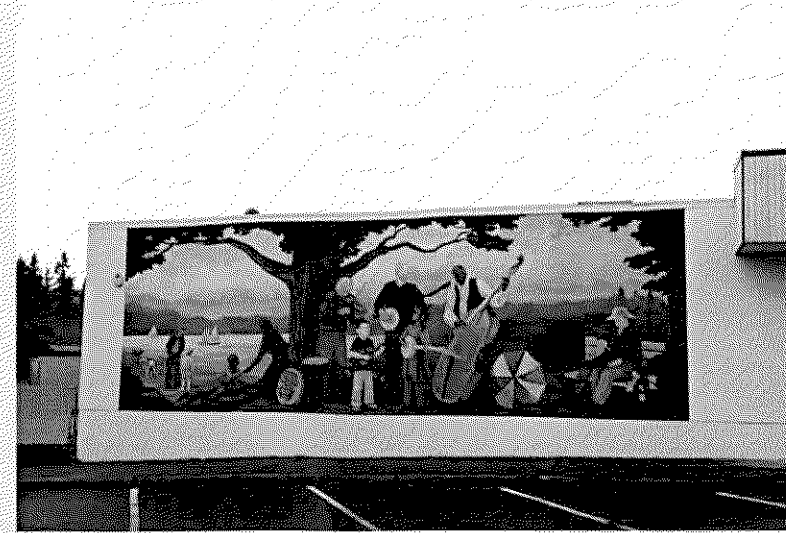
[Recommendations | Connectivity]



experiencing Place

The Marina District has a blend of artistic elements and existing infrastructure that highlight its unique history and relationship to the Puget Sound. During our time in the Marina District we noticed many of these features were located in obscure locations, reducing visibility to visitors. A turtle sculpture is located in the library complex but not adjacent to paths or entry to the building; the Des Moines Shop and Save sign is located in an alley between 7th and Marine View Drive; and the recently completed mural honoring the aging process is located on the south side of the QFC complex. Placement of art accords significance to its setting, and so siting art in poorly-traveled locations can create confusion in the visitor's mind. The future placement of art should focus on locations with higher levels of activity and visibility.

[Recommendations | Art+Context]



Acknowledgements

Denise Lathrop has guided the project throughout its phases, as the team's key contact at the Des Moines Planning Department. She played a major role in defining this project while providing valuable feedback and background materials, and connecting the team to other city resources.

Marty Curry, as Affiliate Assistant Professor of Urban Design & Planning at UW, instructed, selected, and mentored the project team, checking in frequently and providing feedback and advice on content and interim presentations.

Des Moines Planning Dept. provided the team with key GIS data through **Steve Schunzel**, as well as providing valuable input and criticism in developing the product.

Des Moines Arts Commission shared its vision for the future of Des Moines and provided guidance and background on local character and culture.

Des Moines Historical Society connected the project team with historical resources that revealed the nautical and frontier heritage of Des Moines, greatly influencing the content of this report.

About the Authors

Robert Franco-Tayar is studying Political Science at UW in addition to CEP. He is currently interning at People for Puget Sound as a Carlson Civic Fellow.

Brian Greer is studying CEP and Geography at UW. Brian has a professional background in real estate and landscape and is currently working on starting a community garden.

Kimo Jordan is studying CEP at UW. He is deeply interested in the world of co-working and believes in the good that collaboration can do for the world.

Mathan Retik is studying Civil Engineering at UW in addition to CEP. He recently completed an internship at the Washington State Department of Transportation.