

**AMENDED AGENDA**

**DES MOINES CITY COUNCIL  
REGULAR MEETING  
City Council Chambers  
21630 11th Avenue S, Des Moines, Washington  
Thursday, August 8, 2024 - 6:00 PM**

City Council meeting can be viewed live on the City's website, Comcast Channel 21/321 or on the City's [YouTube](#) channel.

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL**

**COMMENTS FROM THE PUBLIC**

**COMMITTEE CHAIR REPORT**

- Finance Committee: Chair Matt Mahoney
- Environment Committee: Chair JC Harris

**CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS**

- Item 1. DAVE UPTHEGROVE
- Item 2. ~~CERT (COMMUNITY EMERGENCY RESPONSE TEAM) GRADUATES~~
- Item 3. MIDWAY OPEN SPACE DESIGN  
[Midway Open Space Design](#)  
[Midway Park Open Space Design Project PowerPoint](#)
- Item 4. WSDOT SR 509 INTERAGENCY AGREEMENT/PROJECT UPDATE  
[WSDOT SR 509 PowerPoint](#)
- Item 5. 2024 2nd QUARTER FINANCIAL REPORT  
[2024 2nd Quarter Financial Report](#)  
[2024 2nd Quarter Financial Report PowerPoint](#)
- Item 6. CITY MANAGER RECRUITMENT UPDATE  
[City Manager Recruitment PowerPoint](#)

**CONSENT AGENDA**

- Item 1. APPROVAL OF VOUCHERS

**Motion** is to approve the payment vouchers through July 25, 2024 and payroll transfers through July 26, 2024 in the attached list and further described as follows:

EFT's	#10468-10503	\$ 184,893.55
Wires	#2650-2660	\$ 741,602.50
Accounts Payable Checks	#165985-166015	\$1,284,280.56
EFT Void	#10409-10409	\$ (100.00)
Account Payable Voided Check	#165930-1965930	\$ (100.00)
Payroll Voided Check	#19864-19864	\$ (300.00)

Total Checks and Wires for A/P & Payroll: \$2,210,276.61

[Approval of Vouchers](#)

Item 2. APPROVAL OF MINUTES

**Motion** is to approve the July 25, 2024 City Council Meeting minutes.

[Approval of Minutes](#)

Item 3. SETTLEMENT AGREEMENT SANBORN V. DES MOINES

**Motion** is to approve the Stipulation and Agreed Order quieting title to certain platted but unimproved right of way abutting 20820 Des Moines Memorial Drive in Des Moines in favor of Plaintiff Sanborns, and authorize the City Manager and the City Attorney to sign the Agreement and Stipulated Judgment substantially in the form as attached.

[Settlement Agreement Sanborn v. Des Moines](#)

Item 4. TEMPORARY RIGHT-OF-WAY EASEMENT - COLLEGE WAY

**Motion** is to accept the temporary right-of-way easement of a portion of Sound Transit owned property, Tax Parcel No. 2500600660, and authorize the City Manager to execute documents for this agreement substantially in the form as submitted.

[Temporary Right-of-Way Easement – College Way](#)

Item 5. INTERAGENCY AGREEMENT GCB 3807 BETWEEN WSDOT AND CITY OF DES MOINES

**Motion** is to approve the Interagency Agreement between the Washington State Department of Transportation and the City of Des Moines - Agreement GCB 3807, and further authorize the City Manager to sign said Agreement substantially in the form as submitted.

[Interagency Agreement GCB 3807 Between WSDOT and City of Des Moines](#)

Item 6. COLLECTIVE BARGAINING AGREEMENT: POLICE SUPPORT GUILD

**Motion** is to approve the attached Collective Bargaining Agreement between the City of Des Moines and the Police Support Guild and to



authorize the Interim City Manager to sign the Agreement substantially in the form as attached.

[Collective Bargaining Agreement Police Support Guild](#)

## **NEW BUSINESS**

Item 1. NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

## **COUNCILMEMBER REPORTS**

(4 minutes per Councilmember) - 30 minutes

## **PRESIDING OFFICER'S REPORT**

## **EXECUTIVE SESSION**

## **NEXT MEETING DATE**

September 05, 2024 City Council Study Session

## **ADJOURNMENT**

[Public Comment 08.08.2024](#)



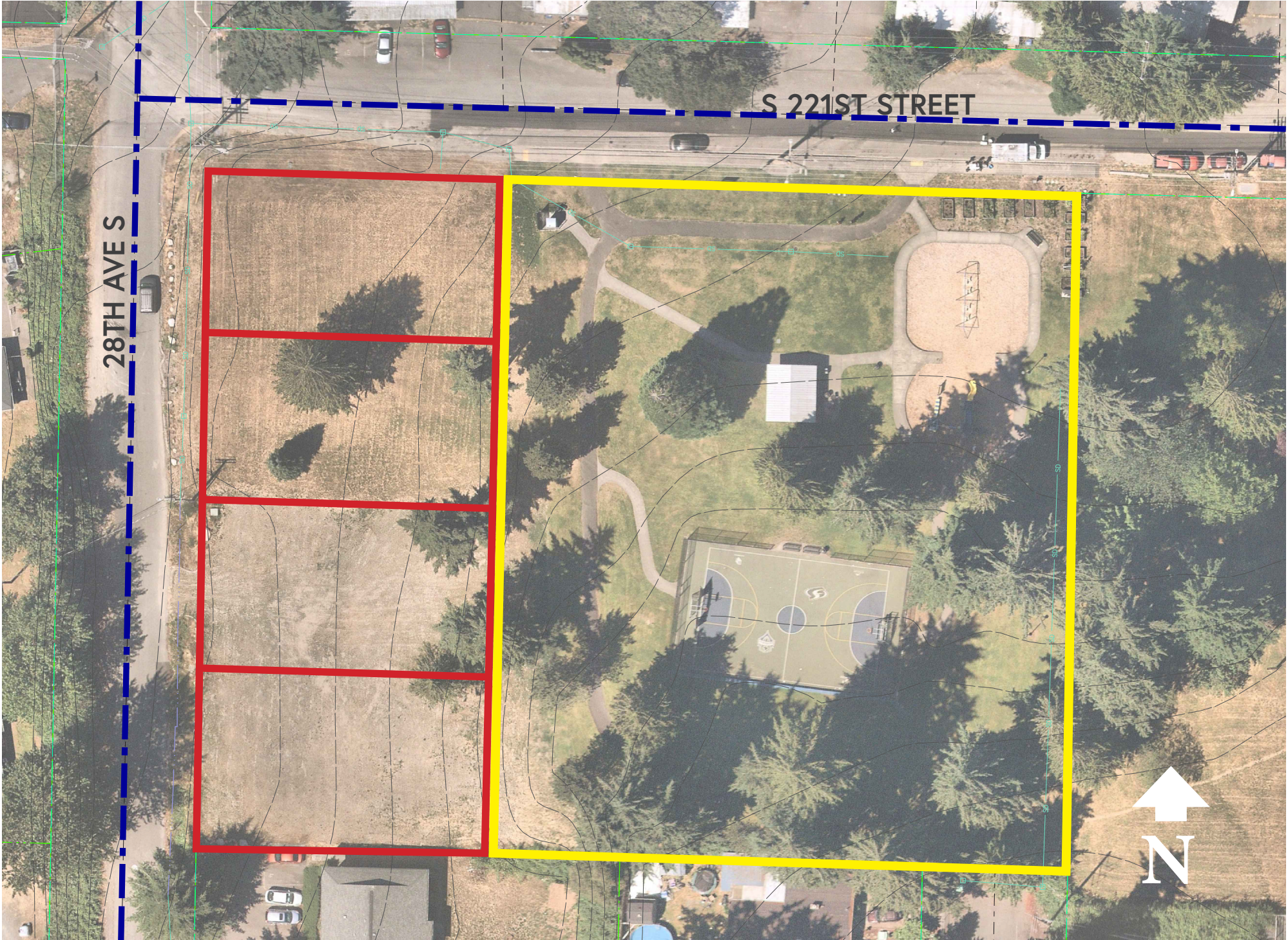
# MIDWAY PARK OPEN SPACE DESIGN PROJECT

City Council Update  
August 8, 2024





# EXISTING SITE MAP





# PROJECT GOALS



- Make Midway Park **safer and increase healthy public use** of the recreational facilities to enrich the lives of residents and build a healthier community.
- Improve existing Midway Park while **preserving and enhancing** natural resources, parkland, and recreational opportunities for **people of all ages and abilities**.
- Anticipate the needs of the changing Pacific Ridge neighborhood and **structure programs and facilities accordingly**.
- Enhance health and wellness of patrons through innovative and **diversified** parks, arts, recreation, leisure, and cultural **opportunities**.
- Create an **inviting spaces** that encourages children and families to come to Midway Park and give them great reasons to stay, learn, and play for a lifetime.





# PUBLIC ENGAGEMENT PROCESS



*A comprehensive approach to public engagement throughout the preliminary design process.*

## City Staff (Community Service Officers) Interviews

### In-Person Outreach Events

- Des Moines EGGstravaganza - March 30th
- Midway Park RAVE Foundation Event - May 2nd
- Des Moines Farmers Market - June 8th

### Online Surveys

- Initial Design Survey - March 28th to April 30th
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### Other Outreach Tactic

- Virtual presence: City of Des Moines web site, Facebook, and Waterland Blog
- Door hangers to 100 neighborhood residents
- Sandwich boards at Midway Park and at Marina Waterfront
- English + Spanish language versions of survey and print materials



Outreach + seed planting activity at EGGstravaganza Event





# IN-PERSON EVENTS



## Midway Park RAVE Foundation Event Des Moines Waterfront Farmers Market

- Visitors used sticker dots
  - Prioritize park improvements
  - Preferred design layout
  - Design theme
- Flyers with online survey



Dot voting at Midway Park Sounders RAVE Foundation event



Dot voting at Des Moines Waterfront Farmers Market

# 539 dot votes!



# ONLINE SURVEYS



- **Two online surveys** were conducted during the preliminary design phase:
  - Initial Design Survey (park usage and improvement priorities)
  - Schematic Design Survey (preferred layout and conceptual theme)
- **Low online participation** compared to in-person outreach events
  - Initial Design Survey = 8 responses
  - Schematic Design Survey = 17 responses

**Des Moines WA** The Waterland City **MIDWAY PARK OPEN SPACE DESIGN PROJECT**

## We appreciate your feedback!

The Midway Park Open Space Design project has begun and the City of Des Moines would like your input on the schematic design layout alternatives and conceptual themes which will be refined for the updated park's final design. This online survey form will take approximately 5 minutes to complete and will be made available for public feedback through **June 26, 2024**. Your responses to the online survey will be anonymous and an email is not required.

- Para servicios de traducción, envíe un correo electrónico al equipo del proyecto a [NNordholm@desmoineswa.gov](mailto:NNordholm@desmoineswa.gov).
- Đối với các dịch vụ dịch thuật, vui lòng gửi email cho nhóm dự án tại [NNordholm@desmoineswa.gov](mailto:NNordholm@desmoineswa.gov).

*Schematic design online survey (also available in Spanish)*





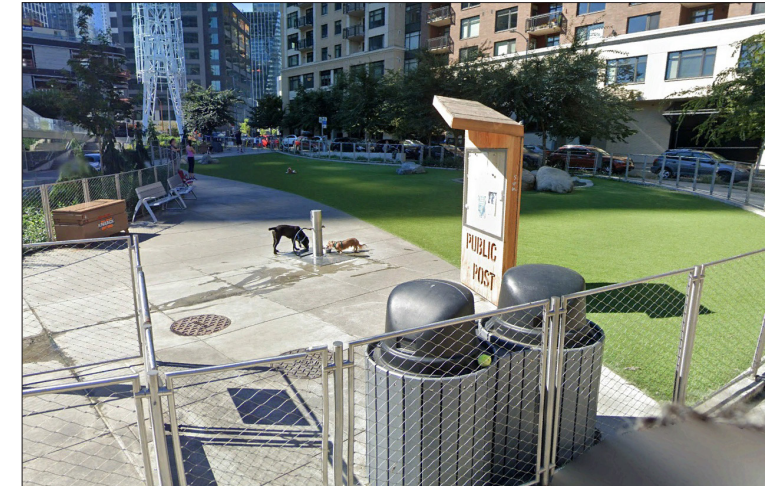
# SCHEMATIC DESIGN | Park Improvements



Prefabricated Restroom



Picnic Shelter



Dog Park



Flexible Open Lawn



Pickle Ball Court



Movie Screen

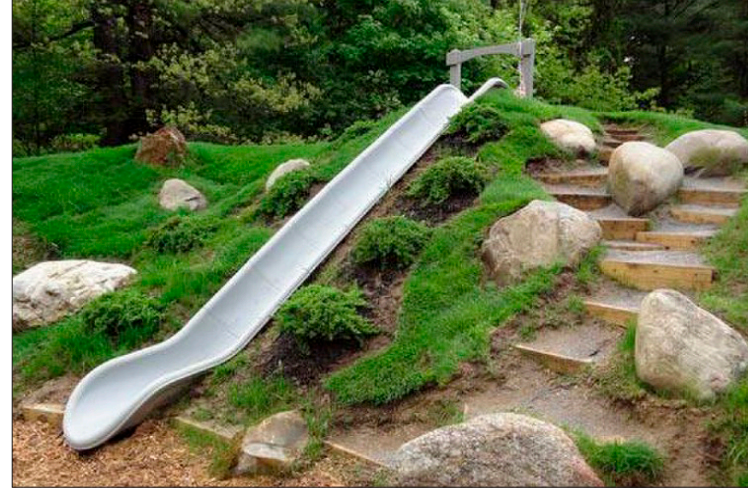




# SCHEMATIC DESIGN | Park Improvements



Play Structure



Hill Scramble & Slide



Accessible Trail (8' width)



Fitness Circuit



Zip Line

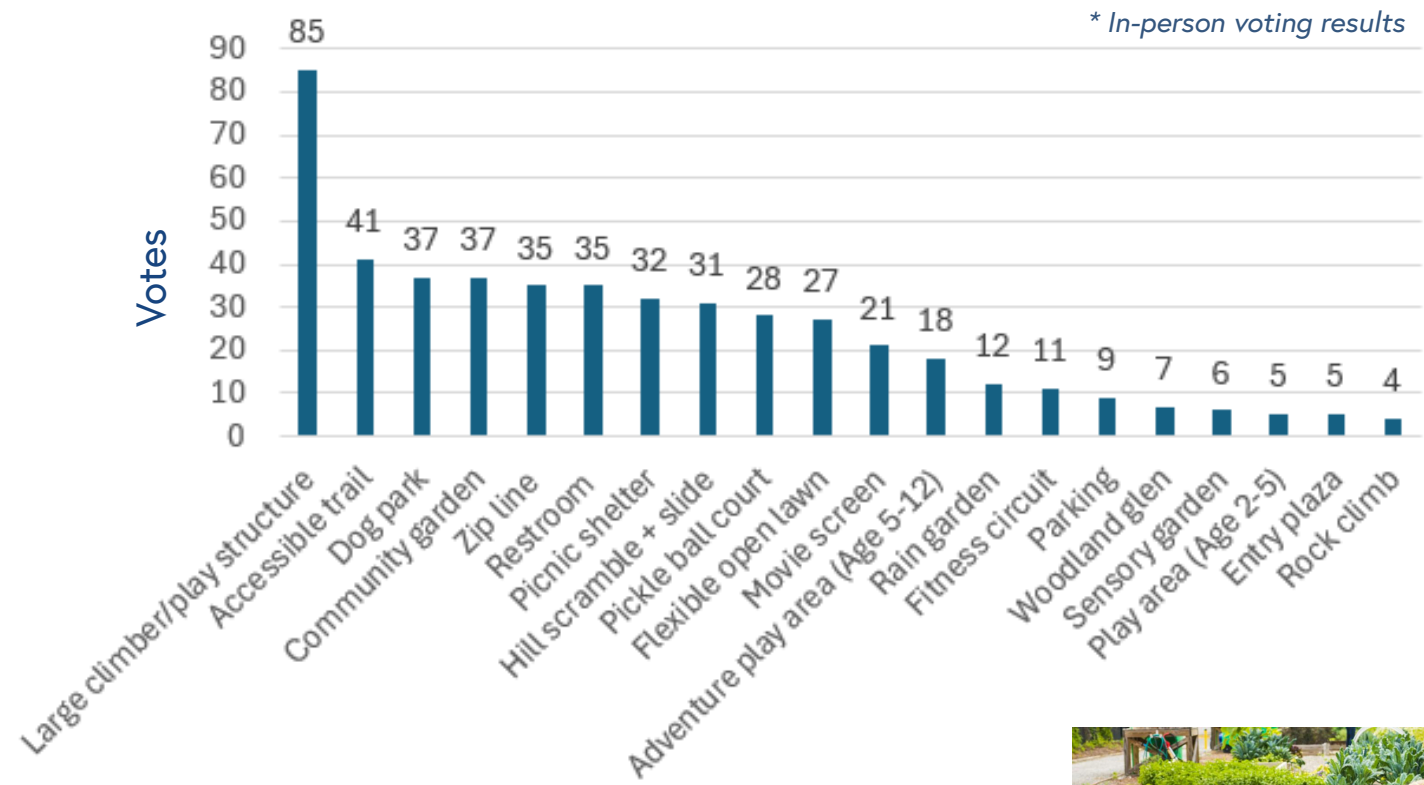


Entry Plaza/Hardscape





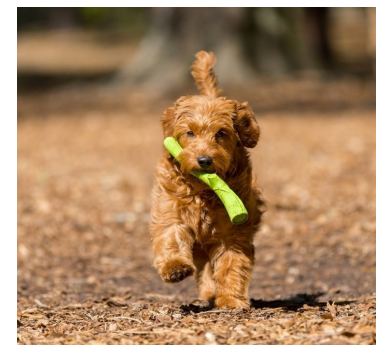
# PARK IMPROVEMENT PRIORITIES



Play Structure (85 votes)



Community Garden (37 votes)



Dog Park (37 votes)



Accessible Trail (41 votes)



Zip Line (35 votes)



Restroom (35 votes)



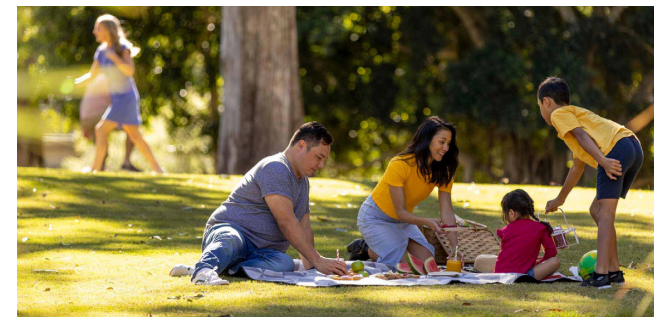


# "THE LOOKOUT"

Pacific Northwest

Nature-inspired

Rustic



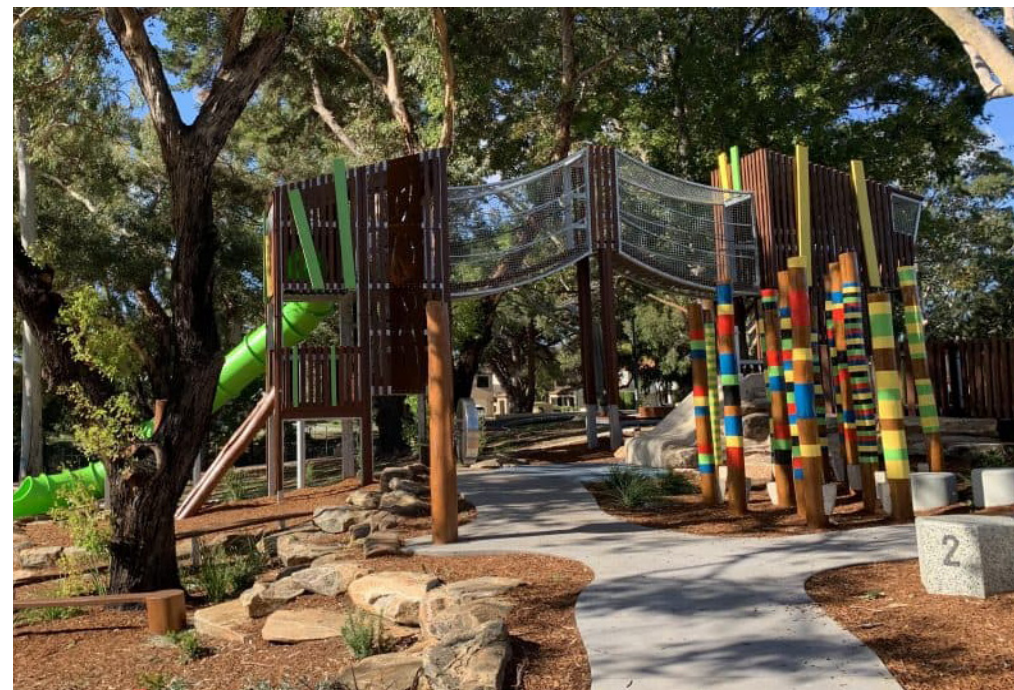


# "MIDWAY MOSAIC"

Playful

**BOLD** + bright

Colorful





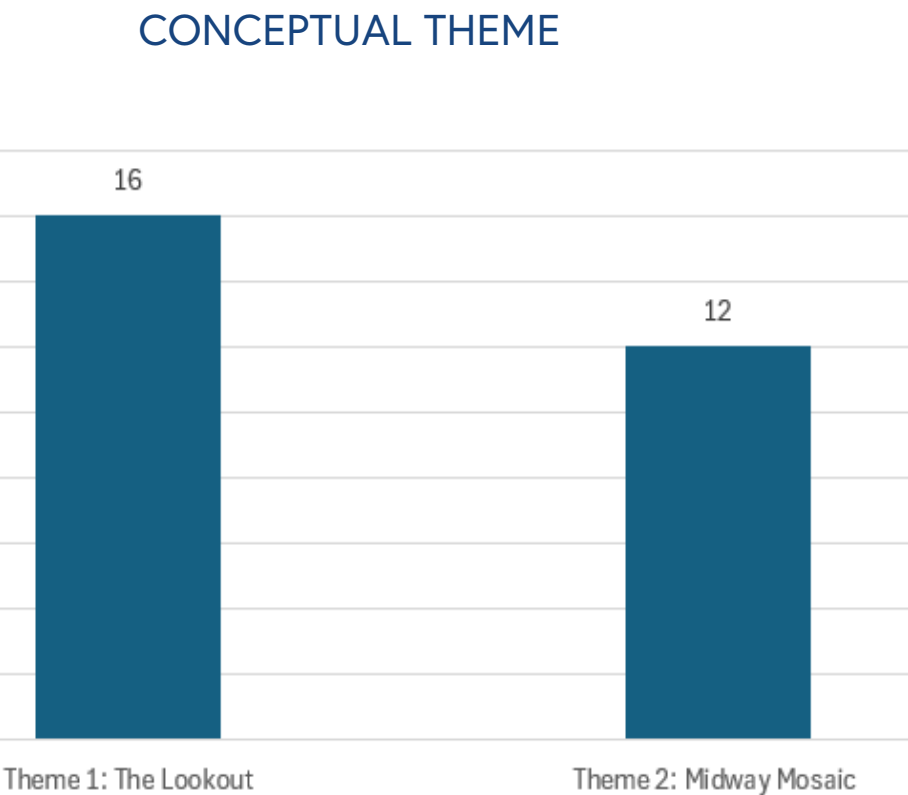
# PREFERRED CONCEPTUAL THEME



## "THE LOOKOUT"

Nature-inspired concept was the preferred conceptual theme.

- Sample comments from online survey:
  - "Freeform, open-ended play and nature inspired theme. My kids love parks like that."
  - "It looks natural, like the kids could use their imagination more, it's more open ended."
  - "Natural and calming."

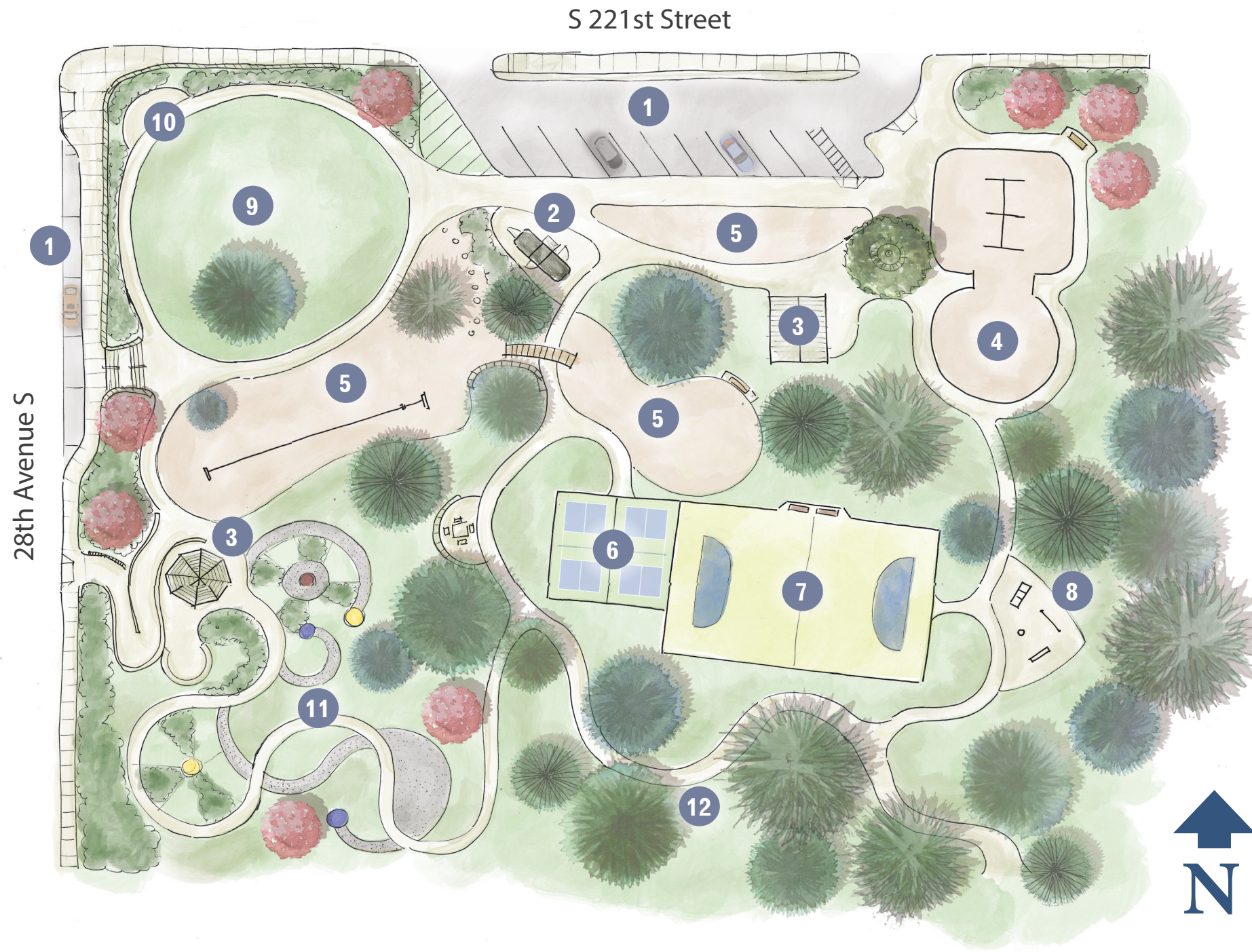


\* In-person + online survey voting results





# SCHEMATIC DESIGN | Layout Alternative A

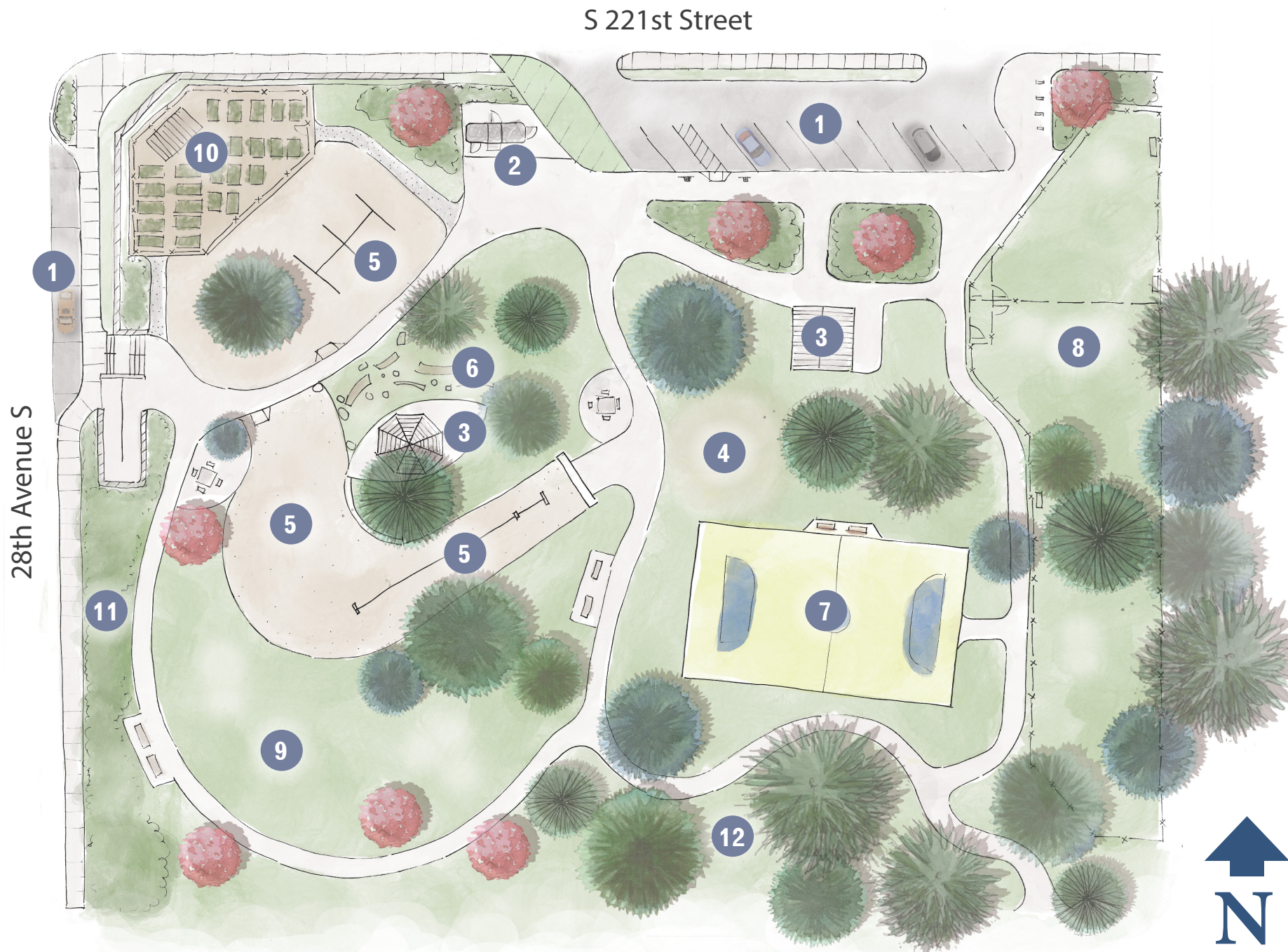


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# SCHEMATIC DESIGN | Layout Alternative B



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# SCHEMATIC DESIGN | Layout Alternative C

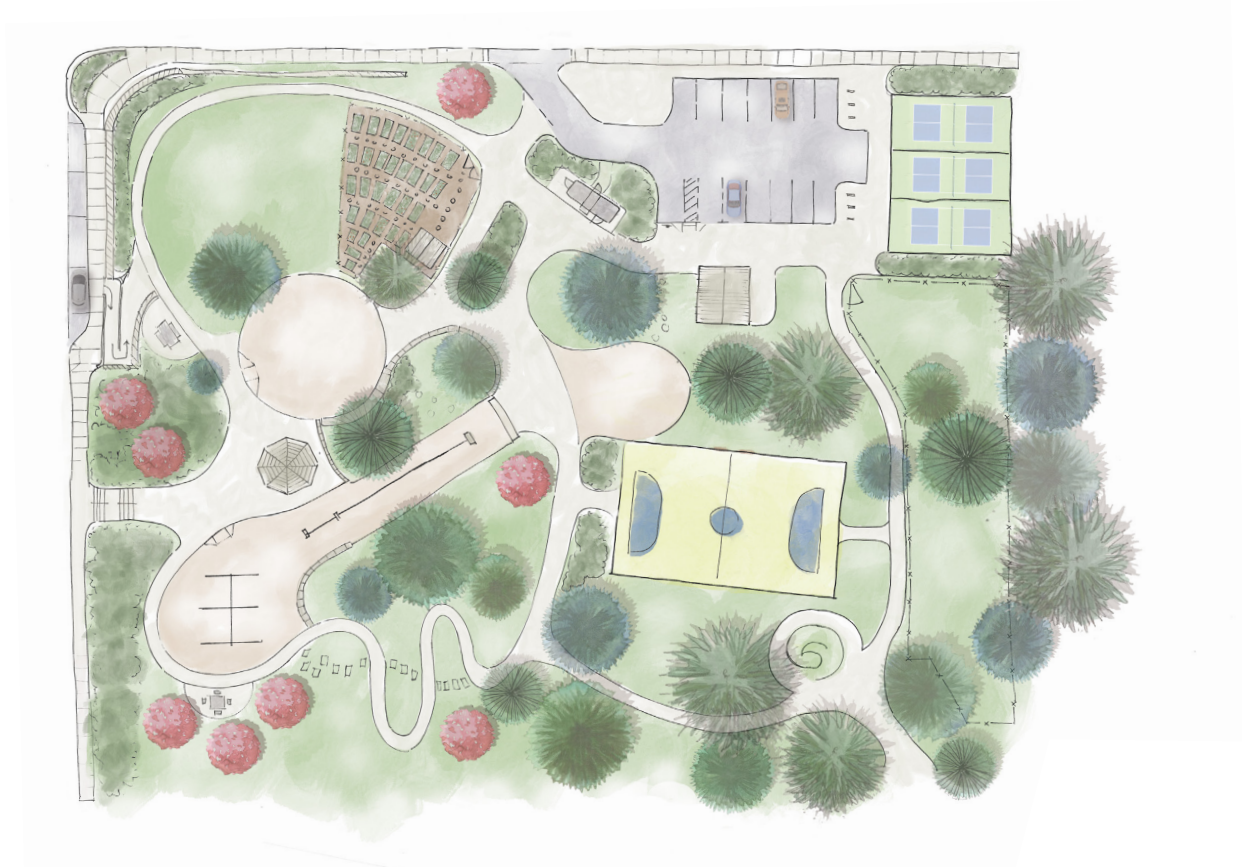


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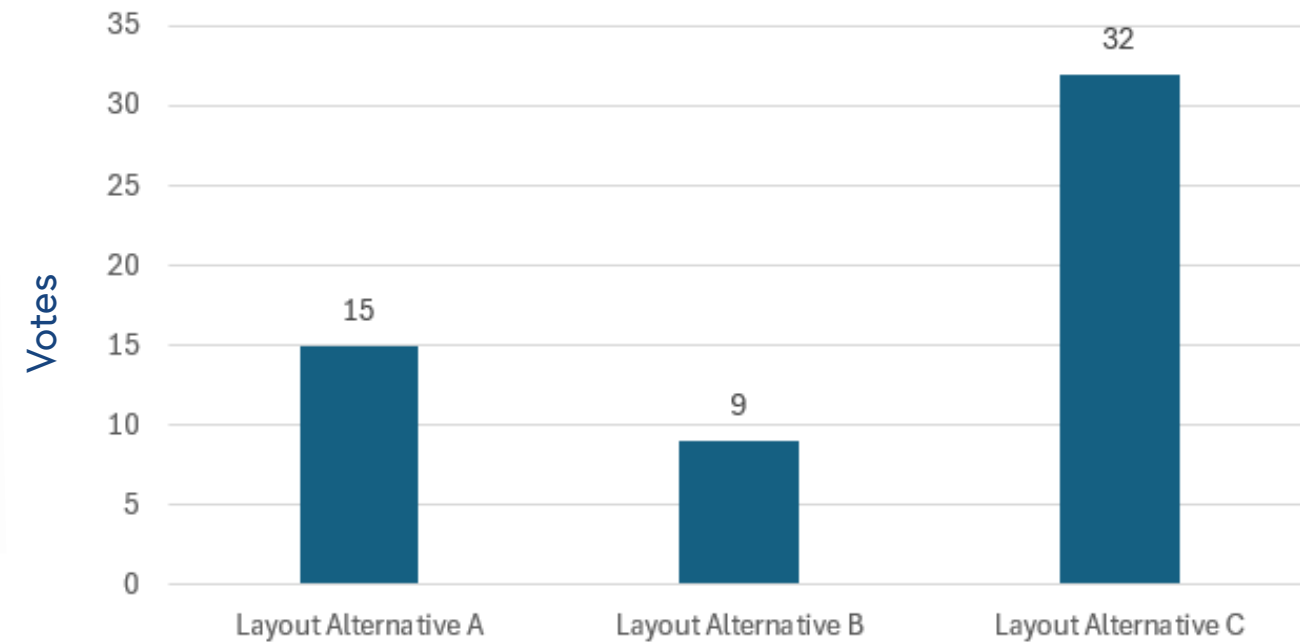




# PREFERRED LAYOUT ALTERNATIVE



LAYOUT ALTERNATIVES



**Alternative C** was the preferred park layout design.

*\* In-person + online survey voting results*

• Sample comments from online survey:

- "It has a dog park, pickle ball, and a rain garden."
- "Like the combination of community garden, pickle ball courts, and larger parking lot."
- "Dog park, pickle ball court, and adventure area. Would love if you could work fitness area into option C."



# NEXT STEPS

## PRELIMINARY DESIGN

- Preferred layout + conceptual theme = preliminary site plan (10% design)
- Draft Reports
  - Geotechnical Analysis & Report
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## FINAL DESIGN

- End of August - begin 60% Design

Questions?





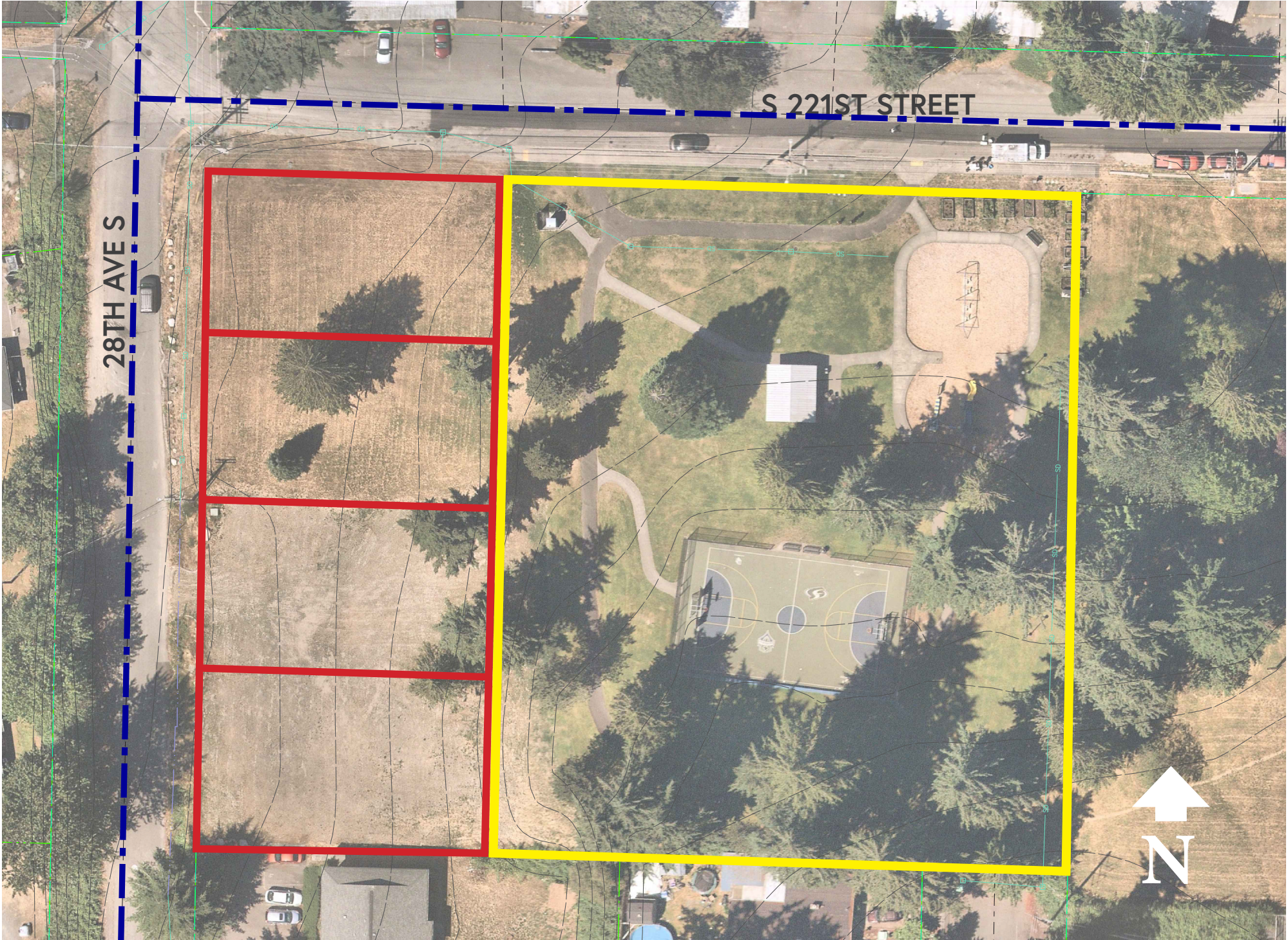
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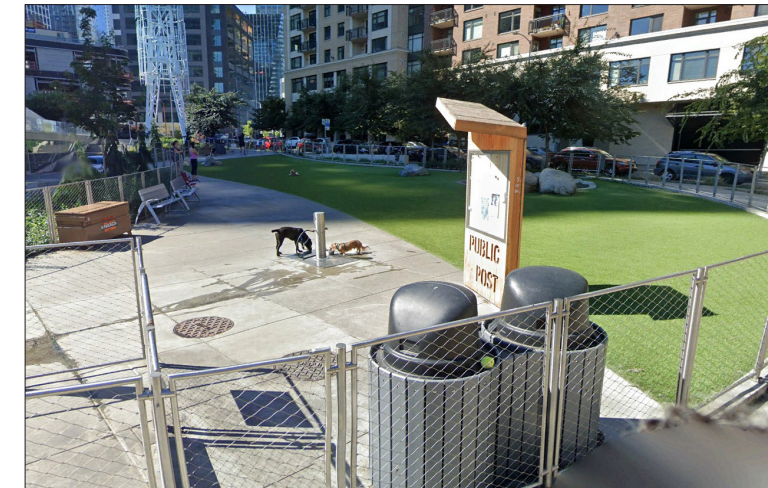
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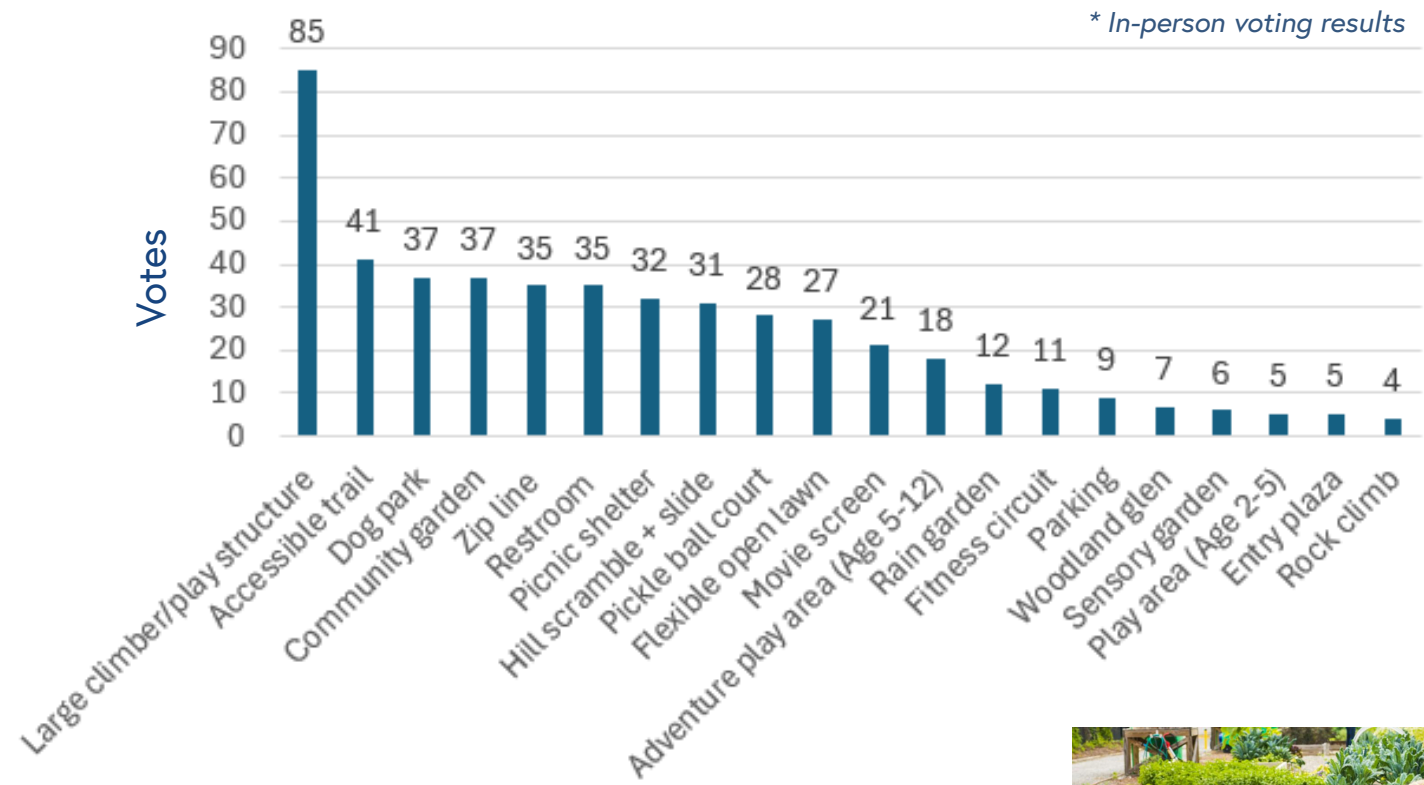


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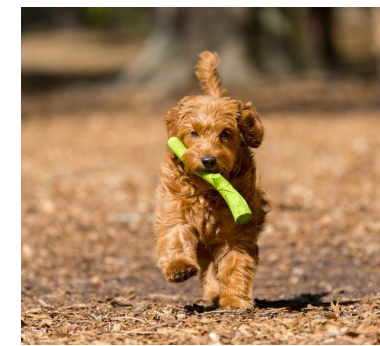
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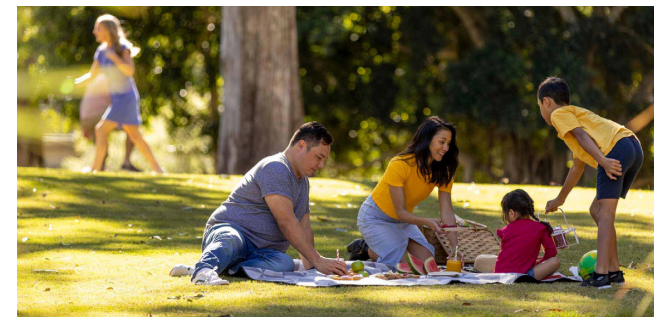


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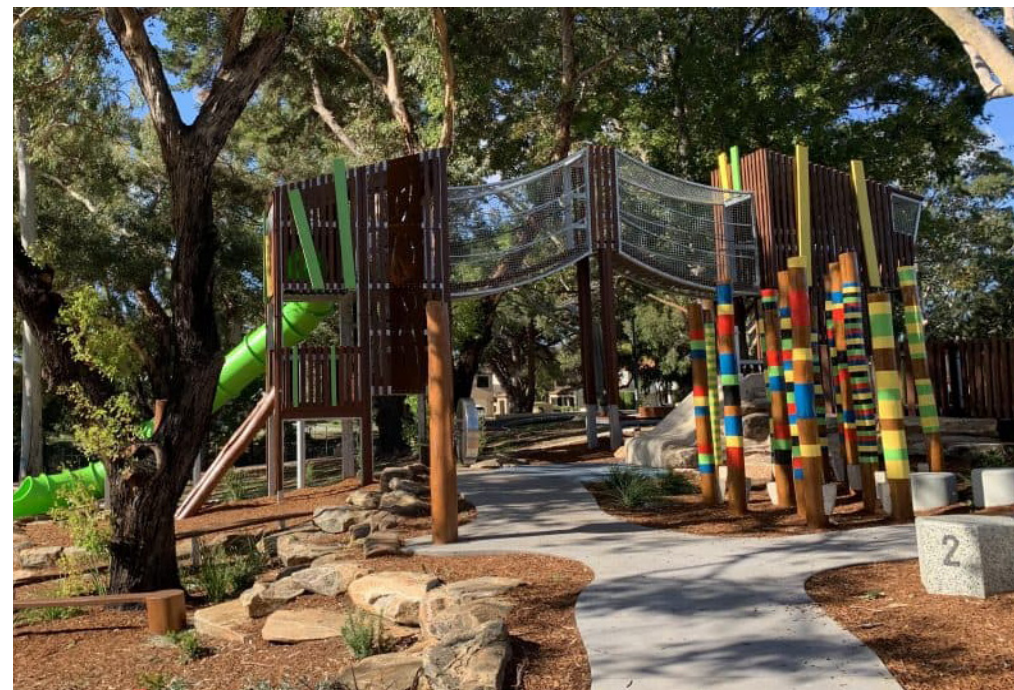


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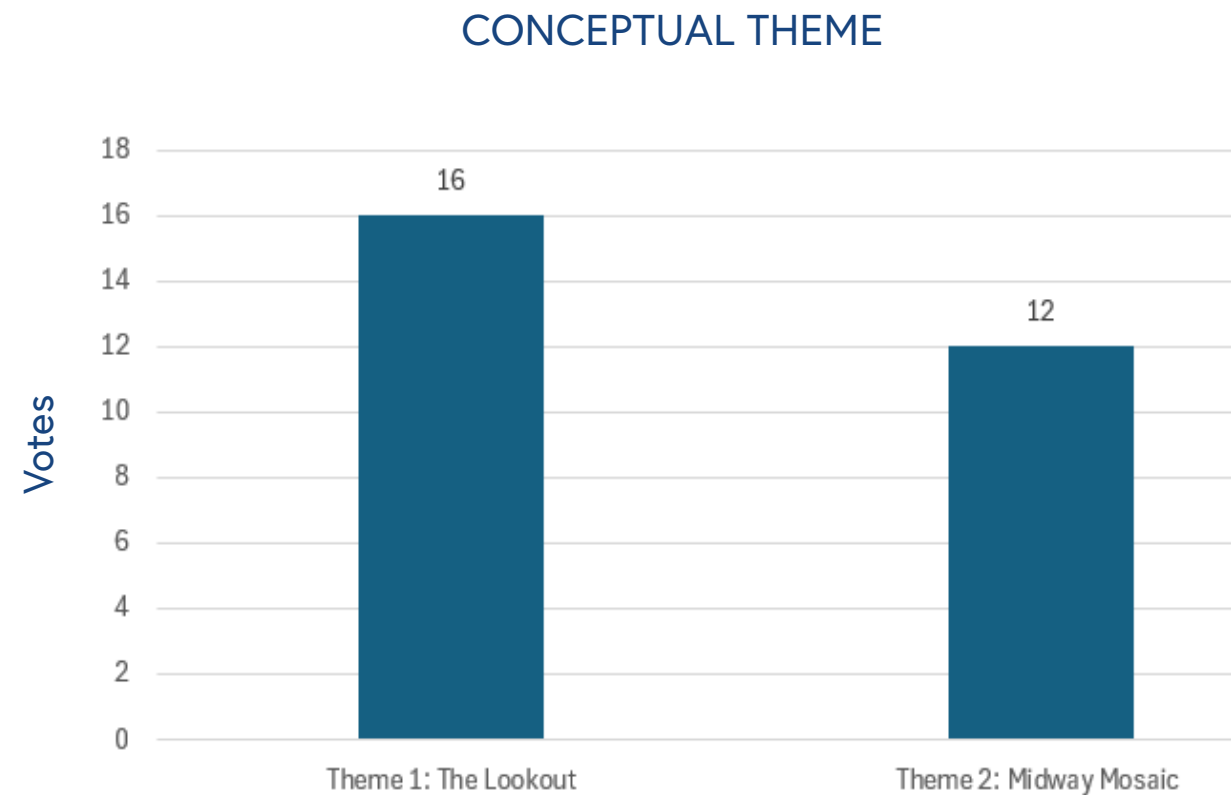
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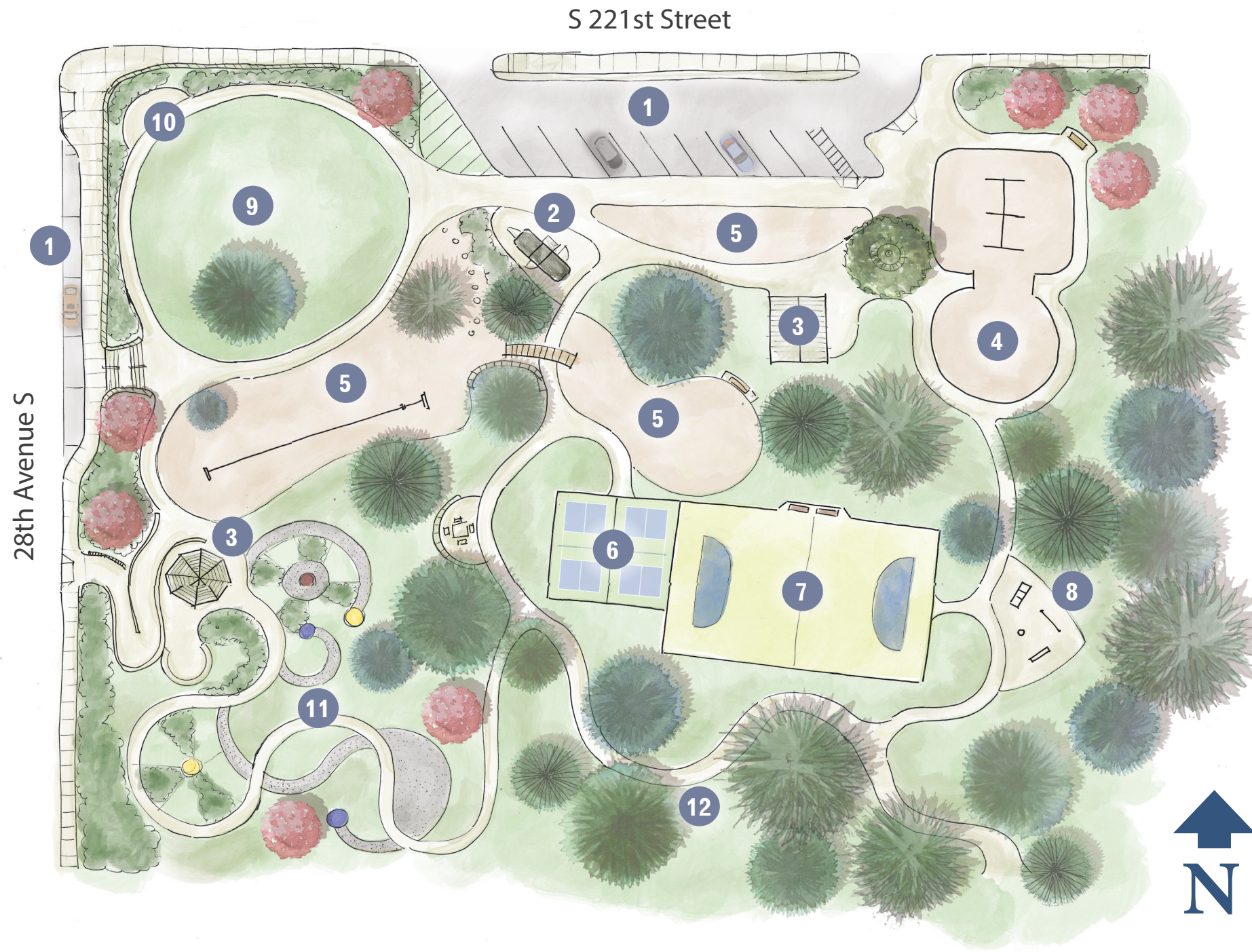


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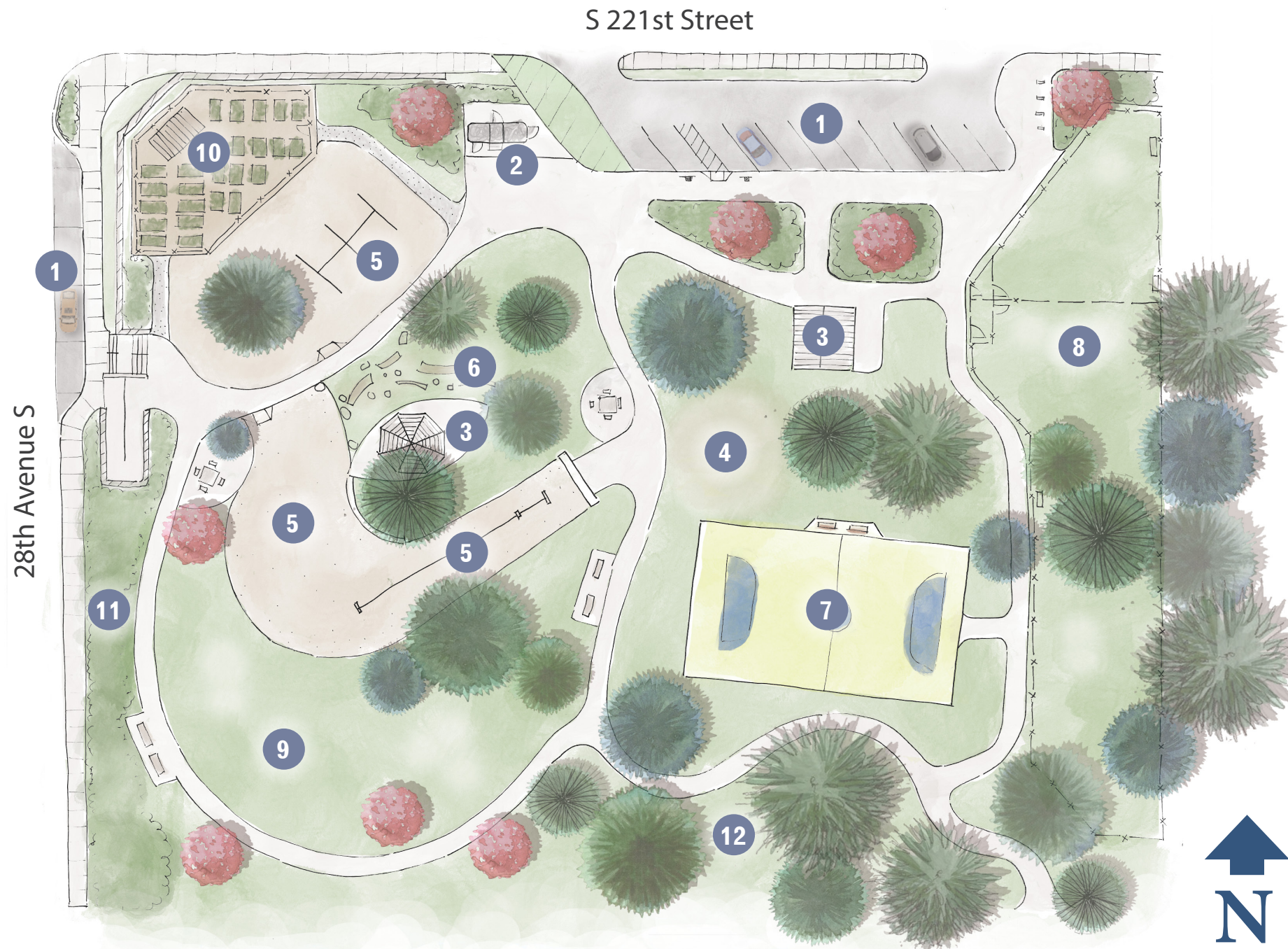


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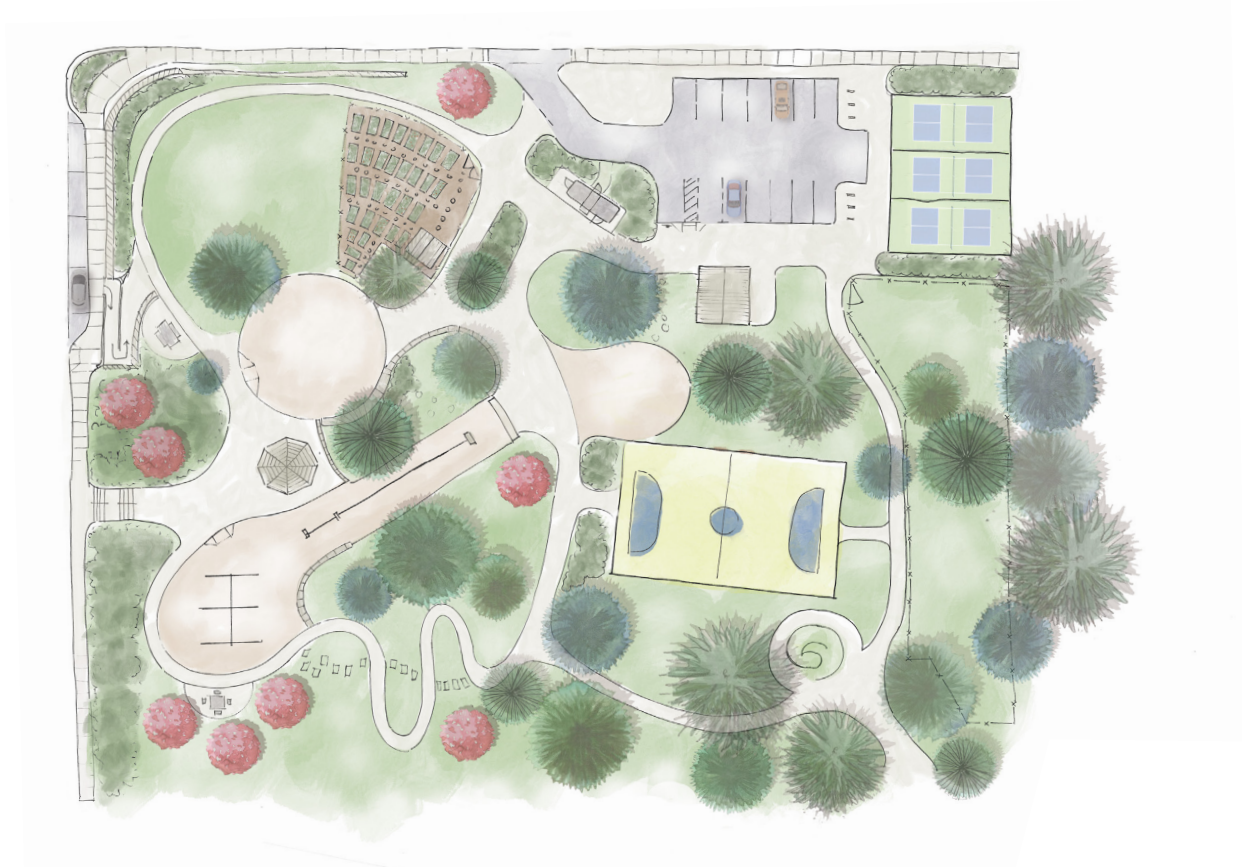


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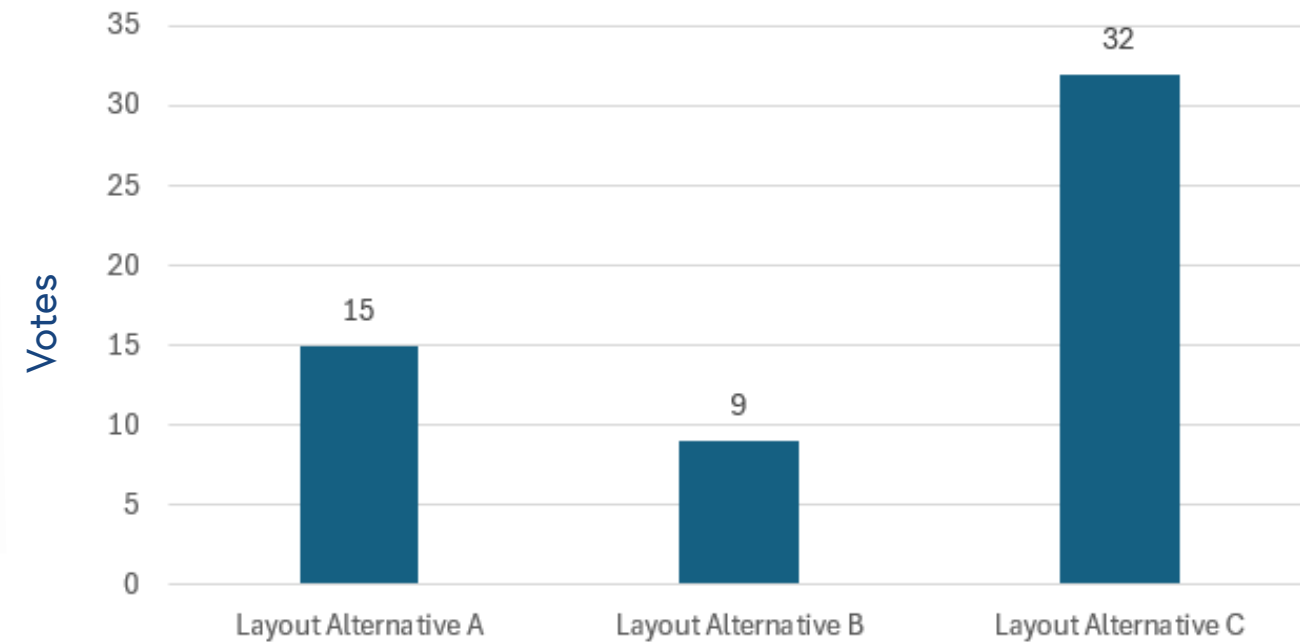




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## FINAL DESIGN

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**Interagency Agreement GCB 3807  
between WSDOT and Des Moines**

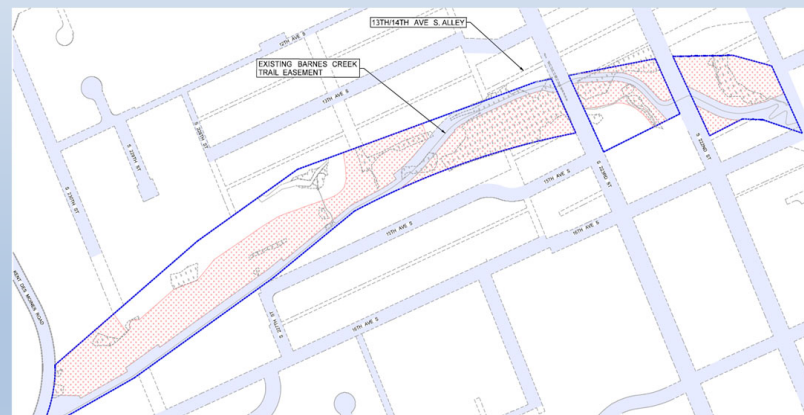
**August 8, 2024**

**Tommy Owen, P.E., PTOE  
City Engineer**



### **Interagency Agreement GCB 3807**

- City has been in discussions with WSDOT over historic SR 509 ROW for 15+ years (Barnes Creek site)
- The City did acquire a permanent easement for Barnes Creek Trail within historic SR 509 ROW
- SR 509 Completion Project Stage 2 proposes to utilize historic ROW as a mitigation site
- Stage 2 project will impact South 194<sup>th</sup> Street within City





### **Interagency Agreement GCB 3807**

- Mitigation will include removing invasive plants, enhancing native plants, preserving forest character, removing hazard trees, and utilizing Crime Prevention Through Environmental Design (CPTED) principles.
- Existing Barnes Creek Trail will be utilized for construction access which will provide for a stabilized path
- WSDOT will maintain access through 10 year landscape maintenance and establishment period
- No cost to the City and site may be considered for future conveyance to the City





# **SR 509 Completion Project**

## **Des Moines City Council update**

Daniel Babuca, Puget Sound Gateway Program Deputy Administrator  
Andrey Chepel, SR 509 Project Construction Manager  
Aug. 8, 2024

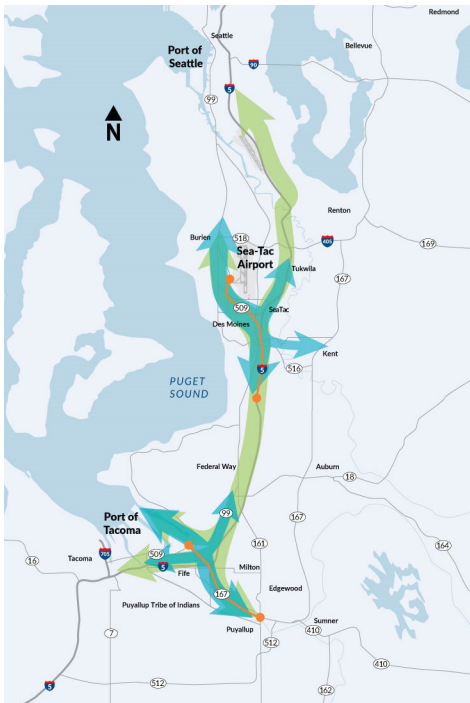


# Agenda

- Program overview
- Project overview
- Community engagement



# Puget Sound Gateway Program



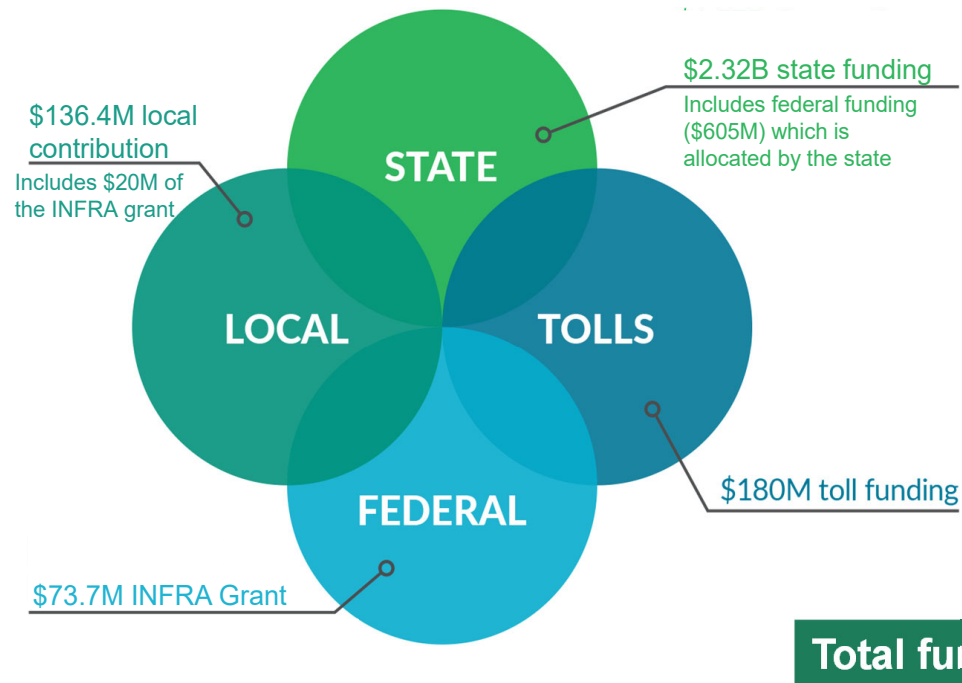
The **Puget Sound Gateway Program** is composed of two projects: the SR 167 Completion Project in Pierce County, and the SR 509 Completion Project in King County.

- Essential connections to the ports of Tacoma and Seattle
- Ensure people and goods move more reliably through the Puget Sound region
- Enhance the state's economic competitiveness by connecting the state's largest ports to key distribution centers

Delivering the projects under one program allows WSDOT to realize efficiencies in planning, environmental review, design, and construction.

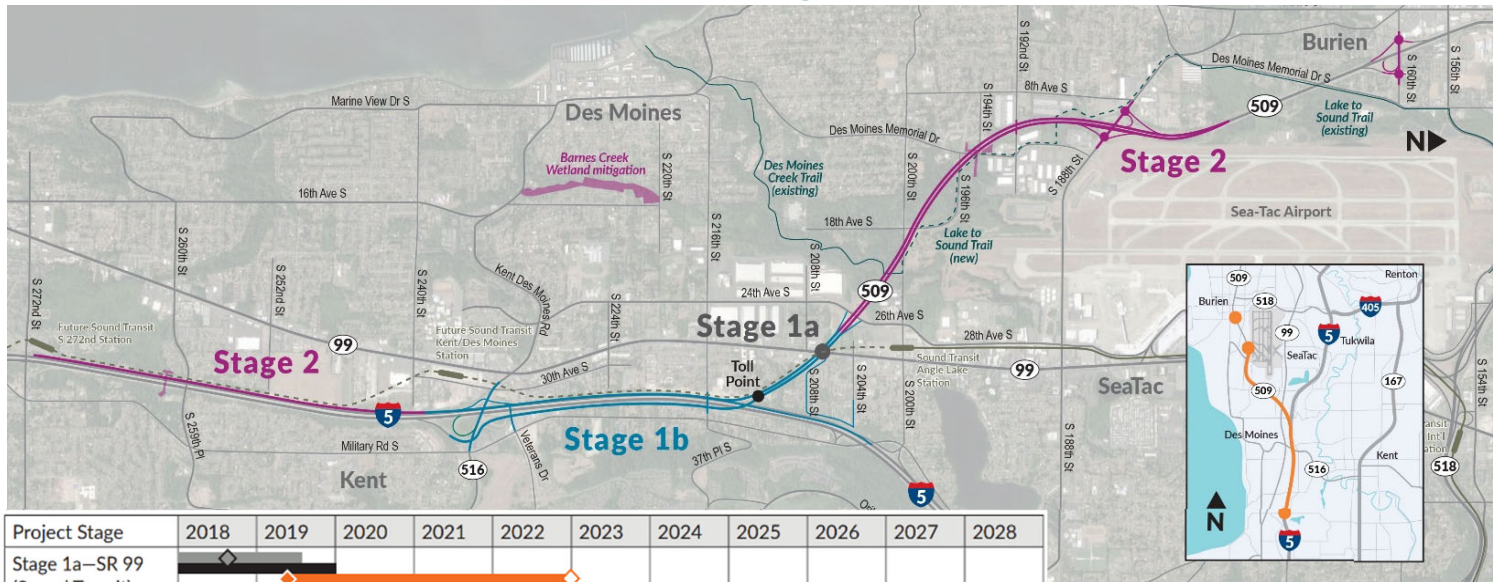


# Puget Sound Gateway Program funding





# SR 509 Completion Project



Project Stage	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Stage 1a—SR 99 (Sound Transit)	PE		ROW		CN						
Stage 1b—I-5 to 24th Ave S	PE		ROW		CN						
Stage 2—24th Ave S to S 188th	PE		ROW		CN						

- PE
- ROW
- CN
- RFP
- Bid Opening
- Open to traffic



# SR 509 Completion Project – Stage 1b

## I-5 to 24th Avenue South – New expressway



SR 509 looking north

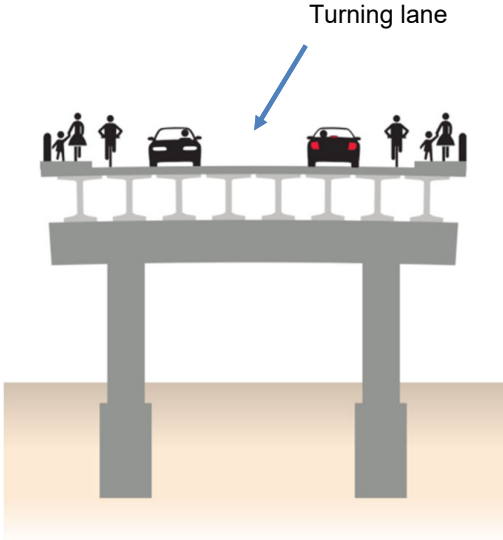


I-5 looking south



# SR 509 Completion Project – Stage 1b

## I-5 to 24th Avenue South – New expressway

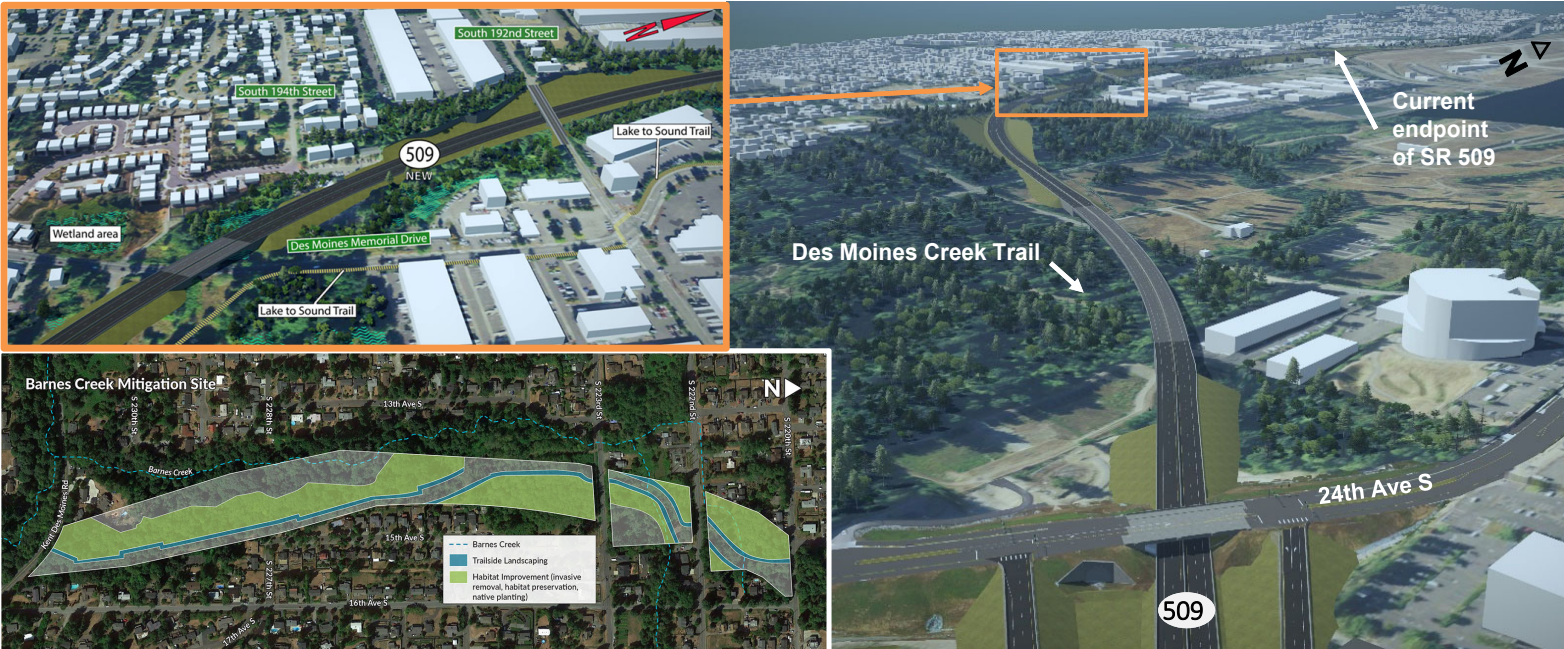


*New South 216th Street bridge*



# SR 509 Completion Project – Stage 2

## 24th Avenue South to South 188th Street





# Community engagement

- SR 509 Stage 2 construction online open House
  - Launches Sept. 4
- Online SR 509 Completion Project interactive map: [bit.ly/SR509map](http://bit.ly/SR509map)
- Attendance at summer fairs and festivals
- Highline School District coordination
- Area-specific construction outreach (Postcards, fliers, door-to-door)
- Briefing municipalities and community groups by request
  - Please reach out if you or your staff would like a more detailed briefing.



WSDOT  
Etapa 2 del Proyecto de Finalización de la SR 509  
**Página web interactiva del proyecto**  
Visite en línea en cualquier momento

Vea el nuevo vídeo del proyecto completo sobrevolando en 3D

*Open house advertisement in culturally-relevant media, Spanish language*



*Tabling at the Des Moines Farmers Market*





**Thank you**

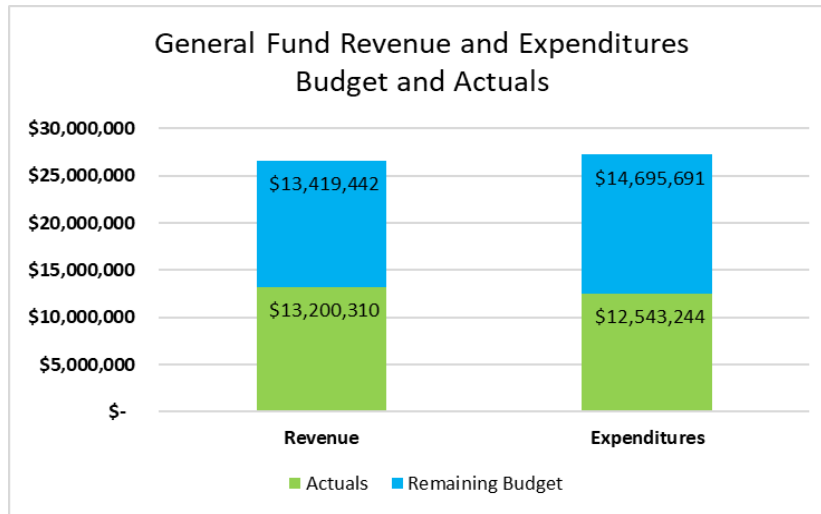


## 2024 2ND QUARTER FINANCIAL REPORT

This report provides an overview of the City's overall financial position for the quarter ending June 30, 2024.

### GENERAL FUND

Through the second quarter of 2024, the General Fund received \$13,200,310 of revenue, which represents 49.6% of budgeted revenue for the year. The general fund also incurred 12,543,244 of expenditures representing 46.0% of the annual 2024 expenditure budget. Net income for the period was \$657,098.





## 2024 2ND QUARTER FINANCIAL REPORT

### Structural and One-Time Revenue/Expenditures

2024 GENERAL FUND					
	ADOPTED BUDGET	YTD Budget	YTD ACTUALS	YTD Budget vs. Actuals	% of Adopted Budget
<b>Operating Revenues</b>					
Taxes	18,623,676	9,311,838	9,246,068	(65,770)	49.6%
Licenses and Permits	315,000	157,500	188,280	30,780	59.8%
Intergovernmental	1,043,304	521,652	531,570	9,918	51.0%
Fees/Charges/Fines	2,177,650	1,088,825	909,398	(179,427)	41.8%
Other	2,131,561	1,065,781	1,253,511	187,730	58.8%
<b>Total Structural Revenues</b>	<b>24,291,191</b>	<b>12,145,596</b>	<b>12,128,827</b>	<b>(16,768)</b>	<b>49.9%</b>
<b>Operating Expenditures</b>					
Policy and Support Services	6,962,913	3,481,456	3,448,470	(32,987)	49.5%
Public Safety Services	14,530,556	7,265,278	6,877,523	(387,755)	47.3%
Community Services	5,068,843	2,534,422	1,904,407	(630,014)	37.6%
Other	277,600	138,800	113,300	(25,500)	40.8%
<b>Total Structural Expenditures</b>	<b>26,839,912</b>	<b>13,419,956</b>	<b>12,343,700</b>	<b>(1,076,256)</b>	<b>46.0%</b>
<b>** Net Structural Activity</b>	<b>(2,548,721)</b>	<b>(1,274,360)</b>	<b>(214,873)</b>	<b>1,059,488</b>	
<b>ONE-TIME ACTIVITIES</b>					
<b>Revenues</b>					
Sound Transit	212,944	106,472	132,600	26,128	62.3%
American Rescue Plan Funding	1,850,617	925,309	838,604	(86,705)	45.3%
One-Time Sales & B&O Tax Revenues	265,000	132,500	100,279	(32,221)	37.8%
<b>Total One-Time Revenues</b>	<b>2,328,561</b>	<b>1,164,281</b>	<b>1,071,482</b>	<b>(92,798)</b>	<b>46.0%</b>
<b>One-time Expenditures</b>					
Sound Transit related expenditures	-	-	-	-	#DIV/0!
ARPA Expenditures - Police and Police Lease	399,024	199,512	199,512	-	50.0%
Transfer Out - One-Time Sales & B&O Tax to Fund 309	-	-	-	-	-
<b>Total One-Time Expenditures</b>	<b>399,024</b>	<b>199,512</b>	<b>199,512</b>	<b>-</b>	<b>50.0%</b>
<b>** Net One-Time Activity</b>	<b>1,929,537</b>	<b>964,769</b>	<b>871,970</b>	<b>(92,798)</b>	
<b>Change in Cash - Increase/(Decrease)</b>	<b>\$ (619,184)</b>	<b>\$ (309,592)</b>	<b>\$ 657,098</b>		

The General Fund had a net loss of \$214,873 from structural operations. However, due to vacancies in Police, Parks Maintenance, and Parks, Recreation, and Senior Services this amount exceeds budgeted expectations.

One-time funding provided the General Fund a net income of \$871,970. This is primarily due to American Rescue Plan Act (ARPA) funds designated to support General Fund operations in 2024 as well as the retention of One-Time Sales and B&O Taxes in the General Fund in 2024.



## 2024 2ND QUARTER FINANCIAL REPORT

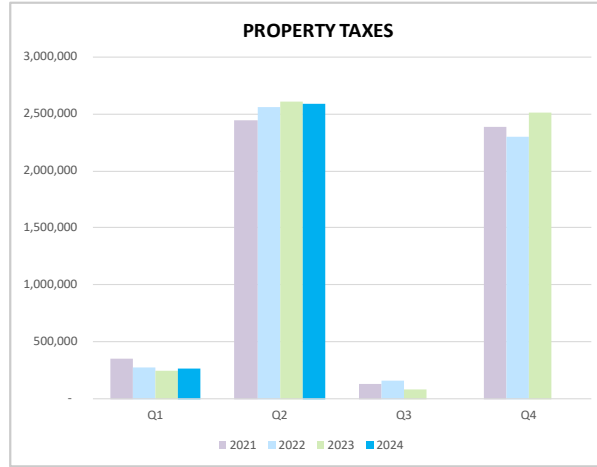
### Revenue

**Property Tax** collected through the second quarter was \$2,848,159, which was a \$12,896 (0.5%) decrease from the same period in the prior year. Property tax levies by the City are based on the assessed value of the City which has steadily increased over the past few years. Property taxes are primarily collected in April and October.

PROPERTY TAXES				
	2021	2022	2023	2024
Jan	15,727	41,595	11,454	27,453
Feb	42,269	8,972	33,302	54,801
Mar	292,081	226,701	204,610	179,549
Apr	1,427,756	1,374,884	1,967,536	1,936,246
May	956,647	1,133,679	618,824	602,982
Jun	56,028	49,571	25,329	47,127
Jul	19,615	6,852	15,166	
Aug	29,051	39,674	21,490	
Sep	84,841	112,850	48,208	
Oct	1,815,634	1,592,366	1,949,538	
Nov	502,576	702,505	525,510	
Dec	63,120	2,194	33,104	
<b>Totals</b>	<b>5,305,346</b>	<b>5,291,843</b>	<b>5,454,070</b>	<b>2,848,159</b>

	2021	2022	2023	2024
Q1	350,077	277,268	249,366	261,803
Q2	2,440,432	2,558,134	2,611,689	2,586,356
Q3	133,507	159,376	84,864	-
Q4	2,381,330	2,297,066	2,508,152	-
<b>Totals</b>	<b>5,305,346</b>	<b>5,291,843</b>	<b>5,454,070</b>	<b>2,848,159</b>



**2024 Budget and YTD % collected:** 5,639,570 50.5%

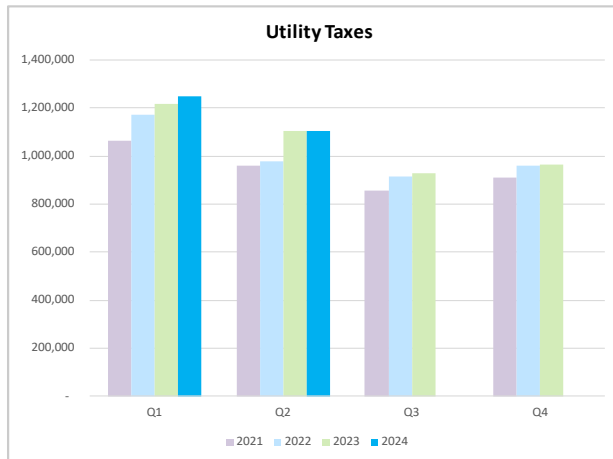
**2024 YTD to 2023 YTD variance:** (12,896) -0.5%

**Utility Taxes** collected through the second quarter of 2024 were \$2,353,729, which is a \$31,274 (1.3%) increase from the same period in the prior year. The City collects utility tax on the usage of electricity, natural gas, solid waste disposal, cable TV, telephone, and surface water. The City continues to see an increase in utility tax collections over past years.

UTILITY TAXES				
	2021	2022	2023	2024
Jan	356,912	415,812	408,403	451,573
Feb	333,424	381,052	392,084	430,377
Mar	372,379	373,550	417,758	367,997
Apr	350,317	342,928	396,489	413,384
May	321,555	372,039	392,783	356,681
Jun	289,060	262,819	314,936	333,717
Jul	284,693	334,278	302,561	
Aug	161,581	292,009	318,246	
Sep	409,898	288,223	306,996	
Oct	277,060	343,898	314,077	
Nov	288,366	330,062	260,985	
Dec	345,268	285,723	390,568	
<b>Totals</b>	<b>3,790,510</b>	<b>4,022,392</b>	<b>4,215,887</b>	<b>2,353,729</b>

	2021	2022	2023	2024
Q1	1,062,714	1,170,414	1,218,246	1,249,947
Q2	960,931	977,786	1,104,208	1,103,781
Q3	856,171	914,509	927,803	-
Q4	910,693	959,683	965,630	-
<b>Totals</b>	<b>3,790,510</b>	<b>4,022,392</b>	<b>4,215,887</b>	<b>2,353,729</b>



**2024 Budget and YTD % collected:** 4,459,106 52.8%

**2024 YTD to 2023 YTD variance:** 31,274 1.3%



## 2024 2ND QUARTER FINANCIAL REPORT

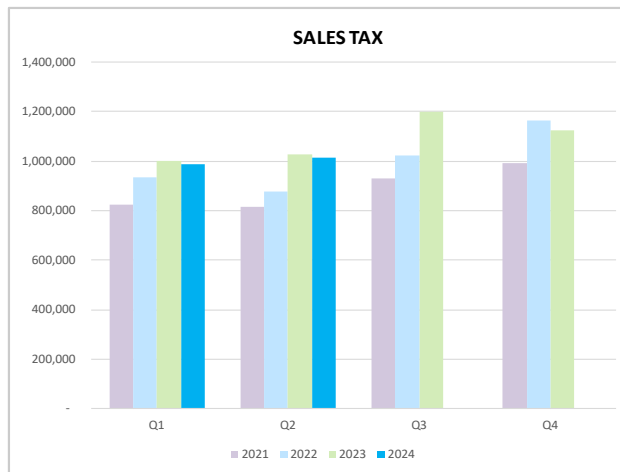
The table below demonstrates actual revenues compared to prior year collections by the different utility categories:

Utility Tax Type	2023 Q2 Total	2024 Q2 Total	Change from 2023	
			Amount	Percent
Electricity	\$ 828,933	\$ 878,200	\$ 49,267	5.9%
Natural Gas	377,878	305,084	(72,794)	-19.3%
Solid Waste	267,914	366,165	98,250	36.7%
Cable TV	423,166	379,915	(43,252)	-10.2%
Telephone	123,951	109,734	(14,216)	-11.5%
SWM*	300,612	314,631	14,019	4.7%
<b>YE Total</b>	<b>\$ 2,322,454</b>	<b>\$ 2,353,729</b>	<b>\$ 31,274</b>	<b>1.3%</b>

\*Surface Water Management (SWM) billings include a 15% utility tax. The 15% tax is collected by the Surface Water Management Fund then paid to the General Fund and the Street Fund. The General Fund receives 87% of the SWM utility tax with the Street Fund receiving 13%.

**Total Sales and Use Tax** collection decreased \$27,016 (1.3%) over the same period in the prior year. Through the second quarter, the City collected \$1,999,785 in sales tax, which represented 46.2% of budgeted expectations. A flattening or slight reduction in sales tax revenue has been a trend in 2024 for many cities. The chart below includes **both regular and one-time** Sales and Use Tax.

SALES TAX				
	2021	2022	2023	2024
Jan	279,627	318,894	324,361	323,934
Feb	300,346	328,370	348,280	363,347
Mar	242,765	288,274	327,198	299,521
Apr	236,636	271,881	325,182	284,088
May	291,534	320,577	354,939	349,579
Jun	289,025	287,264	346,840	379,315
Jul	321,677	350,183	386,221	
Aug	316,427	330,806	390,611	
Sep	292,786	343,648	423,355	
Oct	316,242	400,408	388,330	
Nov	323,006	362,060	382,509	
Dec	355,429	400,567	355,268	
<b>Totals</b>	<b>3,565,499</b>	<b>4,002,932</b>	<b>4,353,096</b>	<b>1,999,785</b>
	2021	2022	2023	2024
Q1	822,738	935,539	999,839	986,802
Q2	817,195	879,722	1,026,961	1,012,982
Q3	930,889	1,024,637	1,200,188	-
Q4	994,677	1,163,035	1,126,108	-
<b>Totals</b>	<b>3,565,499</b>	<b>4,002,932</b>	<b>4,353,096</b>	<b>1,999,785</b>



**2024 Budget and YTD % collected**    4,325,000    46.2%

**2024 YTD to 2023 YTD variance:**    (27,016)    -1.3%

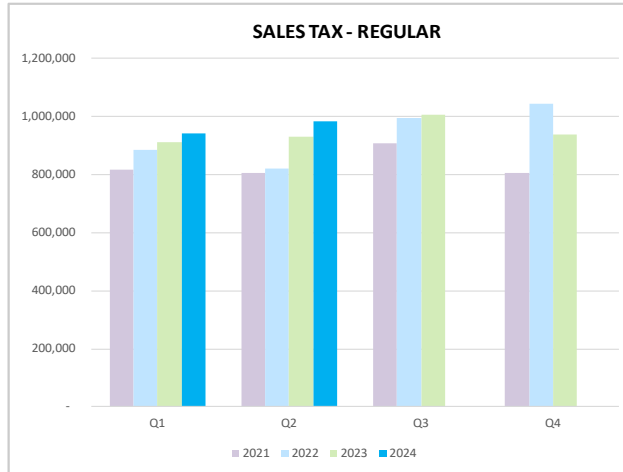
Please see Attachment #1 for a breakdown of sales tax by revenue category.



## 2024 2ND QUARTER FINANCIAL REPORT

**Sales and Use Tax (Regular)** collection increased \$81,330 (4.4%) over the same period in the prior year. Through the second quarter, the City collected \$1,924,218 in sales tax, which represented 4.4% of budgeted expectations. "Regular" Sales and Use Tax excludes the sales and use tax generated by construction projects that are valued at \$15 million or more.

SALES TAX - REGULAR				
	2021	2022	2023	2024
Jan	279,627	307,248	324,361	306,411
Feb	300,346	318,149	348,280	342,510
Mar	238,440	261,291	239,565	291,160
Apr	234,236	250,089	325,182	281,002
May	287,523	309,451	354,939	343,551
Jun	285,449	261,903	250,560	359,586
Jul	308,345	334,498	386,221	
Aug	312,079	314,775	390,611	
Sep	288,774	343,648	230,071	
Oct	312,723	400,408	388,330	
Nov	322,999	362,060	382,509	
Dec	170,212	279,570	168,304	
<b>Totals</b>	<b>3,340,753</b>	<b>3,743,090</b>	<b>3,788,935</b>	<b>1,924,218</b>
	2021	2022	2023	2024
Q1	818,413	886,688	912,207	940,080
Q2	807,207	821,443	930,681	984,138
Q3	909,198	992,921	1,006,904	-
Q4	805,934	1,042,039	939,143	-
<b>Totals</b>	<b>3,340,753</b>	<b>3,743,090</b>	<b>3,788,935</b>	<b>1,924,218</b>

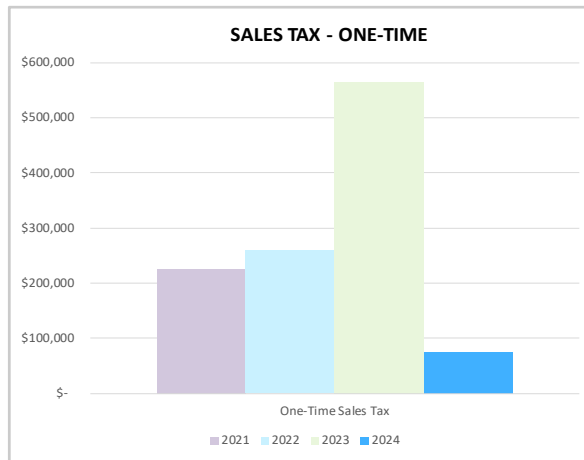


**2024 Budget and YTD % collected:** 4,150,000 46.4%

**2024 YTD to 2023 YTD variance:** 81,330 4.4%

The City receives **One-Time Sales and Use Tax** from construction projects in the City whose permits are valued at \$15 million or more. Therefore, this revenue is dependent on whether or not these types of projects are occurring. Through the second quarter of 2024, the City received \$75,567 of One-Time Sales Tax, which is \$108,346 (58.9%) less than through the same period of the prior year.

SALES TAX - ONE-TIME				
	2021	2022	2023	2024
Jan	-	11,647	-	17,523
Feb	-	10,221	-	20,838
Mar	4,325	26,983	87,633	8,361
Apr	2,400	21,792	-	3,086
May	4,012	11,126	-	6,029
Jun	3,576	25,361	96,280	19,730
Jul	13,332	15,685	-	
Aug	4,348	16,031	-	
Sep	4,012	-	193,284	
Oct	3,519	-	-	
Nov	7	-	-	
Dec	185,217	120,996	186,964	
<b>Totals</b>	<b>224,746</b>	<b>259,842</b>	<b>564,161</b>	<b>75,567</b>
	2021	2022	2023	2024
Q1	4,325	48,851	87,633	46,722
Q2	9,988	58,279	96,280	28,845
Q3	21,691	31,716	193,284	-
Q4	188,742	120,996	186,964	-
<b>Totals</b>	<b>224,746</b>	<b>259,842</b>	<b>564,161</b>	<b>75,567</b>



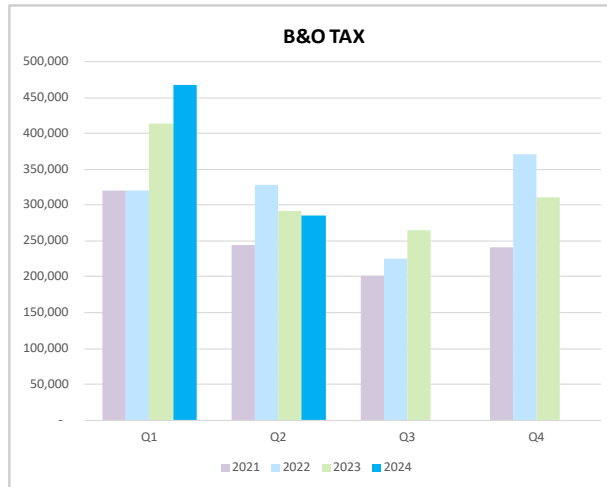
**2024 Budget and YTD % collected:** 175,000 43.2%

**2024 YTD to 2023 YTD variance:** (108,346) -58.9%

## 2024 2ND QUARTER FINANCIAL REPORT

The City received \$752,860 in **Business and Occupation Tax** through the second quarter of 2024. This amount was a \$47,127 (6.7%) increase over the prior year. This amount includes both regular and one-time Business and Occupation Tax.

B&O TAX				
	2021	2022	2023	2024
Jan	66,546	109,447	242,752	239,860
Feb	245,260	191,636	152,492	215,092
Mar	8,303	19,159	18,194	11,983
Apr	132,192	198,624	170,070	185,292
May	104,127	125,808	103,965	75,163
Jun	8,121	3,117	18,260	25,469
Jul	74,594	92,251	178,738	
Aug	125,512	83,386	79,454	
Sep	878	49,720	7,183	
Oct	67,391	163,660	184,516	
Nov	155,885	109,623	70,141	
Dec	18,389	96,950	56,616	
<b>Totals</b>	<b>1,007,196</b>	<b>1,243,381</b>	<b>1,282,381</b>	<b>752,860</b>
	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
Q1	320,109	320,243	413,438	466,936
Q2	244,440	327,548	292,295	285,925
Q3	200,983	225,357	265,375	-
Q4	241,665	370,233	311,273	-
<b>Totals</b>	<b>1,007,196</b>	<b>1,243,381</b>	<b>1,282,381</b>	<b>752,860</b>

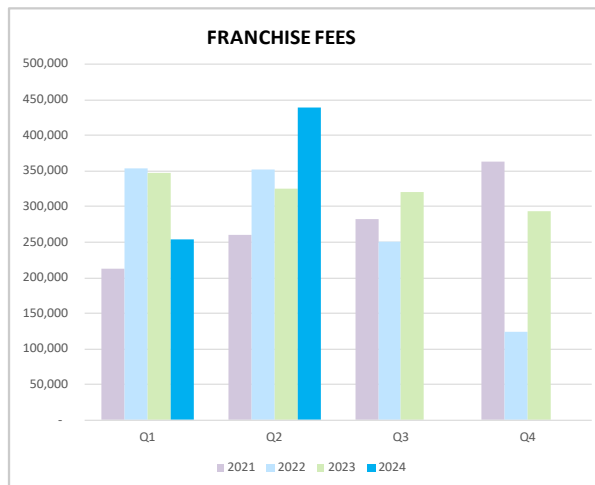


**2024 Budget and YTD % collected:** 1,440,000 52.3%

**2024 YTD to 2023 YTD variance:** 47,127 6.7%

**Franchise Fees** help the City recoup the cost of allowing a utility to use its public space. Through the second quarter of 2024, the City collected \$693,344 in franchise fees, which was \$20,918 (3.1%) increase than the same period in the prior year.

FRANCHISE FEES				
	2021	2022	2023	2024
Jan	119,037	245,777	173,449	88,987
Feb	86,631	70,914	123,221	165,479
Mar	7,587	37,062	50,955	-
Apr	115,318	256,013	181,577	270,581
May	55,721	96,150	-	101,142
Jun	89,430	-	143,224	67,154
Jul	168,994	159,775	178,140	
Aug	72,647	59,357	84,701	
Sep	41,418	32,238	57,748	
Oct	177,795	179,959	192,773	
Nov	57,945	75,358	100,000	
Dec	126,740	(131,661)	-	
<b>Totals</b>	<b>1,119,264</b>	<b>1,080,943</b>	<b>1,285,788</b>	<b>693,344</b>
	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
Q1	213,255	353,753	347,625	254,466
Q2	260,469	352,163	324,801	438,878
Q3	283,060	251,371	320,589	-
Q4	362,480	123,656	292,773	-
<b>Totals</b>	<b>1,119,264</b>	<b>1,080,943</b>	<b>1,285,788</b>	<b>693,344</b>



**2024 Budget and YTD % collected:** 1,450,000 47.8%

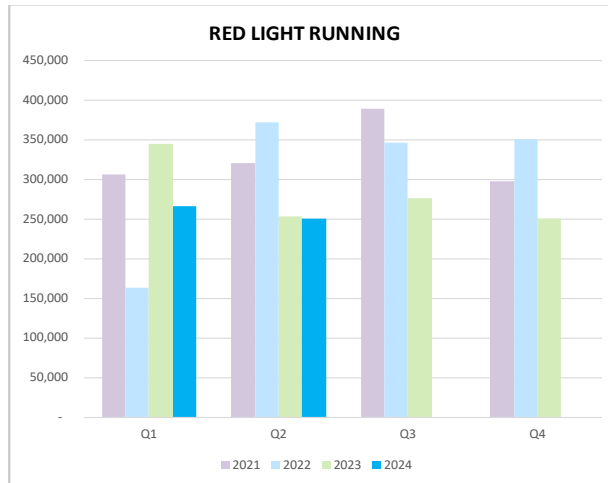
**2024 YTD to 2023 YTD variance:** 20,918 3.1%



## 2024 2ND QUARTER FINANCIAL REPORT

**Red Light Running Infractions** is revenue received from fines generated by the red light camera ticketing system installed at select intersections in the City. Through the second quarter of 2024, the City collected \$516,129 in red light running fee revenue, which was \$82,702 (13.8%) less than the same period in the prior year.

RED LIGHT RUNNING				
	2021	2022	2023	2024
Jan	111,284	85,665	150,079	98,243
Feb	85,275	77,910	99,253	79,761
Mar	109,113	-	95,658	87,930
Apr	101,518	173,061	73,351	86,674
May	97,293	96,361	84,756	75,221
Jun	121,298	102,210	95,734	88,300
Jul	81,076	96,754	90,018	
Aug	154,085	142,340	103,026	
Sep	154,312	107,359	82,801	
Oct	121,645	101,010	90,115	
Nov	99,958	97,034	74,921	
Dec	76,358	152,214	85,015	
<b>Totals</b>	<b>1,313,215</b>	<b>1,231,918</b>	<b>1,124,727</b>	<b>516,129</b>



	2021	2022	2023	2024
Q1	305,673	163,575	344,990	265,934
Q2	320,109	371,632	253,841	250,195
Q3	389,473	346,453	275,845	-
Q4	297,961	350,259	250,051	-
<b>Totals</b>	<b>1,313,215</b>	<b>1,231,918</b>	<b>1,124,727</b>	<b>516,129</b>

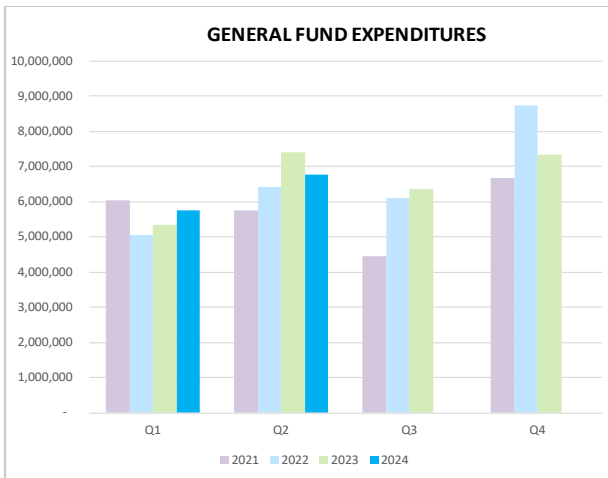
**2024 Budget and YTD % collected: 1,200,000 43.0%**

**2024 YTD to 2023 YTD variance: (82,702) -13.8%**

### Expenditures

General Fund expenditures were \$12,543,244, which was \$208,212 (1.63%) more than the same period in the prior year.

GENERAL FUND EXPENDITURES				
	2021	2022	2023	2024
Jan	2,144,873	1,793,863	1,056,241	1,386,166
Feb	1,521,148	1,568,282	1,916,153	2,259,451
Mar	2,389,548	1,686,766	2,363,620	2,129,517
Apr	1,617,624	2,553,651	2,659,612	2,183,092
May	1,921,701	1,913,915	1,539,854	2,490,431
Jun	2,225,871	1,955,199	3,215,978	2,094,587
Jul	559,043	1,771,471	2,077,948	
Aug	1,699,309	1,893,030	2,018,241	
Sep	2,186,707	2,455,471	2,277,215	
Oct	1,865,683	1,378,264	2,156,507	
Nov	1,560,582	2,179,340	1,957,621	
Dec	3,246,002	5,172,142	3,245,339	
<b>Totals</b>	<b>22,938,090</b>	<b>26,321,394</b>	<b>26,484,327</b>	<b>12,543,244</b>



	2021	2022	2023	2024
Q1	6,055,568	5,048,911	5,336,014	5,775,134
Q2	5,765,197	6,422,765	7,415,443	6,768,110
Q3	4,445,058	6,119,972	6,373,404	-
Q4	6,672,266	8,729,745	7,359,467	-
<b>Totals</b>	<b>22,938,090</b>	<b>26,321,394</b>	<b>26,484,327</b>	<b>12,543,244</b>

**2024 Budget and YTD % collected: 27,238,936 46.0%**

**2024 YTD to 2023 YTD variance: (208,212) -1.63%**

## 2024 2ND QUARTER FINANCIAL REPORT

General Fund Summary of Uses Year to Date through June	2023	2024	2024		2024 vs. 2023		2024 vs. Budget	
	YTD Actual	Annual Budget	YTD Budget	YTD Actual	\$	%	\$	%
	Personnel	\$ 7,834,991	\$ 18,527,028	\$ 8,491,555	\$ 8,056,977	\$ 221,986	2.8%	\$ (434,578)
Supplies	393,358	672,264	336,132	390,624	(2,734)	-0.7%	54,492	16.2%
Services	3,125,357	6,184,666	3,092,333	3,182,121	56,764	1.8%	89,788	2.9%
Internal Services	1,022,541	1,577,378	788,689	746,126	(276,415)	-27.0%	(42,563)	-5.4%
Capital	148,810	-	-	54,883	(93,927)	-63.1%	54,883	0.0%
Transfers Out	226,400.00	277,600	138,800	113,300	(113,100)	0.0%	(25,500)	-18.4%
<b>Total Expenditures</b>	<b>\$ 12,751,457</b>	<b>\$ 27,238,936</b>	<b>\$ 12,847,508</b>	<b>\$ 12,544,030</b>	<b>\$ (207,426)</b>	<b>-1.6%</b>	<b>\$ (303,478)</b>	<b>-2.4%</b>

Personnel: Personnel costs represent expenditure of funds for salary and benefits expenses. Through the second quarter, personnel costs were \$221,986 (2.8%) higher than at the same point in the prior period.

Internal Services: Internal services represents funds paid by General Fund departments to Internal Service Funds such as Computer Replacement (Fund 511), Facility Repair and Replacement (Fund 506), Equipment Rental Maintenance (Fund 500), Equipment Rental Replacement (Fund 501), and Self-Insurance (Fund 520). In 2024, insurance costs are being spread out over twelve months; whereas, in 2023, they were all paid in one transaction in June of 2023. Therefore, prior year costs are higher when comparing the second quarter of 2024 to the same period of the prior year.

Transfers Out: The transfer out of the General Fund is for the 2018 LTGO bonds debt service payment which is made out of the Debt Service Fund.



## 2024 2ND QUARTER FINANCIAL REPORT

### General Fund Details

General Fund Summary of Sources and Uses	2024			2024 YTD Budget vs Actual		2024
	Amended Budget	YTD Budget	YTD Actual	Amount	Percentage	Remaining Budget
<b>Operating Revenues</b>						
Property Tax	\$ 5,639,570	\$ 2,819,785	\$ 2,848,159	\$ 28,374	1%	\$ 2,791,411
Utility Tax	4,459,106	2,229,553	2,353,729	124,176	6%	2,105,377
Sales Tax - Regular	4,150,000	2,075,000	1,924,218	(150,782)	-7%	2,225,782
Sales Tax - One Time	175,000	87,500	75,567	(11,933)	-14%	99,433
B+O Tax - Regular	1,350,000	675,000	728,148	53,148	8%	621,852
B+O Tax - One Time	90,000	45,000	24,712	(20,288)	-45%	65,288
Franchise Fees	1,450,000	725,000	693,344	(31,656)	-4%	756,656
Criminal Justice Tax	1,300,000	650,000	572,652	(77,348)	-12%	727,348
Gambling Tax	35,000	17,500	9,780	(7,720)	-44%	25,220
Leasehold Tax	240,000	120,000	116,039	(3,961)	-3%	123,961
<b>Taxes Subtotal</b>	<b>\$ 18,888,676</b>	<b>\$ 9,444,338</b>	<b>\$ 9,346,347</b>	<b>\$ (97,991)</b>	<b>-1%</b>	<b>\$ 9,542,329</b>
Business Licenses and Permits	300,000	150,000	181,263	31,263	21%	118,737
Other Licenses and Permits	15,000	7,500	7,017	(483)	-6%	7,983
Intergovernmental (Grants, etc.)	1,043,304	521,652	531,570	9,918	2%	511,734
Charges for Services:						
General Government Services	212,944	106,472	133,897	27,425	26%	79,047
Court	103,300	51,650	53,416	1,766	3%	49,884
Public Safety	83,300	41,650	46,491	4,841	12%	36,809
Culture and Recreation	438,900	219,450	252,097	32,647	15%	186,803
Red Light Running Infractions	1,200,000	600,000	516,129	(83,871)	-14%	683,871
Other fees and penalties	352,150	176,075	41,265	(134,810)	-77%	310,885
<b>Fees/Charges/Fines Subtotal</b>	<b>\$ 3,748,898</b>	<b>\$ 1,874,449</b>	<b>\$ 1,763,145</b>	<b>\$ (111,304)</b>	<b>-6%</b>	<b>\$ 1,985,753</b>
Interest Income	106,000	53,000	46,576	(6,424)	-12%	59,424
Rentals and Leases	511,570	255,785	209,697	(46,088)	-18%	301,873
Contributions and Donations	24,000	12,000	1,402	(10,598)	-88%	22,598
Miscellaneous	30,700	15,350	136,164	120,814	787%	(105,464)
Interfund Charges	1,459,291	729,646	858,375	128,729	18%	600,916
Transfers In						
Fund 114 (ARPA Fund)	1,850,617	925,309	838,604	(86,705)	-9%	1,012,013
<b>Other Revenues Subtotal</b>	<b>\$ 3,982,178</b>	<b>\$ 1,991,089</b>	<b>\$ 2,090,817</b>	<b>\$ 99,728</b>	<b>5%</b>	<b>\$ 1,891,361</b>
<b>Total Operating Revenues</b>	<b>\$ 26,619,752</b>	<b>\$ 13,309,876</b>	<b>\$ 13,200,310</b>	<b>\$ (109,566)</b>	<b>-1%</b>	<b>\$ 13,419,442</b>
<b>Operating Expenditures</b>						
City Council	\$ 95,981	\$ 47,991	\$ 72,876	24,885	52%	23,105
City Manager/Administration	1,255,148	627,574	843,606	216,032	34%	411,542
City Clerk	854,703	427,352	463,730	36,378	9%	390,973
Human Resources	407,370	203,685	128,487	(75,199)	-37%	278,884
Finance	1,334,670	667,335	609,306	(58,029)	-9%	725,364
Technology Services	1,618,534	809,267	807,302	(1,965)	0%	811,231
City Attorney	889,357	444,678	277,897	(166,781)	-38%	611,460
Municipal Court	1,735,021	867,511	734,114	(133,397)	-15%	1,000,908
Public Safety - Business Office	1,061,350	530,675	610,838	80,163	15%	450,512
Police	12,133,208	6,066,604	5,732,083	(334,521)	-6%	6,401,125
Social Services	427,509	213,755	203,764	(9,990)	-5%	223,745
Parks Maintenance	2,081,907	1,040,954	879,127	(161,826)	-16%	1,202,780
Recreation & Senior Services	3,066,577	1,533,289	1,066,782	(466,507)	-30%	1,999,795
Transfers Out						
Fund 208 (2018 LTGO Bonds)	226,600	113,300	113,300	-	0%	113,300
Fund 506 (Facility Repair and Replacement)	51,000	25,500	-	(25,500)	-100%	51,000
<b>Total Operating Expenditures</b>	<b>\$ 27,238,936</b>	<b>\$ 13,619,468</b>	<b>\$ 12,543,211</b>	<b>\$ (1,076,256)</b>	<b>-8%</b>	<b>\$ 14,695,724</b>
<b>Total Operating Income (Loss)</b>	<b>\$ (619,184)</b>	<b>\$ (309,592)</b>	<b>\$ 657,098</b>	<b>\$ 966,690</b>		

# OTHER FUNDS



## 2024 2ND QUARTER FINANCIAL REPORT

### SPECIAL REVENUE FUNDS

#### Development Fund Details

Created in 2017, the purpose of the Development Fund is to account for revenue generated by fee-based development-related activities, including permitting, plan review, etc. and the associated cost of providing services. Divisions included in this fund include Planning and Development Services, Building, Joint and Minor Home Repair, Code Enforcement, Engineering Services, and City Project Management.

Development Fund Summary of Sources and Uses	2024			2024 YTD Budget vs Actual		2024 Remaining Budget
	Adopted Budget	YTD Budget	YTD Actual	Amount	Percentage	
<b>Operating Revenues</b>						
<b>Planning and Building</b>						
Building Permits	\$ 500,000	\$ 250,000	\$ 352,688	\$ 102,688	41%	\$ 147,312
Other Licenses and Permits	462,270	231,135	159,534	(71,601)	-31%	302,736
Intergovernmental (Grants, etc.)	110,000	55,000	154,462	99,462	181%	(44,462)
Charges for Services:						
Zoning Fees	336,168	168,084	234,138	66,054	39%	102,030
Plan Check Fees	585,000	292,500	261,312	(31,188)	-11%	323,688
SEPA-Related Mitigation Fees	100,000	50,000	-	(50,000)	-100%	100,000
Other Fees	6,800	3,400	2,261	(1,139)	-33%	4,539
Credit Card Fees	40,000	20,000	25,076	5,076	25%	14,924
Penalties - Stop Work	3,000	1,500	9,004	7,504	500%	(6,004)
<b>Planning and Building Revenue Subtotal</b>	<b>\$ 2,143,238</b>	<b>\$ 1,071,619</b>	<b>\$ 1,198,476</b>	<b>\$ 126,857</b>	<b>12%</b>	<b>\$ 944,762</b>
<b>Engineering</b>						
Right-Of-Way Permits	\$ 125,000	\$ 62,500	\$ 82,804	\$ 20,304	32%	\$ 42,196
Engineering Fees	240,224	120,112	98,655	(21,457)	-18%	141,569
Interfund Charges/ Engineering CIP Support	250,000	125,000	982.63	(124,017)	-99%	249,017
<b>Engineering Revenue Subtotal</b>	<b>\$ 615,224</b>	<b>\$ 307,612</b>	<b>\$ 182,441</b>	<b>\$ (125,171)</b>	<b>-41%</b>	<b>\$ 432,783</b>
Interest Income	20,000	10,000	46,633	36,633	366%	(26,633)
<b>Total Operating Revenues</b>	<b>\$ 2,778,462</b>	<b>\$ 1,389,231</b>	<b>\$ 1,427,551</b>	<b>\$ 38,320</b>	<b>3%</b>	<b>\$ 1,350,911</b>
<b>Operating Expenditures</b>						
<b>Planning and Building</b>						
Salaries and Benefits	\$ 1,483,850	\$ 741,925	\$ 705,301	\$ (36,624)	-5%	\$ 778,549
Supplies	32,380	16,190	12,557	(3,633)	-22%	19,823
Services	761,741	380,871	366,230	(14,640)	-4%	395,511
<b>Planning and Building Expenditures Subtotal</b>	<b>\$ 2,277,971</b>	<b>\$ 1,138,986</b>	<b>\$ 1,084,089</b>	<b>\$ (54,897)</b>	<b>-5%</b>	<b>\$ 1,193,882</b>
<b>Engineering</b>						
Salaries and Benefits	\$ 1,070,041	\$ 535,021	\$ 350,203	\$ (184,817)	-35%	\$ 719,838
Supplies	10,000	5,000	4,303	(698)	-14%	5,698
Services	224,812	112,406	116,546	4,140	4%	108,266
<b>Engineering Expenditures Subtotal</b>	<b>\$ 1,304,853</b>	<b>\$ 652,427</b>	<b>\$ 471,052</b>	<b>\$ (181,374)</b>	<b>-28%</b>	<b>\$ 833,801</b>
<b>Total Operating Expenditures</b>	<b>\$ 3,582,824</b>	<b>\$ 1,791,412</b>	<b>\$ 1,555,141</b>	<b>\$ (236,271)</b>	<b>-13%</b>	<b>\$ 2,027,683</b>
<b>Total Operating Income (Loss)</b>	<b>\$ (804,362)</b>	<b>\$ (402,181)</b>	<b>\$ (127,590)</b>	<b>\$ 274,591</b>		

## 2024 2ND QUARTER FINANCIAL REPORT

### American Rescue Plan Act

In 2021, the City was awarded \$9,029,879 from the federal government through the American Rescue Plan Act (ARPA). The intent of the grant is to replace revenue the City lost due to the impact of the COVID-19 pandemic. ARPA funds must be fully obligated by December 31, 2024 and fully expended by December 31, 2026. Below is the list, as of June 30, 2024 of projects approved by the City Council to be funded by ARPA:

Completed Projects	Allocated	Expended	Remaining
Parks Program Support	1,000,000	1,000,000	-
Municipal Court	550,000	550,000	-
Small Business Grants	495,000	495,000	-
Police Vehicles	255,486	255,486	-
Tenant Eviction Resources	250,000	250,000	-
Metro Transit	250,000	250,000	-
SCORE	250,000	250,000	-
Workforce training scholarships	125,000	125,000	-
Body Cams and Program Consultant	91,925	91,925	-
ARPA Administration Support	90,557	90,557	-
EATS Program	80,471	80,471	-
SR3	75,000	75,000	-
Human Services Committee Enhancement	75,000	75,000	-
Utility Voucher Fund	70,050	70,050	-
Redondo Space Lease	63,000	63,000	-
Food Trucks - Limited Term	50,000	50,000	-
Arts Commission	50,000	50,000	-
Passenger Ferry	45,631	45,631	-
People Movers	42,237	42,237	-
Evidence Van	37,733	37,733	-
Finance Budgeting Software	35,000	35,000	-
Human Resources Recruitment	14,400	14,400	-
Emergency Management Comp Plan	8,000	8,000	-
<b>Subtotal</b>	<b>4,004,490</b>	<b>4,004,490</b>	<b>-</b>
Continuing Projects	Allocated	Expended	Remaining
Marina Infrastructure	1,865,000	525,948	1,339,052
2024 General Fund Support	1,260,389	639,092	621,297
Police Officers	830,000	654,652	175,348
Tenant Restroom	400,000	-	400,000
Non-Profit Hiring Assistance (Mental Health Support)	250,000	224,029	25,971
Nonprofit Foundation	100,000	71,000	29,000
ADA Compliance Program	100,000	11,064	88,936
Additional Traffic Calming	100,000	-	100,000
Field House Play Equipment	100,000	50,000	50,000
Marina Redevelopment Community Presentation Materials	20,000	-	20,000
<b>Subtotal</b>	<b>5,025,389</b>	<b>2,175,785</b>	<b>2,849,604</b>
<b>Total ARPA funds</b>	<b>9,029,879</b>	<b>6,180,275</b>	<b>2,849,604</b>



## 2024 2ND QUARTER FINANCIAL REPORT

### Summary of Other Special Revenue Funds

Fund	Revenue			Expenditures		
	Budget	Actual	% Actual to Budget	Budget	Actual	% Actual to Budget
<b>Special Revenue Funds:</b>						
Street	\$ 2,400,331	\$ 1,050,268	43.8%	\$ 2,198,602	\$ 856,357	39.0%
Arterial Pavement	1,122,500	317,818	28.3%	1,308,000	28,806	2.2%
Police Drug Seizure	26,000	-	0.0%	20,500	-	0.0%
Hotel-Motel Tax	110,750	39,023	35.2%	130,000	50,857	39.1%
Affordable Housing Sales Tax	30,000	12,627	42.1%	30,000	34,012	113.4%
American Rescue Plan Act	1,750	-	0.0%	3,973,617	845,125	21.3%
Redondo Zone	69,500	24,986	36.0%	102,151	71,499	70.0%
Waterfront Zone	260,750	57,689	22.1%	356,204	56,351	15.8%
PBPW Automation Fee	141,500	100,743	71.2%	77,924	37,560	48.2%
Urban Forestry	5,000	-	0.0%	5,000	-	0.0%
Abatement	5,500	3,614	65.7%	2,500	879	35.1%
Automated Speed Enforcement (ASE)	381,500	158,697	41.6%	442,000	122,074	27.6%
Redondo Speed Enforcement	-	1,740	0.0%	-	-	0.0%
Transportation Benefit District	959,000	532,559	55.5%	1,450,000	225,000	15.5%

### CAPITAL PROJECTS FUND

Capital Projects Funds are funds used to account for financial resources that are restricted or committed to the construction, acquisition, or improvement of major capital facilities.

The Capital Project Fund per City Code is a single fund for accounting and budgeting purposes. The fund it is comprised of a series of managerial funds intended to account for the receipt and expenditure of capital monies. Managerial funds are for informational purposes only.

Fund	Revenue			Expenditures		
	Budget	Actual	% Actual to Budget	Budget	Actual	% Actual to Budget
<b>Capital Project Fund:</b>						
REET 1	\$ 560,000	\$ 338,396	60.4%	\$ 1,545,000	\$ -	0.0%
REET 2	552,500	315,315	57.1%	1,585,576	-	0.0%
Park Levy	195,500	144,751	74.0%	285,000	-	0.0%
Park in Lieu	100,750	-	0.0%	46,000	-	0.0%
One-Time Sales & B+O Tax Revenues	5,000	38,938	778.8%	660,000	-	0.0%
Municipal Capital Improvements	15,626,000	187,110	1.2%	16,558,359	1,031,314	6.6%
Transportation Capital Improvements	8,008,000	1,407,786	17.6%	8,320,641	3,103,528	38.8%
Traffic in Lieu	452,500	8,724	1.9%	540,000	-	0.0%
Traffic Impact - Citywide	301,250	409,859	136.1%	473,000	-	0.0%
Traffic Impact - Pac Ridge	100,750	13,674	13.6%	-	-	0.0%

## 2024 2ND QUARTER FINANCIAL REPORT

### ENTERPRISE FUNDS

#### Marina Fund Details

The purpose of the Marina Fund is to account for the revenues and expenditures related to Marina operations, construction, and debt.

Marina Fund Summary of Sources and Uses	2024			2024 YTD Budget vs Actual		2024
	Adopted Budget	Amended Budget	YTD Actual	Amount	Percentage	Remaining Budget
<b>Operating Revenue</b>						
Charges for Services	\$ 3,558,167	\$ 3,558,167	\$ 2,014,316	\$ (1,543,851)	-43%	\$ 1,543,851
Fuel Sales	1,503,000	1,503,000	420,989	(1,082,011)	-72%	1,082,011
Miscellaneous Revenues	12,800	12,800	14,086	1,286	10%	(1,286)
<b>Operating Revenue Subtotal</b>	<b>\$ 5,073,967</b>	<b>\$ 5,073,967</b>	<b>\$ 2,449,391</b>	<b>\$ (2,624,576)</b>	<b>-52%</b>	<b>\$ 2,624,576</b>
<b>Operating Expense</b>						
Salaries and Benefits	\$ 1,310,733	\$ 1,310,733	\$ 605,293	\$ (705,440)	-54%	\$ 705,440
Supplies	147,500	147,500	53,495	(94,005)	-64%	94,005
Fuel Purchases	1,200,000	1,200,000	271,509	(928,491)	-77%	928,491
Services	612,145	612,145	204,098	(408,047)	-67%	408,047
Services - Interfund	930,106	930,106	506,840	(423,266)	-46%	423,266
<b>Total Operating Expenses (excl. depreciation)</b>	<b>\$ 4,200,484</b>	<b>\$ 4,200,484</b>	<b>\$ 1,641,235</b>	<b>\$ (2,559,249)</b>	<b>-61%</b>	<b>\$ 2,559,249</b>
<b>Operating Income/(Loss)</b>	<b>\$ 873,483</b>	<b>\$ 873,483</b>	<b>\$ 808,156</b>	<b>\$ (65,327)</b>	<b>-7%</b>	
<b>Non-Operating Revenue</b>						
Interest Income	90,000	90,000	295,615	205,615	228%	(205,615)
<b>Non-operating Revenue Subtotal</b>	<b>\$ 90,000</b>	<b>\$ 90,000</b>	<b>\$ 295,615</b>	<b>\$ 205,615</b>	<b>228%</b>	<b>\$ (205,615)</b>
<b>Non-operating Expense</b>						
Capital Outlay	\$ 7,687,000	\$ 7,687,000	\$ 54,944	\$ (7,632,056)	-99%	\$ 7,632,056
Debt Service	1,272,523	1,272,523	430,782	(841,741)	-66%	841,741
<b>Non-operating Expense Subtotal</b>	<b>\$ 8,959,523</b>	<b>\$ 8,959,523</b>	<b>\$ 485,726</b>	<b>\$ (8,473,797)</b>	<b>-95%</b>	<b>\$ 8,473,797</b>
<b>Net Income</b>	<b>\$ (7,996,040)</b>	<b>\$ (7,996,040)</b>	<b>\$ 618,045</b>	<b>\$ 8,614,085</b>	<b>-108%</b>	

\*\*June is month 6 of 12 = 50%



## 2024 2ND QUARTER FINANCIAL REPORT

### **Surface Water Management (SWM) Fund Details**

The purpose of the Surface Water Management(SWM) Fund is to account for revenues and expenses related to Surface Water Management operations and construction.

Surface Water Management Fund Summary of Sources and Uses	2024			2024 YTD Budget vs Actual		2024
	Adopted Budget	YTD Budget	YTD Actual	Amount	Percentage	Remaining Budget
<b>Operating Revenue</b>						
Charges for Services	\$ 5,529,436	\$ 2,764,718	\$ 3,362,983	\$ 598,265	22%	\$ 2,166,453
Intergovernmental Revenue	613,000	306,500	456,884	150,384	49%	156,116
<b>Operating Revenue Subtotal</b>	<b>\$ 6,142,436</b>	<b>\$ 3,071,218</b>	<b>\$ 3,819,868</b>	<b>\$ 748,650</b>	<b>24%</b>	<b>\$ 2,322,568</b>
<b>Operating Expense</b>						
Salaries and Benefits	\$ 1,672,255	\$ 836,128	\$ 697,638	\$ (138,490)	-17%	\$ 974,617
Supplies	116,100	58,050	46,031	(12,019)	-21%	70,069
Services	1,269,027	634,514	679,851	45,337	7%	589,176
Services - Interfund	727,599	363,800	404,217	40,417	11%	323,382
<b>Total Operating Expenses (excl. depreciation)</b>	<b>\$ 3,784,981</b>	<b>\$ 1,892,491</b>	<b>\$ 1,827,736</b>	<b>\$ (64,754)</b>	<b>-3%</b>	<b>\$ 1,957,245</b>
<b>Operating Income/(Loss)</b>	<b>\$ 2,357,455</b>	<b>\$ 1,178,728</b>	<b>\$ 1,992,131</b>	<b>\$ 813,404</b>	<b>69%</b>	
<b>Non-Operating Revenue</b>						
Interest Income	20,000	10,000	244,178	234,178	2342%	(224,178)
<b>Non-operating Revenue Subtotal</b>	<b>\$ 20,000</b>	<b>\$ 10,000</b>	<b>\$ 244,178</b>	<b>\$ 234,178</b>	<b>2342%</b>	<b>\$ (224,178)</b>
<b>Non-operating Expense</b>						
Capital Outlay	\$ 3,123,000	\$ 1,561,500	\$ 496,612	\$ (1,064,888)	-68%	\$ 2,626,388
<b>Non-operating Expense Subtotal</b>	<b>\$ 3,123,000</b>	<b>\$ 1,561,500</b>	<b>\$ 496,612</b>	<b>\$ (1,064,888)</b>	<b>-68%</b>	<b>\$ 2,626,388</b>
<b>Net Income</b>	<b>\$ (745,545)</b>	<b>\$ (372,773)</b>	<b>\$ 1,739,697</b>	<b>\$ 2,112,469</b>	<b>-567%</b>	

\*\*June is month 6 of 12 = 50%

## 2024 2ND QUARTER FINANCIAL REPORT

### INTERNAL SERVICE FUNDS

Internal service funds are used to account for the financing of goods or services provided by one department to other departments of the government and to other government units on a cost reimbursement basis.

Fund	Revenue			Expenditures		
	Budget	Actual	% Actual to Budget	Budget	Actual	% Actual to Budget
<i>Internal Service Funds:</i>						
Equipment Rental Operations	1,238,024	379,885	30.7%	811,082	368,468	29.8%
Equipment Rental Replacement	753,280	455,722	60.5%	1,122,000	446,060	59.2%
Facility Major Repairs	461,150	109,794	23.8%	546,000	49,247	10.7%
Computer Replacement	412,800	156,606	37.9%	939,985	130,098	31.5%
Self Insurance	1,286,315	556,295	43.2%	1,266,927	1,121,287	87.2%
Unemployment Insurance	51,950	32,987	63.5%	42,500	16,138	31.1%



## 2024 2ND QUARTER FINANCIAL REPORT

### ATTACHMENT 1

### SALES TAX SUMMARY

JUNE 2024 (APRIL 2024 SALES)

NAICS	CONSTRUCTION	23 TOTAL	23 YTD	24 YTD	YTD % Diff
236	Construction of Buildings	714,343	325,336	174,359	-46.4%
237	Heavy & Civil Construction	50,465	29,511	20,295	-31.2%
238	Specialty Trade Contractors	360,010	135,901	156,917	15.5%
<b>TOTAL CONSTRUCTION</b>		<b>\$ 1,124,818</b>	<b>\$ 490,748</b>	<b>\$ 351,572</b>	
<i>Overall Construction Change from Previous Year</i>				<b>\$ (139,177)</b>	<b>-28.4%</b>
MANUFACTURING		23 TOTAL	23 YTD	24 YTD	YTD % Diff
311	Food Manufacturing	\$ 1,607	\$ 894	\$ 444	-50.3%
312	Beverage & Tobacco Products	2,444	1,248	1,052	-15.7%
313	Textile Mills	244	170	111	-35.0%
314	Textile Product Mills	207	167	135	-19.1%
315	Apparel Manufacturing	310	171	164	-4.0%
316	Leather & Allied Products	365	139	202	45.4%
321	Wood Product Manufacturing	2,141	602	3,831	535.9%
322	Paper Manufacturing	460	273	83	-69.7%
323	Printing & Related Support	4,336	1,845	2,400	30.1%
324	Petroleum & Coal Products	41	1	8	508.7%
325	Chemical Manufacturing	1,254	561	685	22.1%
326	Plastic & Rubber Products	384	51	223	340.9%
327	Nonmetallic Mineral Products	4,380	1,978	1,866	-5.7%
331	Primary Metal Manufacturing	25	(1)	5	-810.4%
332	Fabricated Metal Mfg Products	6,380	4,566	853	-81.3%
333	Machinery Manufacturing	854	216	433	100.5%
334	Computer & Electronic Products	3,309	1,110	1,033	-7.0%
335	Electric Equipment, Appliances	790	53	212	301.3%
336	Transportation Equipment Mfg	16,069	5,187	7,274	40.2%
337	Furniture & Related Products	4,229	1,807	3,122	72.7%
339	Miscellaneous Manufacturing	4,628	1,741	2,369	36.1%
<b>TOTAL MANUFACTURING</b>		<b>\$ 54,458</b>	<b>\$ 22,780</b>	<b>\$ 26,504</b>	
<i>Overall Manufacturing Change from Previous Year</i>				<b>\$3,724</b>	<b>16.3%</b>
TRANSPORTATION & WAREHOUSING		23 TOTAL	23 YTD	24 YTD	YTD % Diff
482	Rail Transportation	5	2	1	-50.0%
484	Truck Transportation	6,501	3,577	3,549	-0.8%
487	Scenic and Sightseeing Trans	669	669	-	-100.0%
488	Transportation Support	2,121	1,060	1,331	25.5%
491	Postal Services	115	57	57	-0.4%
492	Couriers & Messengers	23,390	11,600	14,047	21.1%
493	Warehousing & Storage	1,143	104	316	202.4%
<b>TOTAL TRANSP &amp; WHSING</b>		<b>\$ 33,944</b>	<b>\$ 17,071</b>	<b>\$ 19,301</b>	
<i>Overall Transportation Change from Previous Year</i>				<b>\$2,230</b>	<b>13.1%</b>
WHOLESALE TRADE		23 TOTAL	23 YTD	24 YTD	YTD % Diff
423	Whls Trade-Durable Goods	\$ 162,845	\$ 83,025	\$ 70,235	-15.4%
424	Whls Trade-Nondurable Goods	52,346	25,638	27,530	7.4%
425	Wholesale Electronic Markets	796	348	656	88.7%
<b>WHOLESALE TRADE TOTAL</b>		<b>\$ 215,987</b>	<b>\$ 109,010</b>	<b>\$ 98,420</b>	
<i>Overall Wholesale Change from Previous Year</i>				<b>(\$10,590)</b>	<b>-9.7%</b>

## 2024 2ND QUARTER FINANCIAL REPORT

### ATTACHMENT 1 (Cont.)

### SALES TAX SUMMARY

JUNE 2024 (APRIL 2024 SALES)

NAICS	AUTOMOTIVE	23 TOTAL	23 YTD	24 YTD	YTD % Diff
441	Motor Vehicle & Parts Dealer	\$ 102,216	\$ 63,550	\$ 147,063	131.4%
	<b>TOTAL AUTOMOTIVE</b>	<b>\$ 102,216</b>	<b>\$ 63,550</b>	<b>\$ 147,063</b>	
	<i>Overall Automotive Change from Previous Year</i>			<b>\$83,513</b>	<b>131.4%</b>
	RETAIL TRADE	23 TOTAL	23 YTD	24 YTD	YTD % Diff
444	Building Material & Garden	53,538	28,167	26,351	-6.5%
445	Food & Beverage Stores	171,323	81,486	86,330	5.9%
449	Furniture, Home Furnishings, Electronic	215,111	96,464	78,748	-18.4%
455	General Merchandise Retailers	57,547	27,195	30,711	12.9%
456	Health and Personal Care Retailers	155,417	101,919	32,347	-68.3%
457	Gasoline Stations and Fuel Dealers	66,686	33,068	29,538	-10.7%
458	Clothing, Clothing Accessories, Shoe an	51,776	27,167	25,958	-4.5%
459	Sporting Goods, Hobby, Musical Instrur	622,518	286,590	336,714	17.5%
	<b>TOTAL RETAIL TRADE</b>	<b>\$1,393,916</b>	<b>\$ 682,056</b>	<b>\$ 646,696</b>	
	<i>Overall General Retail Change from Previous Year</i>			<b>(\$35,360)</b>	<b>-5.2%</b>
	SERVICES	23 TOTAL	23 YTD	24 YTD	YTD % Diff
51*	Information	\$ 189,478	\$ 91,790	\$ 113,046	23.2%
52*	Finance & Insurance	23,393	11,176	12,414	11.1%
53*	Real Estate, Rental, Leasing	69,057	23,514	23,815	1.3%
541	Professional, Scientific, Tech	84,983	35,315	42,288	19.7%
551	Company Management	817	203	949	368.1%
56*	Admin, Supp, Remed Svcs	251,426	118,229	133,313	12.8%
611	Educational Services	16,075	7,702	9,264	20.3%
62*	Health Care Social Assistance	6,030	1,861	3,443	85.0%
71*	Arts & Entertainment	32,618	15,235	15,165	-0.5%
72*	Accommodation & Food Svcs	415,966	196,818	195,959	-0.4%
81*	Other Services	117,907	53,565	74,609	39.3%
92*	Public Administration	867	206	246	19.2%
	<b>TOTAL SERVICES</b>	<b>\$1,208,618</b>	<b>\$ 555,615</b>	<b>\$ 624,511</b>	
	<i>Overall Services Change from Previous Year</i>			<b>\$68,897</b>	<b>12.4%</b>
	MISCELLANEOUS	23 TOTAL	23 YTD	24 YTD	YTD % Diff
111-115	Agriculture, Forestry, Fishing	947	303	200	-34.1%
211-221	Mining & Utilities	1,052	308	7,973	2488.1%
999	Unclassifiable Establishments	142,767	56,824	64,861	14.1%
	<b>MISCELLANEOUS TOTAL</b>	<b>\$ 144,766</b>	<b>\$ 57,435</b>	<b>\$ 73,034</b>	
	<i>Overall Miscellaneous Change from Previous Year</i>			<b>\$15,599</b>	<b>27.2%</b>
	GRAND TOTALS	23 TOTAL	23 YTD	24 YTD	YTD % Diff
	<b>GRAND TOTALS</b>	<b>\$4,278,723</b>	<b>\$1,998,265</b>	<b>\$1,987,102</b>	
	<i>Grand Total Change from Previous Year to Date</i>			<b>(\$11,163)</b>	<b>-0.56%</b>



## 2024 2ND QUARTER FINANCIAL REPORT

### Glossary of Terms

**Abatement:** A reduction or elimination of a real or personal property tax, motor vehicle excise, a fee, charge, or special assessment imposed by a governmental unit. Granted only on application of the person seeking the abatement and only by the committing governmental unit.

**Abatement Fund:** This fund was created to account for revenue and expenditures to abate nuisances within the city.

**Bond:** A means to raise money through the issuance of debt. A bond issuer/borrower promises in writing to repay a specified sum of money, alternately referred to as face value, par value or bond principal, to the buyer of the bond on a specified future date (maturity date), together with periodic interest at a specified rate. The term of a bond is always greater than one year.

**Budget:** A plan for allocating resources to support particular services, purposes and functions over a specified period of time.

**Capital Assets:** All real and tangible property used in the operation of a government, which is not easily converted into cash, and has an initial useful life extending beyond a single financial reporting period. Capital assets include land and land improvements; infrastructure such as roads, bridges, water and sewer lines; easements; buildings and building improvements; vehicles, machinery and equipment. Communities typically define capital assets in terms of a minimum useful life and a minimum initial cost.

**Capital Outlay:** Expenditures that result in the acquisition of or addition to capital assets.

**Capital Projects Fund:** funds that are used to account for financial resources that are restricted or committed to the construction, acquisition, or improvement of major capital facilities.

**Debt Service:** The repayment cost, usually stated in annual terms and based on an amortization schedule, of the principal and interest on any particular bond issue.

**Enterprise Fund:** A fund type used to account for operations that are financed or operated in a manner similar to private business enterprise where the intent of the governing body is that costs of providing goods and services be recovered primarily through user charges.

**Expenditure/Expense:** An outlay of money made by municipalities to provide the programs and services within their approved budget.

**Franchise Fees:** Fees paid to the City by a utility provider who uses public space to deliver its services.

**Fund:** An independent fiscal and accounting entity with a self-balancing set of accounts recording cash and/or other resources, together with all related liabilities, obligations, reserves, and equities which are segregated for the purpose of carrying on specific activities or attaining certain objectives.

**General Fund:** Accounts for all revenues and expenditures that are not accounted for in any other fund except those required by statute. It is a fund supported by taxes, fees, and other miscellaneous revenues. This fund is used to finance daily and long-term operations.

## 2024 2ND QUARTER FINANCIAL REPORT

**Grant:** A contribution by Federal, State, and other jurisdiction or organization to support a particular function.

**Impact Fees:** A payment of money imposed by the City upon development activity as a condition of issuance of a building permit to pay for public facilities needed to serve new growth and development, and to mitigate the impacts of the development activity on the existing public facilities.

**In-Lieu:** A payment alternative for funding capital expenditures.

**Interfund Transfer:** The movement of monies between funds of the same government entity.

**Intergovernmental:** Relating to activity conducted between two or more governments.

**Investments:** Securities held for the production of income in the form of interest. The term does not include fixed assets used in governmental operations.

**Net Position:** The difference between assets and liabilities.

**Park In-Lieu Fees:** A voluntary payment of money from a subdivision or multi-family development as an alternative to providing open space or park land for recreation purposes.

**Park Levy:** Funding generated through an interlocal agreement with King County for King County Parks Levy funds restricted for capital projects.

**Planning, Building and Public Works (PBPW) Automation Fund:** This fund was created to account for Planning, Building and Public Works automation fees and to be used for technology operations, maintenance and replacement expenditures; as well as, capital expenditures for acquisition of additional technology benefitting the PBPW department.

**Redondo Zone Fund:** The Redondo Zone is the Redondo Beach Park area. This fund accounts for parking fees and fines in the Redondo Zone which are to be used for operating and capital costs related to the zone.

**Revenue:** Money that flows into the local government. It is recurring if it is received on a consistent basis (e.g., sales taxes and property taxes) and nonrecurring if it is received irregularly (e.g., federal and state grants).

**Special Revenue Fund:** A special revenue fund is a fund that collects money to be used for a specific purpose. These funds can increase transparency and accountability for taxpayers by ensuring that their tax dollars are used for their intended purpose.

**Unrestricted Net Position:** The net position that generally can be used for any purpose. However, they are not necessarily in a spendable form, such as cash.

**Waterfront Zone:** This fund was created to account for revenues and expenditures relating to the provision of services and public access to the fishing pier, the waterfront area of the Beach Park and related parking lots and to the space on the upland areas not designated as part of the marina enterprise fund.



# 2024 2<sup>nd</sup> Quarter Finance Update

City of Des Moines, Washington

August 8, 2024

## General Fund

2024 Year-To-Date  
2<sup>nd</sup> Quarter

### General Fund through June 30, 2024

Revenues	\$13,200,310
Expenditures	<u>- 12,543,212</u>
Operating Income	<b>\$ 657,098</b>



## General Fund

2024 Year-To-Date  
2<sup>nd</sup> Quarter

### Recurring vs Non-recurring

*According to the Government Finance Officer's Association:*

**Recurring revenues** are the portion of a government's revenues that can be reasonably expected to continue year-to-year, with some degree of predictability.

**Recurring expenditures** appear in the budget each year. Recurring expenditures should be those where funding is expected every year in order to maintain current/status quo service levels.

A structurally balanced budget is a budget where **recurring revenues** equal or exceed **recurring expenditures**.

## General Fund

2024 Year-To-Date  
2<sup>nd</sup> Quarter

### General Fund Operating Income

Recurring Activity	- \$214,873
Non-Recurring Activity	<u>+ 871,970</u>
Operating Income	\$ 657,098



# General Fund

2024 Year-To-Date

2<sup>nd</sup> Quarter

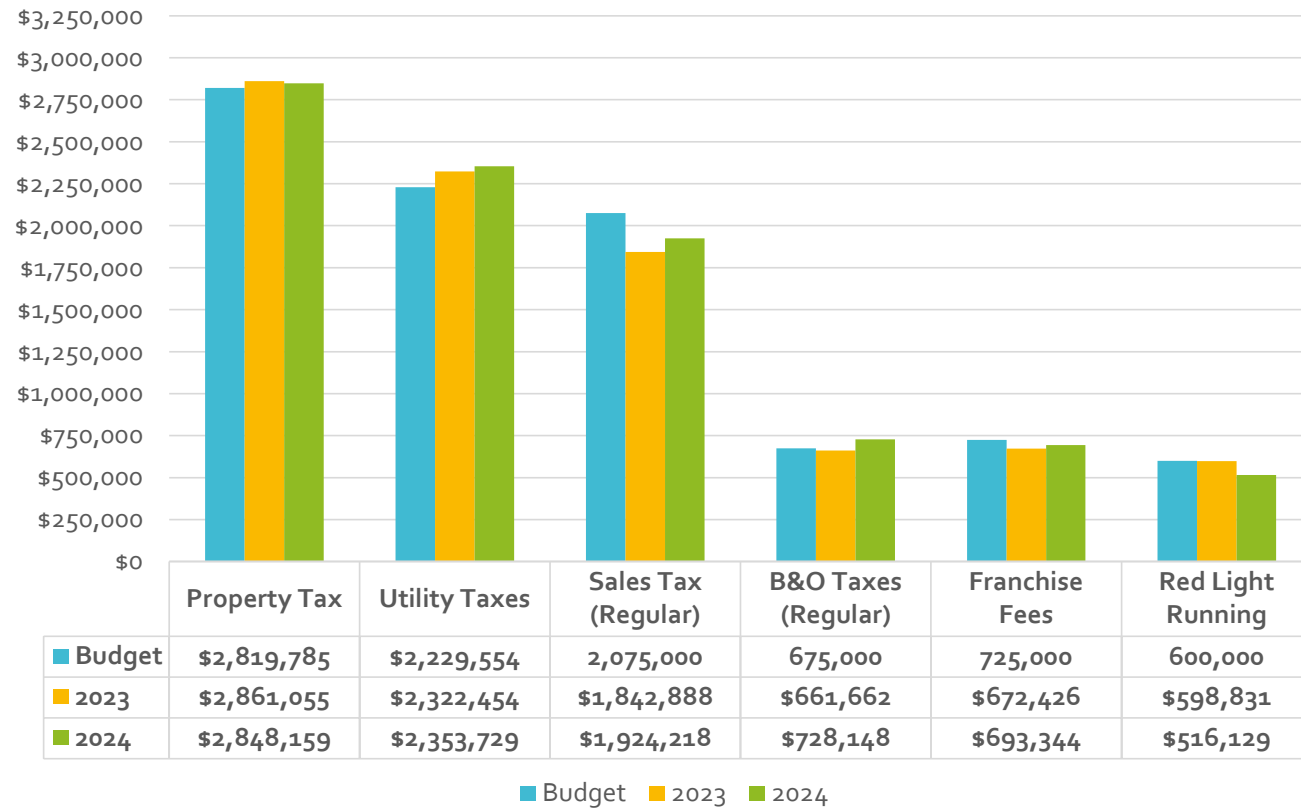
## Status Quo without ARPA

	Operating Income/ (Loss)
General Fund Operating Loss	\$ (214,873)
Police Officers – Limited Term (2)	(127,663)
Crisis Response Specialist – Limited Term	(53,635)
Crime Analyst – Limited Term	(53,739)
Redondo Substation Lease	(19,248)
<b>Total Income/(Loss)</b>	<b>\$(469,158)</b>

# General Fund

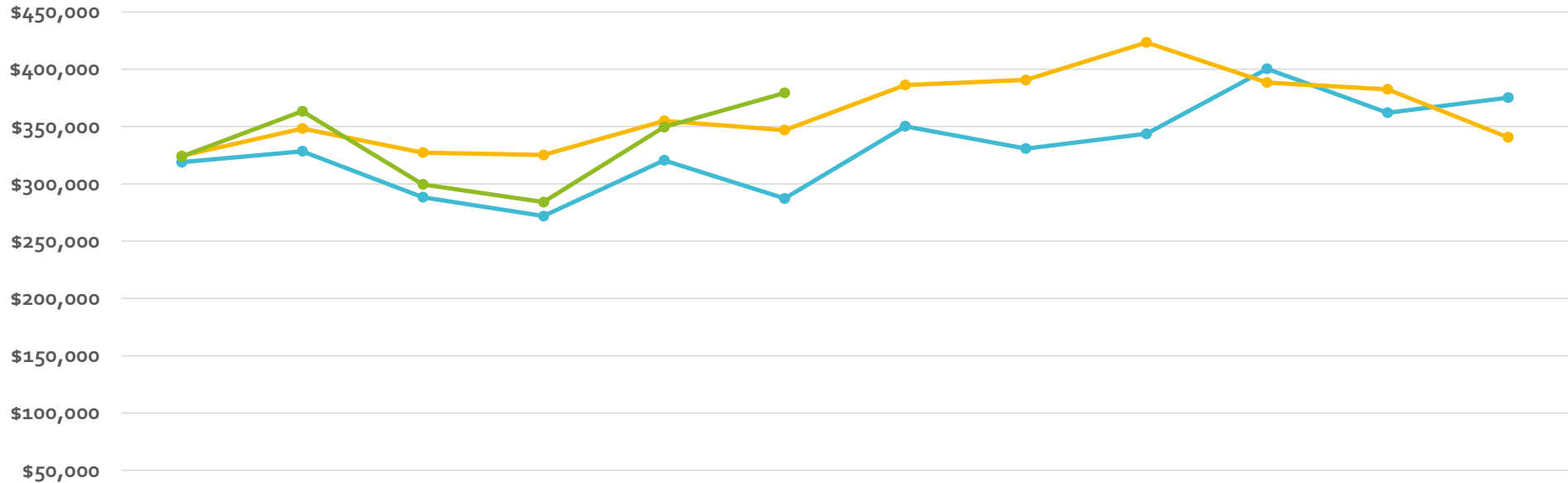
2024 Year-To-Date  
2<sup>nd</sup> Quarter

## General Fund Revenue





### Sales Tax by Month



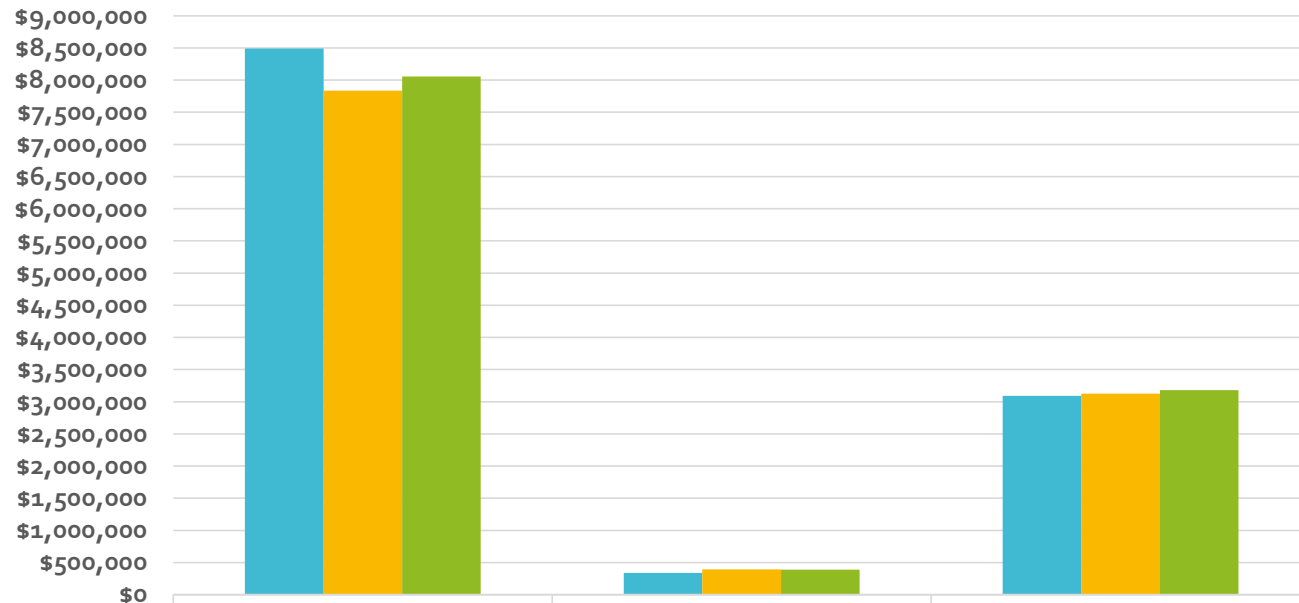
	January	February	March	April	May	June	July	August	September	October	November	December
2022	\$318,894	\$328,370	\$288,274	\$271,881	\$320,577	\$287,264	\$350,183	\$330,806	\$343,648	\$400,408	\$362,060	\$375,190
2023	\$324,361	\$348,280	\$327,198	\$325,182	\$354,939	\$346,840	\$386,221	\$390,611	\$423,355	\$388,330	\$382,509	\$340,629
2024	\$323,934	\$363,347	\$299,521	\$284,088	\$349,579	\$379,315						

2022 2023 2024

# General Fund

2024 Year-To-Date  
2<sup>nd</sup> Quarter

## General Fund Expenditures



	Personnel	Supplies	Services
■ Budget	\$8,491,555	\$336,132	\$3,092,333
■ 2023	\$7,834,991	\$393,358	\$3,125,357
■ 2024	\$8,056,977	\$390,624	\$3,182,121

■ Budget ■ 2023 ■ 2024



CITY OF DES MOINES

**2024 City Manager  
Recruitment  
City Manager Selection  
Process**



## CITY MANAGER RECRUITMENT RECAP

- Secured an executive search firm to conduct the City Manager recruitment.
- Updated the City Manager Job Description.
- Adopted a new salary methodology and range for the 2024 City Manager Pay Schedule.
- Participated in “Listening Sessions” with the consultant.
- Provided input that later became the City Manager Recruitment Brochure.
  - The job posting went live on May 30, 2024 and closed on June 30, 2024.
  - (29) applicants applied.
- Selected (13) semi-finalist to respond to (20) written supplemental questions and (4) online self interview questions.
- (11) candidates provided the requested supplemental materials.
- **(4) candidates have been moved forward to the onsite interview phase.**





## CITY MANAGER SELECTION PROCESS - GOALS AND DESIRED OUTCOMES

- For every candidate to leave with a positive impression of the City of Des Moines, regardless of the outcome. Our goal is to create excitement about the opportunity to work here and to build enthusiasm for the City and the community!!!
- To be efficient and effective, ensure we follow legal requirements, and streamline the process for evaluating candidates.
- Provide the Council with feedback from different stakeholders and insights from the interviews to help them make a well-informed hiring decision. The aim is to improve the Council's ability to choose the best candidate for the role.



## CITY MANAGER SELECTION PROCESS- DAY 1

- **Tuesday, August 27, 2024**
- During the day, candidates will be provided a City Tour, participate in (2) different onsite panel interviews and a Staff Meet and Greet.
- Later that evening, the City will be hosting a Community Meet and Greet for the Citizens Advisory Committee and the General Public.
- At the Meet and Greet, each candidate will have (10) minutes to introduce themselves, talk about the opportunities and challenges they see for Des Moines, and explain how they plan to leverage the opportunities and tackle the challenges.
- After each candidate has been provided the opportunity to introduce themselves to the community, members of the public will have a chance to interact with each candidate and provide the Council feedback on their preferred candidate using comment cards.





## CITY MANAGER SELECTION PROCESS-”ALL HANDS ON DECK”

- Alex Reyes, HR Analyst - LT
- Bonnie Wilkins, Director of Community/Administrative Services
- Cortney Wilt, Events and Facilities Manager
- Rochelle Caton, Executive Administrative Analyst
- Scott Wilkins, Harbormaster
- Shawna Thomas, HR Analyst
- Stephanie Holt, Executive Assistant
- Taria Keane, City Clerk



## CITY MANAGER SELECTION PROCESS- DAY 2

- **Wednesday, August 28, 2024**
- Candidates will participate in an interviews with the Council during an Executive Session.
- **Thursday, August 29, 2024**
- Council will be provided the evaluation forms and feedback cards from the interviews for review.





## CITY MANAGER SELECTION PROCESS - STRUCTURED INTERVIEWS

- The City of Des Moines uses structured interviews to evaluate candidates applying for vacant positions.
- A structured interview is a set way of asking all job candidates the same questions that are closely related to the job they're applying for to ensure fair and consistent evaluation.
  - The Equal Employment Opportunity Commission (EEOC) and most courts assume that every pre-employment question is asked for a purpose, and any answer will then be used to influence hiring decisions. By adhering to questions directly related to job requirements, it upholds equal treatment and minimizes biases, helping to select the best candidate based on objective, job-relevant criteria. All candidates are asked the same pre-determined questions to ensure fair and consistent evaluation.
- Each interviewee will be scheduled to spend an equal amount of time interviewing for the position.
- To ensure that candidates are being evaluated consistently, the assessors will apply the same evaluation criteria to each interviewee.
- **The Assessor(s) are responsible for:**
  - Writing down interview responses from the candidate.
  - Evaluating the candidate based on their responses.



## CITY MANAGER SELECTION PROCESS - QUESTION?

- **QUESTION FOR COUNCIL**

- Does the Council want to have the candidates complete and share their “First Year Game Plan” during their scheduled interview time?





## CITY MANAGER SELECTION PROCESS - COUNCIL NEXT STEPS

- Submit your selections for the panel.
- Highlight your preferred interview questions.
- Review the agenda for August 27 and 28.



## CITY MANAGER SELECTION PROCESS -?QUESTIONS?





**CITY OF DES MOINES**  
**Voucher Certification Approval**  
**August 8, 2024**  
**Auditing Officer Certification**

Voucher 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 **August 8, 2024** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through July 25, 2024 and payroll transfers through July 26 2024 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:

  
 \_\_\_\_\_  
 Jeff Friend, Finance Director

	# From	# To	Amounts
<b>Claims Vouchers:</b>			
EFT's	10468	10503	184,893.55
Wires	2650	2662	741,602.50
Accounts Payable Checks	165985	166015	1,284,280.56
EFT Void	10409	10409	(100.00)
Accounts Payable Voided Check	165930	165930	(100.00)
<b>Total Vouchers paid</b>			<b>2,210,576.61</b>
<b>Payroll Vouchers</b>			
Payroll Voided Check	7/26/2024	19864	19864
<b>Total Paychecks &amp; Direct Deposits</b>			<b>(300.00)</b>
<b>Total checks and wires for A/P &amp; Payroll</b>			<b>2,210,276.61</b>

**MINUTES**

**DES MOINES CITY COUNCIL  
REGULAR MEETING  
City Council Chambers  
21630 11th Avenue S, Des Moines, Washington  
Thursday, July 25, 2024 - 6:00 PM**

**CALL TO ORDER**

Mayor Traci Buxton called the meeting to order at 6:00 p.m.

**PLEDGE OF ALLEGIANCE**

The flag salute was led by Deputy Mayor Harry Steinmetz.

**ROLL CALL**

**Council Present:**

Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Gene Achziger; Councilmember JC Harris; Councilmember Matt Mahoney; and Councilmember Jeremy Nutting

**Council Present via Phone:**

Councilmember Yoshiko Grace Matsui

**Staff Present:**

Interim City Manager Tim George; Assistant City Manager Adrienne Johnson-Newton; Acting Police Chief Mark Couey; Public Works Director Michael Slevin; City Engineer Tommy Owen; Civil Engineer I Mike Kwispond; Finance Director Jeff Friend; Assistant Harbormaster Katy Bevegni; Director of Court Administration Melissa Patrick; and City Clerk Taria Keane

**CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL**

- There were no addition correspondence outside of the emails already received by Council.

**COMMENTS FROM THE PUBLIC**

- Martha Hamilton, Housing
- Bill Linscott, Marina Steps
- Lloyd Lytle, Masonic Home
- Scott Kawahara, Masonic Home
- George Pettibone, Masonic Home



Regular Meeting Minutes  
July 25, 2024

- Kay Vann, Safety
- Barbara McMichael, Des Moines Creek Business Park W.

**COMMITTEE CHAIR REPORT**

- Municipal Facilities Committee: Chair Jeremy Nutting
  - Councilmember Jeremy Nutting gave Council an update on the Municipal Facilities Committee meeting.
- Economic Development Committee: Chair Jeremy Nutting
  - Councilmember Jeremy Nutting gave Council an update on the Economic Development Committee meeting.
- Highline Forum
  - Councilmember Matt Mahoney gave Council an update on the Highline Forum meeting.
- Waterland Weekend
  - Councilmember Matt Mahoney gave Council an update on the Waterland Weekend Events.
- South King Housing and Homelessness Partners
  - Mayor Traci Buxton gave Council an update on the SKHHP meeting.

**CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS**

PROPOSITION 1 INFORMATION BRIEFING

- Finance Director Jeff Friend gave Council an informational PowerPoint Presentation on Proposition 1.

At 7:07 Council took a 7 minute break and resumed the meeting at 7:14 p.m.

CITY MANAGER RECRUITMENT UPDATE

- Assistant City Manager Adrienne Johnson-Newton and the Council discussed the City Manager Recruitment.

**CONSENT AGENDA**

Item 1: APPROVAL OF VOUCHERS

**Motion** is to approve the payment vouchers through July 18, 2024 and payroll transfers through July 19, 2024 in the attached list and further described as follows:

EFT's	#10381-10467	\$ 691,686.22
Wires	#2620-2649	\$2,868,869.44
Wire	#2927-2927	\$ 17,291.33
Accounts Payable	#165951-165984	\$ 195,093.33
Checks		

Regular Meeting Minutes  
July 25, 2024

Payroll Checks	#19854-19863	\$ 16,781.04
Payroll Voided Advice	#10217-10389	\$ 585,093.86

Total Checks and Wires for A/P & Payroll: \$4,374,815.22

Item 2: APPROVAL OF MINUTES

**Motion** is to approve the June 06, 2024 Study Session, the June 13, June 27, and July 11, 2024 Regular City Council Meetings, and the July 02, 2024 Executive Session minutes.

Item 3: ADMINISTRATIVE OFFICE OF THE COURTS - REIMBURSEMENT AGREEMENT

**Motion** is to approve the Interagency Reimbursement Agreement between the Administrative Office of the Courts and the City of Des Moines for extraordinary expenses for up to \$100,966 and further authorize the Director of Court Administration of Des Moines Municipal Court to sign the agreement substantially in the form as submitted.

Item 4: DRAFT RESOLUTION 24-064 IN SUPPORT OF MARINA CHARGING FLOATS GRANT APPLICATION

**Motion** is to enact Draft Resolution 24-064 naming the Interim City Manager as the designated agent for the City in order to apply for grant funding for the Marina Charging Floats Project.

Item 5: DRAFT RESOLUTION NO. 24-061: SUPPORT FOR SOUTH KING FIRE PROPOSITION NO. 1, AUTHORIZING FIRE BENEFIT CHARGE

**Motion** is to adopt Draft Resolution No. 24-061 in support of South King Fire's Proposition 1, Authorizing Fire Benefit Charge, on the August 6, 2024 election ballot.

Item 6: MARINA STEPS PROJECT - AMENDED TASK ASSIGNMENT FOR CONSULTANT DESIGN

**Motion** is to approve the 2022-2023 On-Call General Civil Engineering Amendment Task Assignment 2023-07.01 with KPFF Inc., to provide engineering design services for the Marina Steps Project in the amount of \$156,631.00, and further authorize the City Manager to sign said Task Assignment substantially in the form as submitted.

**Direction/Action**

**Motion** made by Councilmember Jeremy Nutting to approve the Consent Agenda; seconded by Councilmember Matt Mahoney.

Councilmember Gene Achziger pulled Item #6.

Councilmember Yoshiko Grace Matsui pulled Item #4.

Regular Meeting Minutes  
July 25, 2024

The remainder of the Consent Agenda passed 7-0.

Council discussed Consent Agenda Item #4.

**Direction/Action**

**Motion** made by Councilmember Jeremy Nutting to approve Consent Agenda Item #4 as read; seconded by Councilmember Matt Mahoney. Motion passed 4-3.

**For:** Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Matt Mahoney, and Councilmember Jeremy Nutting.

**Against:** Councilmember Gene Achziger, Councilmember Yoshiko Grace Matsui, and Councilmember JC Harris.

Council discussed Consent Agenda Item #6.

**Direction/Action**

**Motion** made by Councilmember Jeremy Nutting to approve the Consent Agenda Item #6 as read; seconded by Councilmember Matt Mahoney.

**Amended Motion** made by Councilmember JC Harris to remove the Spray Park from the design; seconded by Councilmember Gene Achziger. Amended Motion failed 2-5.

**For:** Councilmember Gene Achziger, and Councilmember JC Harris

**Against:** Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Yoshiko Grace Matsui, Councilmember Matt Mahoney, and Councilmember Jeremy Nutting.

The main motion passed 5-2.

**For:** Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Yoshiko Grace Matsui, Councilmember Matt Mahoney, and Councilmember Jeremy Nutting.

**Against:** Councilmember Gene Achziger, and Councilmember JC Harris.



Regular Meeting Minutes  
July 25, 2024

**Direction/Action**

**Motion** made by Councilmember Jeremy Nutting to extend the meeting with a hard stop at 9:15 p.m.; seconded by Councilmember Jeremy Nutting.

Motion passed 5-2.

**For:** Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Yoshiko Grace Matsui, Councilmember Matt Mahoney, and Councilmember Jeremy Nutting.

**Against:** Councilmember Gene Achziger, and Councilmember JC Harris.

**PUBLIC HEARING/CONTINUED PUBLIC HEARING**

VACATION RIGHT-OF-WAY

Staff Presentation by Civil Engineer I Mike Kwispond

At 8:52 p.m. Mayor Traci Buxton opened the Public Hearing.

Civil Engineer I Mike Kwispond gave Council a PowerPoint Presentation on the Vacation of Public Right-of-Way known as 1st Place South.

Mayor Traci Buxton called those who signed up to speak.

- Larry Scott, Opponent
- Chuck Ballard, Opponent

Mayor Traci Buxton asked 3 times if anyone else wished to speak.

Seeing none, Mayor Traci Buxton asked Council if they had any questions.

At 9:12 p.m. Mayor Traci Buxton closed the Public Hearing.

**Direction/Action**

**Motion** made by Councilmember Jeremy Nutting to enact Draft Ordinance No. 24-063 approving the vacation of a portion of unimproved right-of-way specifically identified and legally described in Draft Ordinance No. 24-063; seconded by Councilmember Matt Mahoney.

Motion passed 7-0.

**EXECUTIVE SESSION**

Regular Meeting Minutes  
July 25, 2024

## **ADJOURNMENT**

### **Direction/Action**

**Motion** made by Deputy Mayor Harry Steinmetz to adjourn; seconded by Councilmember Matt Mahoney.  
Motion passed 7-0.

The meeting adjourned at 9:14 p.m.

## **NEXT MEETING DATE**

July 30, 2024 City Council Executive Session

**A G E N D A   I T E M**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Settlement Agreement: *Sanborn v. Des Moines*

FOR AGENDA OF: August 8, 2024

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

DATE SUBMITTED: July 31, 2024

1. Stipulation and agreed order for declaratory judgment of vacation of rights and quieting title
2. Proposed judgment
3. Complaint to quiet title

CLEARANCES:

- City Clerk \_\_\_\_\_
- Communications \_\_\_\_\_
- Community Development \_\_\_\_\_
- Courts \_\_\_\_\_
- Emergency Management \_\_\_\_\_
- Finance \_\_\_\_\_
- Human Resources \_\_\_\_\_
- Legal /s/ MH
- Marina \_\_\_\_\_
- Police \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

**Purpose and Recommendation**

The purpose of this agenda item is for the City Council to consider a Stipulation and Agreed Order that would resolve on-going litigation in the matter of Sanborn v. City of Des Moines regarding the ownership of a portion of platted but unimproved right of way abutting 20820 Des Moines Memorial Drive in Des Moines.

**Suggested Motion**

**Motion:** “I move to approve the Stipulation and Agreed Order quieting title to certain platted but unimproved right of way abutting 20820 Des Moines Memorial Drive in Des Moines in favor of Plaintiff Sanborns, and authorize the City Manager and the City Attorney to sign the Agreement and Stipulated Judgment substantially in the form as attached.”



### **Background**

This lawsuit was filed in May of 2024 by Plaintiffs Scot and Elizabeth Sanborn claiming ownership of a section of platted but undeveloped right of way. The Sanborns own the property at 20820 Des Moines Memorial Drive and three abutting parcels located on the north side of the 20820 property. The subject right of way abuts two of these three smaller parcels.

The right of way was originally platted in 1890 and is currently undeveloped. This particular property in dispute was designated by the plat to be the south half of “North Street” (now South 208th Street) lying between the east edge of Des Moines Memorial Drive and the centerline of 12th Avenue South, together with the section of 12th Avenue South lying between the south edge of South 208th Street and the 20820 parcel. The block of South 208th Street lying immediately to the east has previously been vacated in Ordinance no. 1340.

Plaintiffs have asserted that based on what is known as the “non-user statute” from the laws of 1889-90, the platted right of way was vacated by operation of law if it was not developed for public use within 5 years of platting.

The “non-user statute” is recognized law in the state of Washington but only has limited applicability. For the statute to apply, the right of way in question must have been a county road at the time of dedication and must have been platted before 1904 with no subsequent rededication or platting. Under the statute, if the right of way is not developed for public use within 5 years of platting, the right of way is vacated. The state legislature recognized the problem this statute was causing and in 1909 it was repealed. However, the repeal did not apply retroactively to rights of way that were effected prior to the legislature’s actions.

### **Discussion**

Based on historical records in the City’s possession, there is a lack of clear evidence that this portion of the South 208th Street and 12th Avenue South was opened for public use during the five years following the original platting (1890-1895). There are no overhead photos of the site at that time and later photos from the 1950’s (showing the right of way was not developed) are not entirely controlling in that the key question is the state of the right of way in the late 1800’s. As a result, the likelihood of prevailing in this lawsuit cannot be accurately quantified.

As a result, the City has worked with the plaintiffs to develop a settlement agreement that satisfactorily addresses all issues. The proposed agreement provides that the City will stipulate to the quiet title action and Plaintiffs would therefore gain title to the disputed portion of the unimproved right of way.

### **Alternatives**

Council may:

1. Approve the settlement agreement
2. Decline to approve the agreement and proceed with litigation

### **Financial Impact**

There is no financial cost to the City in entering into this Agreement. The City will see a de minimus increase in property tax revenue as the disputed right of way area will no longer be exempt from property taxes. Rejecting the settlement agreement will result in litigation costs and potential imposition of costs and attorney’s fees for negligible benefit to the City.

### **Recommendation**

Legal recommends approval of the agreement.

HONORABLE JASON HOLLOWAY

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SCOT D. SANBORN, and ELIZABETH A  
SANBORN, a married couple,

Plaintiffs,

v.

THE CITY OF DES MOINES, a Washington  
Municipal Corporation,

Defendant.

NO. 24-2-11181-6 KNT

STIPULATION AND AGREED ORDER FOR  
DECLARATORY JUDGMENT OF  
VACATION OF RIGHTS AND QUIETING  
TITLE

**I. STIPULATION**

Plaintiffs Scot D. Sanborn and Elizabeth A. Sanborn (“**Plaintiffs**”), and Defendant the City of Des Moines (the “**City**”), by and through their attorneys of record, stipulate and agree as follows:

1. The City of Des Moines is a municipal corporation that was incorporated in the State of Washington on June 17, 1959.

2. On January 17, 1890, the Des Moines City Improvement Company (“**DMCIC**”) platted certain portions of land that were then located within King County into lots, blocks, streets, and alleys (“**1890 Plat**”).

3. The 1890 Plat was recorded in 1890.

4. The undeveloped parcel of real property that is the subject of this lawsuit is legally described as:

STIPULATION AND AGREED ORDER FOR  
DECLARATORY JUDGMENT OF VACATION OF  
RIGHTS AND QUIETING TITLE - 1

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THE SOUTH HALF OF SOUTH 208TH STREET (PREVIOUSLY IDENTIFIED AS NORTH STREET IN THE GROVE ADDITION TO THE TOWN OF DES MOINES) FROM THE CENTERLINE OF TWELFTH STREET WEST TO THE EAST MARGIN OF DES MOINES MEMORIAL DRIVE, TOGETHER WITH THE PORTION OF TWELFTH STREET BETWEEN BLOCKS 68 AND 69 OF THE GROVE ADDITION TO THE TOWN OF DES MOINES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 83, RECORDS OF KING COUNTY, WASHINGTON

**(“Subject Property”)**

5. The Subject Property is an undeveloped area of real property that was designated in the 1890 Plat for a possible future connection of S. 208th Street with what currently is 12th Avenue S.

6. Since DMCIC created and recorded the 1890 Plat, the Subject Property has not been opened or improved.

7. Plaintiffs own real property commonly known as 20820 Des Moines Memorial Drive, Des Moines, Washington, identified by King County parcel number 0822049079, and legally described as follows:

THE NORTH 335 FEET OF THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON

**(“20820 Property”)**

8. Plaintiffs also own two parcels of real property that are directly north of the 20820 Property identified below and described further herein as the **“Grove Addition Properties”**:

a. Plaintiffs own a parcel of real property identified by King County parcel number 2946004835 is legally described as:

LOTS 15 AND 16, BLOCK 69, GROVE ADDITION TO THE TOWN OF DES MOINES, ACCORDING TO THE PLAT

STIPULATION AND AGREED ORDER FOR DECLARATORY JUDGMENT OF VACATION OF RIGHTS AND QUIETING TITLE - 2

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THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 83,  
RECORDS OF KING COUNTY, WASHINGTON

b. Plaintiffs own a parcel of real property identified by King County parcel number  
2946004820 is legally described as:

LOTS 14, 15 and 16, BLOCK 68, GROVE ADDITION TO THE  
TOWN OF DES MOINES, ACCORDING TO THE PLAT  
THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 83,  
RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH THE WEST HALF OF THE ADJOINING  
ALLEY BETWEEN BLOCKS 67 AND 68, AND THE SOUTH  
HALF OF 208TH STREET (PREVIOUSLY KNOWN AS NORTH  
STREET) ABUTTING THE NORTH LINE OF BLOCK 68 AND  
THE NORTH LINE OF THE WEST HALF OF THE ADJOINING  
ALLEY, ALL AS VACATED BY CITY OF DES MOINES  
ORDINANCE NO. 1340, AS RECORDED UNDER RECORDING  
NO. 20050531000674

9. Plaintiffs filed this action seeking to vacate any rights and quiet title to the Subject  
Property which is located directly north and abuts Plaintiffs' 20820 Property and Grove Addition  
Properties.

10. The northern border of the 20820 Property abuts the southern border of the Subject  
Property, the northern and eastern borders of Parcel number 2946004835 abut the Subject  
Property, and western border of parcel number 2946004820 abuts the Subject Property.

11. Section 32, page 603 of the Session Laws of 1889-90 of the State of Washington  
states:

Any county road, or part thereof, which has heretofore been or may  
hereafter be authorized, which remains unopened for public use for  
the space of five years after the order is made or authority granted  
for opening the same, shall be and the same is hereby vacated, and  
the authority for building the same barred by lapse of time.

STIPULATION AND AGREED ORDER FOR  
DECLARATORY JUDGMENT OF VACATION OF  
RIGHTS AND QUIETING TITLE - 3

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1           12.     Since DMCIC created and recorded the 1890 Plat in 1890, the Subject Property has  
2 not been opened or improved. The statutory five (5) year period lapsed in 1895. *See* Section 32 of  
3 the Session Laws of 1889-90.

4           13.     As of the 1895 lapse date, any right of way interest encumbering the Subject  
5 Property was vacated by operation of law under the Session Laws of 1889-90.

6           14.     The City expressly disclaims any and all rights, title, and interest in and to the  
7 Subject Property.

8           15.     Plaintiffs are the owners of the Subject Property, free and clear of any claim of  
9 right, title, or interest based upon the 1890 Plat, recorded in 1890, and pursuant to Section 32 of  
10 the Session Laws of 1889-90.

11           16.     Plaintiffs' ownership of the Subject Property is also free and clear of any easement  
12 or right of use benefitting any other property or party, including the City.

13           17.     Plaintiffs and the City hereby stipulate and respectfully request that the Court enter  
14 the Agreed Order attached hereto and enter the Judgment in the form attached hereto as **Exhibit**  
15 **A.**

16           DATED this        day of                , 2024.

17    **STIPULATED AND AGREED TO BY:**

18    CAIRNCROSS & HEMPELMANN, P.S.

19  
20  
21    \_\_\_\_\_  
22    Stephen P. VanDerhoef, WSBA No. 20088  
23    E-mail: svanderhoef@cairncross.com  
24    Joshua H. Tinajero, WSBA No. 55949  
25    E-mail: jtinajero@cairncross.com  
26    524 Second Avenue, Suite 500  
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  Telephone: (206) 587-0700  
  Facsimile: (206) 587-2308  
  Attorneys for Plaintiffs Scot D. Sanborn and  
  Elizabeth A. Sanborn

STIPULATION AND AGREED ORDER FOR  
DECLARATORY JUDGMENT OF VACATION OF  
RIGHTS AND QUIETING TITLE - 4

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DES MOINES CITY ATTORNEY'S OFFICE

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Attorneys for Defendant City of Des Moines

STIPULATION AND AGREED ORDER FOR  
DECLARATORY JUDGMENT OF VACATION OF  
RIGHTS AND QUIETING TITLE - 5

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**II. AGREED ORDER**

THIS MATTER comes before the Court on the parties' Stipulation for Declaratory Judgment of Vacation of Rights and Quieting Title, and the Court having considered the pleadings and records herein, **NOW THEREFORE, IT IS HEREBY**

**ORDERED, ADJUDGED, AND DECREED** as follows:

1. Plaintiffs filed this action seeking to vacate any rights and quiet title to the Subject Property, an undeveloped parcel of real property that is legally described as:

THE SOUTH HALF OF SOUTH 208TH STREET (PREVIOUSLY IDENTIFIED AS NORTH STREET IN THE GROVE ADDITION TO THE TOWN OF DES MOINES) FROM THE CENTERLINE OF TWELFTH STREET WEST TO THE EAST MARGIN OF DES MOINES MEMORIAL DRIVE, TOGETHER WITH THE PORTION OF TWELFTH STREET BETWEEN BLOCKS 68 AND 69 OF THE GROVE ADDITION TO THE TOWN OF DES MOINES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 83, RECORDS OF KING COUNTY, WASHINGTON

2. The Court finds that DMCIC created and recorded the 1890 Plat in 1890, which included the Subject Property as a possible future connection of S. 208th Street with what currently is 12th Avenue S.

3. The Court finds that since the recording of the 1890 Plat, the Subject Property has never been opened or improved for public use.

4. The Court finds that the five (5) year statutory period to open the Subject Property for public use lapsed in 1895. Therefore, pursuant to Section 32, page 603 of the Session Laws of 1889-90 of the State of Washington, the Court hereby declares the right of way previously situated in the Subject Property, described in Paragraph 1 of this Order, were vacated by operation of law in 1895.

5. The Court finds that the City expressly disclaims any and all rights, title, and interest in and to the Subject Property.

STIPULATION AND AGREED ORDER FOR  
DECLARATORY JUDGMENT OF VACATION OF  
RIGHTS AND QUIETING TITLE - 6

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1           6.       The Court finds the Subject Property, described in Paragraph 1 of this Order,  
2 belongs to and ownership of the Subject Property vests in only Plaintiffs Scot D. Sanborn and  
3 Elizabeth A. Sanborn who are the only abutting property owners of the Subject Property.

4           7.       It is the intent of this Order to confirm that the aforementioned vacation of the  
5 Subject Property in 1895, pursuant to Section 32, page 603 of the Session Laws of 1889-90 of the  
6 State of Washington, was to transfer ownership of the Subject Property to the predecessors in title  
7 of Plaintiffs Scot D. Sanborn and Elizabeth A. Sanborn and that Plaintiffs Scot D. Sanborn and  
8 Elizabeth A. Sanborn own the Subject Property free and clear of any claim of right, title, or interest  
9 by any other party.

10          8.       It is hereby ORDERED that Plaintiffs are the owners of the Subject Property, free  
11 and clear of any claim of right, title, or interest by any other party, and title in the Subject Property  
12 is quieted in Plaintiffs.

13               DATED this \_\_\_\_ day of \_\_\_\_\_, 2024.

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\_\_\_\_\_  
JUDGE/COMMISSIONER

**STIPULATED AND AGREED TO BY:**  
CAIRNCROSS & HEMPELMANN, P.S.

\_\_\_\_\_  
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Attorneys for Plaintiffs Scot D. Sanborn and  
Elizabeth A. Sanborn

STIPULATION AND AGREED ORDER FOR  
DECLARATORY JUDGMENT OF VACATION OF  
RIGHTS AND QUIETING TITLE - 7

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DES MOINES CITY ATTORNEY'S OFFICE

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Attorneys for Defendant City of Des Moines

STIPULATION AND AGREED ORDER FOR  
DECLARATORY JUDGMENT OF VACATION OF  
RIGHTS AND QUIETING TITLE - 8

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HONORABLE JASON HOLLOWAY

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SCOT D. SANBORN, and ELIZABETH A  
SANBORN, a married couple,

Plaintiffs,

v.

THE CITY OF DES MOINES, a Washington  
Municipal Corporation,

Defendant.

NO. 24-2-11181-6 KNT

JUDGMENT

(CLERK'S ACTION REQUIRED)

**I. JUDGMENT SUMMARY**

Judgment Creditor:	N/A
Attorneys for Judgment Creditor:	N/A
Judgment Debtors:	N/A
Attorneys for Judgment Debtor:	N/A
Abbreviated Legal Description:	N/A
Parcel Number:	N/A

JUDGMENT - 1

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**III. JUDGMENT**

THIS MATTER comes before the Court on the parties’ Stipulation for Declaratory Judgment of Vacation of Rights and Quieting Title, and the Court having considered the pleadings and records herein, **NOW THEREFORE, IT IS HEREBY**

**ORDERED, ADJUDGED, AND DECREED** as follows:

1. The property that is the subject of this Judgment is an undeveloped parcel of real property legally described as:

THE SOUTH HALF OF SOUTH 208TH STREET (PREVIOUSLY IDENTIFIED AS NORTH STREET IN THE GROVE ADDITION TO THE TOWN OF DES MOINES) FROM THE CENTERLINE OF TWELFTH STREET WEST TO THE EAST MARGIN OF DES MOINES MEMORIAL DRIVE, TOGETHER WITH THE PORTION OF TWELFTH STREET BETWEEN BLOCKS 68 AND 69 OF THE GROVE ADDITION TO THE TOWN OF DES MOINES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 83, RECORDS OF KING COUNTY, WASHINGTON

(“Subject Property”)

2. The City of Des Moines, or any other party, has no right, title, or interest in or to the Subject Property or any part thereof.

3. Plaintiffs Scot D. Sanborn and Elizabeth A. Sanborn are the owners of the Subject Property, free and clear of any claim of right, title, or interest by any other party, and title in the Subject Property is quieted in Plaintiffs.

DATED this \_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
JUDGE/COMMISSIONER

JUDGMENT - 2

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**STIPULATED TO AND PRESENTED BY:**

CAIRNCROSS & HEMPELMANN, P.S.

---

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Elizabeth A. Sanborn

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JUDGMENT - 3

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SCOT D. SANBORN, and ELIZABETH A  
SANBORN, a married couple,

Plaintiffs,

v.

CITY OF DES MOINES, a Washington  
Municipal Corporation,

Defendant.

NO. 24-2-11181-6 KNT

COMPLAINT TO QUIET TITLE

**I. PARTIES AND RELEVANT PROPERTIES**

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1. Plaintiffs Scot D. Sanborn and Elizabeth A. Sanborn ("Plaintiffs") own real property commonly known as 20820 Des Moines Memorial Drive, Des Moines, Washington, (the "20820 Property") identified by King County parcel number 0822049079, and legally described as follows:

THE NORTH 335 FEET OF THAT PORTION OF THE  
NORTHEAST QUARTER OF THE NORTHWEST QUARTER  
OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP  
22 NORTH, RANGE 4 EAST,  
W.M., IN KING COUNTY, WASHINGTON

2. Plaintiffs also own three parcels of real property that are directly north of the 20820 Property. These properties are identified by King County parcel numbers 2946004835, 2946004820, and 2946004805.

COMPLAINT TO QUIET TITLE - 1

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a. Parcel number 2946004835 is legally described as:

LOTS 15 AND 16, BLOCK 69, GROVE ADDITION TO THE TOWN OF DES MOINES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 83, RECORDS OF KING COUNTY, WASHINGTON

b. Parcel number 2946004820 is legally described as:

LOTS 14 THROUGH 16, INCLUSIVE, BLOCK 68, GROVE ADDITION TO THE TOWN OF DES MOINES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 83, RECORDS OF KING COUNTY, WASHINGTON.

TOGETHER WITH THE WEST HALF OF THE ADJOINING ALLEY BETWEEN BLOCKS 67 AND 68, AND THE SOUTH HALF OF 208<sup>TH</sup> STREET (PREVIOUSLY KNOWN AS NORTH STREET) ABUTTING THE NORTH LINE OF BLOCK 68 AND THE NORTH LINE OF THE WEST HALF OF THE ADJOINING ALLEY, ALL AS VACATED BY THE CITY OF DES MOINES ORDINANCE NO. 1340, AS RECORDED UNDER RECORDING NO. 20050531000674

c. Parcel number 2946004805 is legally described as:

LOTS 14 THROUGH 16, INCLUSIVE, BLOCK 67, GROVE ADDITION TO THE TOWN OF DES MOINES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 83, RECORDS OF KING COUNTY, WASHINGTON.

TOGETHER WITH THE EAST HALF OF THE ADJOINING ALLEY BETWEEN BLOCKS 67 AND 68, AND THE SOUTH HALF OF 208<sup>TH</sup> STREET (PREVIOUSLY KNOWN AS NORTH STREET) ABUTTING THE NORTH LINE OF BLOCK 67 AND THE NORTH LINE OF THE EAST HALF OF THE ADJOINING ALLEY, ALL AS VACATED BY THE CITY OF DES MOINES ORDINANCE NO. 1340, AS RECORDED UNDER RECORDING NO. 20050531000674

Parcel numbers 2946004835, 2946004820, and 2946004805 are collectively referred to as "Grove Addition Properties". A true and correct copy of the King County Parcel Viewer map showing the 20820 Property and the Grove Addition Properties is attached as **Exhibit A**.

3. Directly to the north of the Grove Addition Properties and the 20820 Property is a section of undeveloped land that is legally described as:

THE SOUTH HALF OF SOUTH 208TH STREET (PREVIOUSLY IDENTIFIED AS NORTH STREET IN THE GROVE ADDITION TO THE TOWN OF DES MOINES) FROM THE CENTERLINE

COMPLAINT TO QUIET TITLE - 2

CAIRNCROSS & HEMPELMANN, P.S.  
ATTORNEYS AT LAW  
524 2nd Ave, Suite 500  
Seattle, WA 98104  
office 206 587 0700 fax: 206 587 2308

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OF TWELFTH STREET WEST TO THE EAST MARGIN OF  
DES MOINES MEMORIAL DRIVE, TOGETHER WITH THE  
PORTION OF TWELFTH STREET BETWEEN BLOCKS 68  
AND 69 OF THE GROVE ADDITION TO THE TOWN OF DES  
MOINES, ACCORDING TO THE PLAT THEREOF RECORDED  
IN VOLUME 4 OF PLATS, PAGE 83, RECORDS OF KING  
COUNTY, WASHINGTON.

("Subject Property"). A site plan with the Subject Property outlined in red is attached as **Exhibit B**.

4. Defendant City of Des Moines is a municipal corporation that was incorporated in the State of Washington on June 17, 1959.

**II. JURISDICTION AND VENUE**

5. The Court has jurisdiction pursuant to RCW 2.08.010.

6. Pursuant to RCW 4.12.010, venue is proper in King County because the properties at issue are located in King County.

**III. FACTS**

7. On January 17, 1890, the Des Moines City Improvement Company ("DMCIC") platted certain portions of land then within King County into lots, blocks, streets, and alleys. ("1890 Plat"). A site plan showing a portion of the recorded 1890 Plat is attached hereto as **Exhibit C**. The Subject Property is depicted in the southeast corner of the 1890 Plat. The Subject Property is now located within the City of Des Moines.

8. The Subject Property is an undeveloped area that was designated in the 1890 Plat for a possible, future connection of S. 208th Street (previously identified as "North Street" in the 1890 Plat) with 12th Avenue S. The Subject Property was never opened for public use. The Subject Property is bounded on the east and west by Blocks 68 and 69 and on the north and south by Blocks 54 and 69 of the 1890 Plat.



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9. Section 32 of the Session Laws of 1889-90 states:

Any county road, or part thereof, which has heretofore been or may hereafter be authorized, which remains unopened for public use for the space of five years after the order is made or authority granted for opening the same, shall be and the same is hereby vacated, and the authority for building the same barred by lapse of time.

An excerpt of the Session Laws of 1889-90 is attached hereto as **Exhibit D**.

10. The northern border of the 20820 Property, which is owned by Plaintiffs, abuts the southern border of the Subject Property, the northern and eastern borders of Parcel number 2946004805 directly abut the Subject Property, and western border of parcel number 2946004820 directly abuts the Subject Property.

11. Based upon information and belief, Javier H. and Virginia Prado own King County Parcel number 2946003865 which is directly adjacent to the northern boundary of the Subject Property. Parcel number 2946003865 is legally described as:

GROVE ADD TO DES MOINES POR VAC ST & LESS CO RD

12. On June 12, 2004, the City of Des Moines executed Ordinance No. 1340 which vacated that portion of "North Street" identified in the 1890 Plat which is directly adjacent to and directly east of the Subject Property. That property (the "Vacated Property") is outlined in green on the site plan attached as **Exhibit B**.

13. Ordinance 1340 confirmed that "[t]he public right-of-way which is the subject of this ordinance is unimproved for transportation purposes, has never been opened for transportation purposes, and appears to be subject to vacation by operation of law under the Laws of 1889-90."

14. Since DMCIC created and recorded the 1890 Plat in 1890, the Subject Property has not been opened or improved. The statutory time period of five (5) years as confirmed in Section 32 of the Session Laws of 1889-90 ended in 1895. As of that 1895 lapse date, any right of way interest encumbering the Subject Property was vacated by operation of law under the Session Laws of 1889-90.

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**IV. CAUSES OF ACTION**

**First Cause of Action – Quiet Title**

15. Plaintiffs reallege and incorporate the above allegations as though fully set forth herein.

16. Plaintiffs are the rightful owners of the Subject Property south of the midpoint of the area designated as “North Street” in the 1890 Plat but never opened for public use. Non-parties Javier H. and Virginia Prado are the rightful owners of the Subject Property north of the midpoint of the area designated as “North Street” in the 1890 Plat but never opened for public use.

17. Pursuant to Section 32 of the Session Laws of 1899-1990 and RCW 7.28, *et seq.*, Plaintiffs are entitled to an Order declaring the state of title, including identifying all parties with interests in the Subject Property and the nature and extent of those interests.

**Second Cause of Action – Declaratory Judgment**

18. Plaintiffs reallege and incorporate the above allegations as though fully set forth herein.

19. There is a genuine and bona fide dispute between Plaintiffs and Defendant concerning the title of the Subject Property.

20. Plaintiffs and Defendant are genuinely adversarial in character regarding the cloud of title on the Subject Property.

21. Plaintiffs own the Grove Addition Properties and the 20820 Property, which directly abut the Subject Property. Pursuant to Section 32 of the Session Laws of 1889-90, Plaintiffs are the true owners of the Subject Property south of the midpoint of the area designated as North Street in the 1890 Plat. Therefore, Plaintiffs have a direct and substantial right in the Subject Property.

22. A judicial determination by this Court would be final and conclusive of this issue and would provide Plaintiffs with immediate relief from any cloud on title regarding the Subject

1 Property, as specifically contemplated in Section 32 of the Session Laws of 1889-90 and RCW  
2 7.24 *et seq.*

3 23. Accordingly, and pursuant to Section 32 of the Session Laws of 1889-90 and RCW  
4 7.24 *et seq.*, Plaintiffs are entitled to declaratory relief entered in their favor.

5 **V. REQUEST FOR RELIEF**

6 Plaintiffs request the following relief:

7 1. An order vacating the Subject Property and quieting title to the Subject Property  
8 south of the midpoint of the area designated as North Street in the 1890 Plat in Plaintiffs' name  
9 and/or declaring the state of title, including identifying all parties with interests in the Subject  
10 Property and the nature and extent of those interests;

11 2. A declaratory judgment entered in Plaintiffs' favor, holding that the Subject  
12 Property south of the midpoint of the area designated as North Street in the 1890 Plat is in  
13 Plaintiffs' name;

14 3. An award of Plaintiffs' costs and reasonable attorneys' fees incurred in this matter;  
15 and

16 4. Such other relief as the Court deems just and proper.

17  
18 DATED this 17th day of May, 2024.

19 CAIRCROSS & HEMPELMANN, P.S.

20 

21 \_\_\_\_\_  
22 Stephen P. VanDerhoef, WSBA No. 20088  
23 E-mail: svanderhoef@caircross.com  
24 Joshua H. Tinajero, WSBA No. 55949  
25 E-mail: jtinajero@caircross.com  
26 524 Second Avenue, Suite 500  
Seattle, WA 98104-2323  
Telephone: (206) 587-0700  
Facsimile: (206) 587-2308  
Attorneys for Plaintiffs Scot D. Sanborn and  
Elizabeth A. Sanborn

COMPLAINT TO QUIET TITLE - 6

CAIRCROSS & HEMPELMANN, P.S.  
ATTORNEYS AT LAW  
524 2nd Ave, Suite 500  
Seattle, WA 98104  
office 206 587 0700 fax: 206 587 2308



# **EXHIBIT A**

# King County



King County Assessor's Office, King County GIS Center, King County, King county Assessor's Office, King County GIS Center

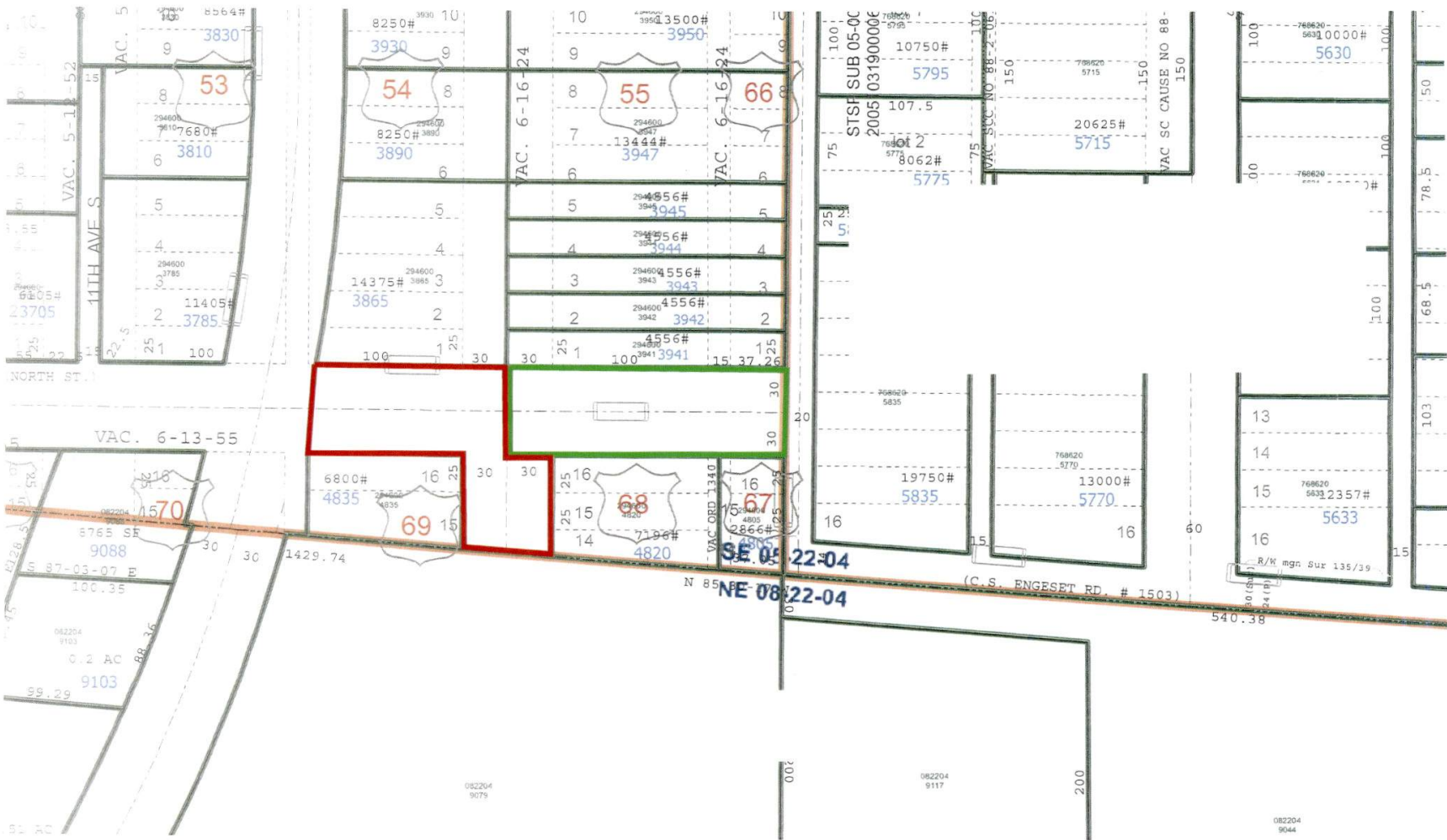
The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.

Date: 5/17/2024



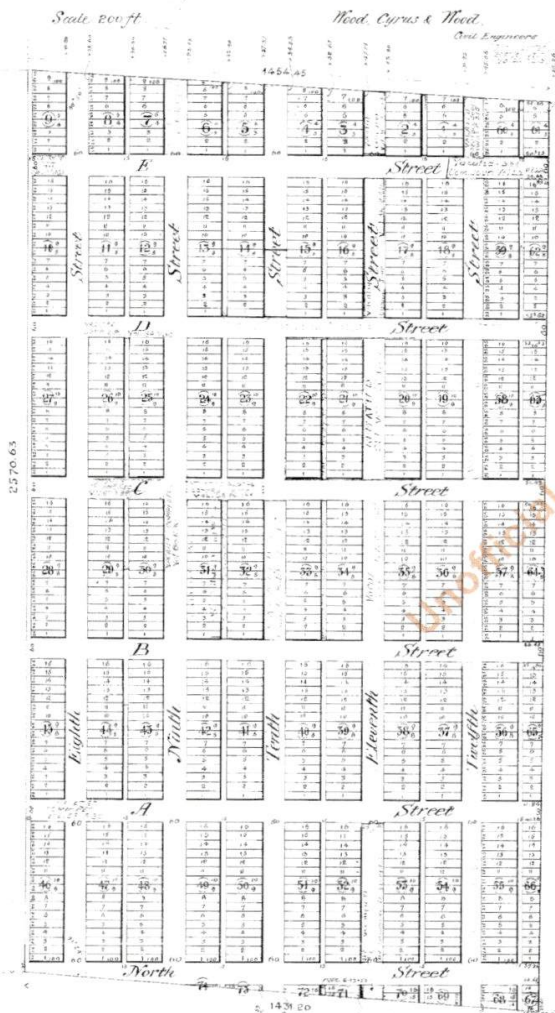
# **EXHIBIT B**





# **EXHIBIT C**

# Plat of THE GROVE ADDITION To the Town of **DES MOINES** King County Washington.



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Now all men by these presents that the Des Moines City Improvements Company, a Corporation duly organized under the laws of Washington Territory, does hereby lay out and plat into townlots, blocks, streets and alleys the following described tract of land to wit: The N 1/2 of S 1/2 of Sec 6 T 20 N R 4 E W 20 as the same is described on the plat on file in the Survey General's office in Olympia, Washington and containing Eighty Acres more or less of land which is hereafter to be known as the Grove Addition to the Town of Des Moines King County Washington, and does hereby grant and establish to the use of the public forever all streets and alleys shown on this plat. The dimensions of lots, streets and alleys are as shown on this plat. The initial point of this plat and survey is the 1 Section post between Sections 6 and 8 and is the N 1/2 cor of Section 6. In witness whereof the said Des Moines City Improvements Company has caused this plat to be signed by the President and Secretary thereunto duly authorized and its corporate seal herewith affixed this 16th day of January A. D. 1890.

R. Norman Barbo }  
 W. Johnson } Witness  
 W. Kleeb, President  
 O. W. Barlow, Secy



State of Washington }  
 County of Pierce }  
 This is to certify that on this 16th day of January A. D. 1890 J. W. Kleeb, President, and O. W. Barlow, Secretary of the Des Moines City Improvement Company personally appeared before me, the undersigned, a duly qualified Notary Public in and for said County, with state to me known to be the President and Secretary of the said Des Moines City Improvement Company and the persons standing at and who for and on behalf of the Des Moines City Improvement Company executed the above and foregoing instrument, and acknowledged to me that they executed the same as and for the act and deed of said Des Moines City Improvement Company. In witness whereof I have herewith set my hand and affixed my official seal this 16th day of January A. D. 1890.



R. Norman Barbo  
 Notary Public  
 in and for Washington.

We hereby certify that we have surveyed the above Addition and that the distances marked on this plat are correct.

Wood, Cyrus & Wood,  
 Civil Engineers.

SEE SURVEY VOL. 13 PAGES 26

45872.  
 Filed for Record at the request  
 of The Des Moines L. & L. Co.  
 Jan 17 A. D. 1890  
 at 57 min. past 4 P. M.  
 and recorded in Vol. IX of  
 Plats Page 83  
 Records of King County Wash.  
 County Auditor  
 Deputy.

A. Birds Eye.



3 4 5

# **EXHIBIT D**

SESSION LAWS  
OF THE  
STATE OF WASHINGTON,

ENACTED BY THE  
FIRST STATE LEGISLATURE,

SESSION OF 1889-90.

---

[COMPILED IN CHAPTERS, WITH MARGINAL NOTES AND INDEX, BY  
ALLEN WEIR, SECRETARY OF STATE.]

---

PUBLISHED BY AUTHORITY.

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OLYMPIA, WASH.:  
O. C. WHITE, STATE PRINTER.  
1890.

AUTHENTICATION.

STATE OF WASHINGTON,  
OFFICE OF SECRETARY OF STATE. }

OLYMPIA, April 15, 1890.

I, ALLEN WEIR, Secretary of State of the State of Washington, and custodian of the seal of said state, do hereby certify that the laws, memorials and resolutions hereinafter published are true and correct copies of the originals on file in my office, with the exception of corrections of certain obvious errors in orthography and use of words, which corrections have in each case been indicated by brackets, thus: [ ], as provided by law.

In witness whereof, I have hereunto set my hand and affixed the seal of the State of Washington, the day and year aforesaid.

[SEAL.]

ALLEN WEIR,  
*Secretary of State.*



county commissioners, who shall appoint three reviewers to inspect, assess and report the amount of damages sustained in the premises, and the clerk and commissioners of the proper county shall be governed in the reception and recording of such report in all respects as is prescribed in this act in cases of new roads.

SEC. 31. The surveyors shall receive for each day Compensation. actually employed, under the provisions of the two preceding sections, five dollars; the viewers, reviewers and chainmen, two dollars and fifty cents per day; other employes, two dollars per day, the same compensation allowed in cases of the construction of new roads, to be paid out of the county treasury as hereinbefore provided in this act.

SEC. 32. Any county road, or part thereof, which has Roads un- heretofore been or may hereafter be authorized, which opened. remains unopened for public use for the space of five years after the order is made or authority granted for opening the same, shall be and the same is hereby vacated, and the authority for building the same barred by lapse of time.

SEC. 33. When notice has been given and a road has Establishing been petitioned for as hereinbefore provided, and the without review petition calls for a road wholly on section lines, and where or survey. there are no damages claimed, and evidence filed that the route is practicable, the county commissioners may grant the road without reviewing or surveying the same.

SEC. 34. The county commissioners shall cause Monuments. monuments of stone to be placed at the beginning and terminus of all roads established under this act.

SEC. 35. No order of the county commissioners for the Limit for exe- establishment of a county road, or for the alteration or cutting orders. vacation, in whole or in part, of a state or county road, or changing the width of a county road, shall be executed until twenty days have elapsed after the entry of such order in the record of the commissioners, and no order shall issue to open any county road until fifteen days after the same has been established, at which time the clerk of the board may issue such order by direction of the commissioners, unless an appeal has been perfected.

**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Temporary Right-of-Way Easement –  
College Way

FOR AGENDA OF: August 8, 2024

DEPT. OF ORIGIN: Public Works

ATTACHMENTS:

DATE SUBMITTED: July 31, 2024

- 1. Temporary Right-of-Way Easement

CLEARANCES:

- City Clerk \_\_\_\_\_
- Community Development \_\_\_\_\_
- Courts \_\_\_\_\_
- Director of Marina Redevelopment \_\_\_\_\_
- Emergency Management \_\_\_\_\_
- Finance \_\_\_\_\_
- Human Resources \_\_\_\_\_
- Legal /s/MH
- Marina \_\_\_\_\_
- Police \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works MPS

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

**Purpose and Recommendation**

The purpose of this agenda item is to seek City Council acceptance of a temporary right-of-way easement, allowing a portion of Sound Transit property on the south side of College Way, Tax Parcel No. 2500600660, to be utilized by the City and members of the public in order to use the right-of-way easement area in advance of a right-of-way dedication (Attachment 1). The following motion will appear on the consent agenda:

**Suggested Motion**

**Motion:** “I move to accept the temporary right-of-way easement of a portion of Sound Transit owned property, Tax Parcel No. 2500600660, and authorize the City Manager to execute documents for this agreement substantially in the form as submitted.”

### **Background**

In November 2008, central Puget Sound area voters approved Sound Transit 2 (ST2) including extension of the Link Light Rail (LLR) system from SeaTac to the cities of Kent and Des Moines. Unfortunately, due to reduced tax revenue during the Great Recession, all work was suspended south of Angle Lake Station in SeaTac. Then in November 2016, voters approved Sound Transit 3 (ST3) which included the extension of the LLR system to the City of Federal Way, known as the Federal Way Link Extension (FWLE).

The City of Des Moines has negotiated multiple agreements with Sound Transit detailing various project requirements and permitting processes that would provide certainty and predictability for the FWLE Project within the City limits. These agreements referenced the completed Sound Transit Environmental Impact Statement and FTA mitigation requirements. The agreements established a consolidated permit process, amended and resolved technical code requirements that are impractical or infeasible, supported and accommodated the LLR system in land use plans and development regulations, and allowed for extended vesting or duration of land use approvals.

As part of the FWLE construction, Sound Transit is responsible for the construction of College Way from Pacific Highway to the Highline College Campus which includes a widened roadway, non-motorized/pedestrian corridor, storm water improvements, street lighting, and landscaping.

At the October 10, 2019 City Council meeting, the City Council approved a street vacation and right-of-way dedication for the construction of the College Way cul-de-sac at Highline College.

At the August 3, 2023 City Council meeting, the City Council approved a right-of-way dedication of Sound Transit owned property at Tax Parcel No. 2500600660. The right-of-way dedication allowed for improvements associated with Sound Transit's Federal Way Link Extension College Way Connection Project to be constructed within the public right-of-way. It was required that a Midway Sewer District easement within the dedication area be extinguished prior to recording of the right-of-way dedication.

### **Discussion**

The acceptance of a temporary right-of-way easement is necessary to allow for public use of the College Way dedication area prior to recording of the right-of-way dedication. Sound Transit and Midway Sewer District are currently negotiating the extinguishment of the sewer easement but it is unknown when an agreement may be reached. The Sound Transit Federal Way Link Extension College Way Connection Project is substantially complete and acceptable for public use. The temporary easement allows for public use until the right-of-way dedication is recorded.

### **Alternatives**

The City Council may choose not to accept the temporary right-of-way easement. College Way would not be useable by the public until the Midway Sewer easement is extinguished and right-of-way dedication recorded.

### **Financial Impact**

None



**Recommendation**

Staff recommends the adoption of the motion.

**Council Committee Review**

Not Applicable

**WHEN RECORDED RETURN TO:**

Sound Transit  
Real Property Division  
401 S. Jackson Street  
Seattle, WA 98104-2826

---

**TEMPORARY RIGHT-OF-WAY EASEMENT**

**Grantor(s):** [Central Puget Sound Regional Transit Authority]  
**Grantee:** **City of Des Moines**  
**Abbreviated Legal Description:** *Lot 21: Block 6: Federal Highway Addition*  
**Assessor's Tax Parcel No(s):** 2500600660  
**ROW No(s):** FL228

---

**RECITALS**

- A. CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a regional transit authority of the State of Washington, ("Grantor" or "Sound Transit") is the owner of real property in King County, Washington legally described in **Exhibit A** and depicted on **Exhibit C** (the "Property").
- B. THE CITY OF DES MOINES ("Grantee" or "the City") is a Washington municipal corporation.
- C. Grantor is constructing its Kent/Des Moines light rail station project (the "Project") on land adjacent to the Property in connection with its Federal Way Link Extension light rail project, which will serve residents of the city of Des Moines and surrounding communities.
- D. As part of the Project and to facilitate access thereto, Grantor is building right-of-way improvements and related appurtenances in the areas indicated on attached **Exhibit C** (the "Right-of-Way Easement Area") for the benefit of the City and members of the public.
- E. Grantor intends to dedicate the Right-of-Way Easement Area to the City in connection with the Project. However, the City is unwilling to accept such dedication until such time as Grantor completes certain sidewalk lighting improvements and extinguishes a sewer easement in the Right-of-Way Easement Area.
- F. In order to allow the City and members of the public to use the Right-of-Way Easement Area in advance of the dedication, Sound Transit wishes to grant to the City, and the City wishes to accept from Sound Transit, a temporary right-of-way easement in the Right-of-Way Easement Area.
- G. The parties understand and acknowledge that, upon Grantor's dedication of the Right-of-Way Easement Area to the City, the easement shall terminate and shall be of no further force or effect.

## AGREEMENT

NOW, THEREFORE, Grantor, for the public good and other valuable consideration, receipt and sufficiency of which are hereby acknowledged, hereby grants and conveys to Grantee a temporary, non-exclusive right-of-way easement (the "Easement") over, along, across and upon the Right-of-Way Easement Area, which is legally described on **Exhibit B** hereto and depicted on **Exhibit C** hereto, both of which exhibits are incorporated herein by this reference.

Grantee and its employees, agents, contractors, licensees, invitees, permittees, successors, and assigns may use the Easement Area for the purposes of inspection, operation, use, maintenance, repair, replacement, and enlargement of public rights-of-way for all public purposes, including, but not limited to vehicular travel lanes, landscaping, sidewalks, street lights, and public utilities.

The Easement is granted subject to the following terms and conditions:

1. The Easement shall terminate at such time as Grantor dedicates the Right-of-Way Easement Area to Grantee.
2. Upon termination of the Easement, Grantee and Grantor shall cooperate in drafting and recording an instrument terminating the Easement.
3. During the term of the Easement, Grantee shall maintain the Right-of-Way Easement Area in a safe condition and shall perform any and all repairs to the Right-of-Way Easement Area and all improvements thereon reasonably necessary for the purposes described herein.
4. Grantor shall retain the right to use the Right-of-Way Easement Area as long as such use does not interfere with the easement rights granted to the Grantee.
5. Grantee agrees to hold harmless, indemnify and defend Grantor from and against any and all claims, losses or liability, for injuries, sickness or death of persons, including employees of the Grantee, or damage to property, arising out of the exercise of Grantee's and the general public's rights under this Easement, or any willful misconduct or negligent act, error, or omission of Grantee or its employees, agents, contractors, licensees, invitees, and permittees, in connection with the use of the Right-of-Way Easement Area as authorized by this Easement; provided, however, that:
  - a. Grantee's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of Grantor; and
  - b. Grantee's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of Grantee and Grantor, or of Grantee and a third party other than an officer, agent, contractor, employee, invitee, licensee, or permittee of Grantee, shall apply only to the extent of the negligence or willful misconduct of Grantee (including an officer, agent, contractor, employee, invitee, licensee, or permittee of Grantee.)

For purposes of this indemnity, by mutual negotiation, Grantee hereby waives with respect to Grantor only, any immunity that would otherwise be available against any claims under the Industrial Insurance provisions Title 51 RCW, but only to the extent necessary to indemnify Grantor as provided herein.

6. During the term of the Easement, Grantee shall maintain commercial general liability insurance with reasonable limits of liability covering Grantee and its employees, agents, contractors, licensees, invitees, and permittees as to the exercise of Grantee's rights under this Easement within the Right-of-Way Easement Area. Grantee shall provide Grantor, on request, certificates of insurance evidencing such coverage. Grantee may provide the



coverage required herein under blanket policies provided that the coverage is not diminished as a result.

This Easement and covenants herein shall be recorded with the King County Recorder and shall be binding on the Grantor, its successors, heirs and assigns.

Dated and signed on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Day

Month

Year

Grantor: **CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY**

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

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

Approved as to Form

By: \_\_\_\_\_  
 Sound Transit Legal Counsel

STATE OF WASHINGTON }  
 COUNTY OF KING } SS.  
 }

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he is/she is) authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of **CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY** to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Notary Public in and for the State of Washington

Notary (print name): \_\_\_\_\_

Residing at: \_\_\_\_\_

My appointment expires: \_\_\_\_\_

Dated and signed on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.  
Day Month Year

**Grantee: CITY OF DES MOINES**

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

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

STATE OF WASHINGTON }  
  } SS.  
COUNTY OF KING    }

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

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Notary Public in and for the State of Washington

Notary (print name): \_\_\_\_\_

Residing at: \_\_\_\_\_

My appointment expires: \_\_\_\_\_



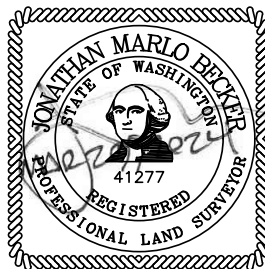
**EXHIBIT "A"**

R/W No.: FL-228  
PIN: 2500600660  
CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (SOUND TRANSIT)

**Grantor's Parcel:**

LOT 21, BLOCK 6, FEDERAL HIGHWAY ADDITION, ACCORDING TO THE PLAT THEREOF, RECORDED  
IN VOLUME 30 OF PLATS, PAGES 1 AND 2, IN KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION THEREOF CONVEYED TO KING COUNTY FOR ROAD PURPOSES BY DEED  
RECORDED UNDER RECORDING NO. 5605333.



**EXHIBIT "B"**

R/W No.: FL-228  
PIN: 2500600660  
CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY (SOUND TRANSIT)

**College Way Right-of-Way Easement Area:**

THAT PORTION OF GRANTOR'S PARCEL (SAID PARCEL BEING DESCRIBED IN EXHIBIT "A") LYING NORTH OF A LINE DESCRIBED AS FOLLOWS:

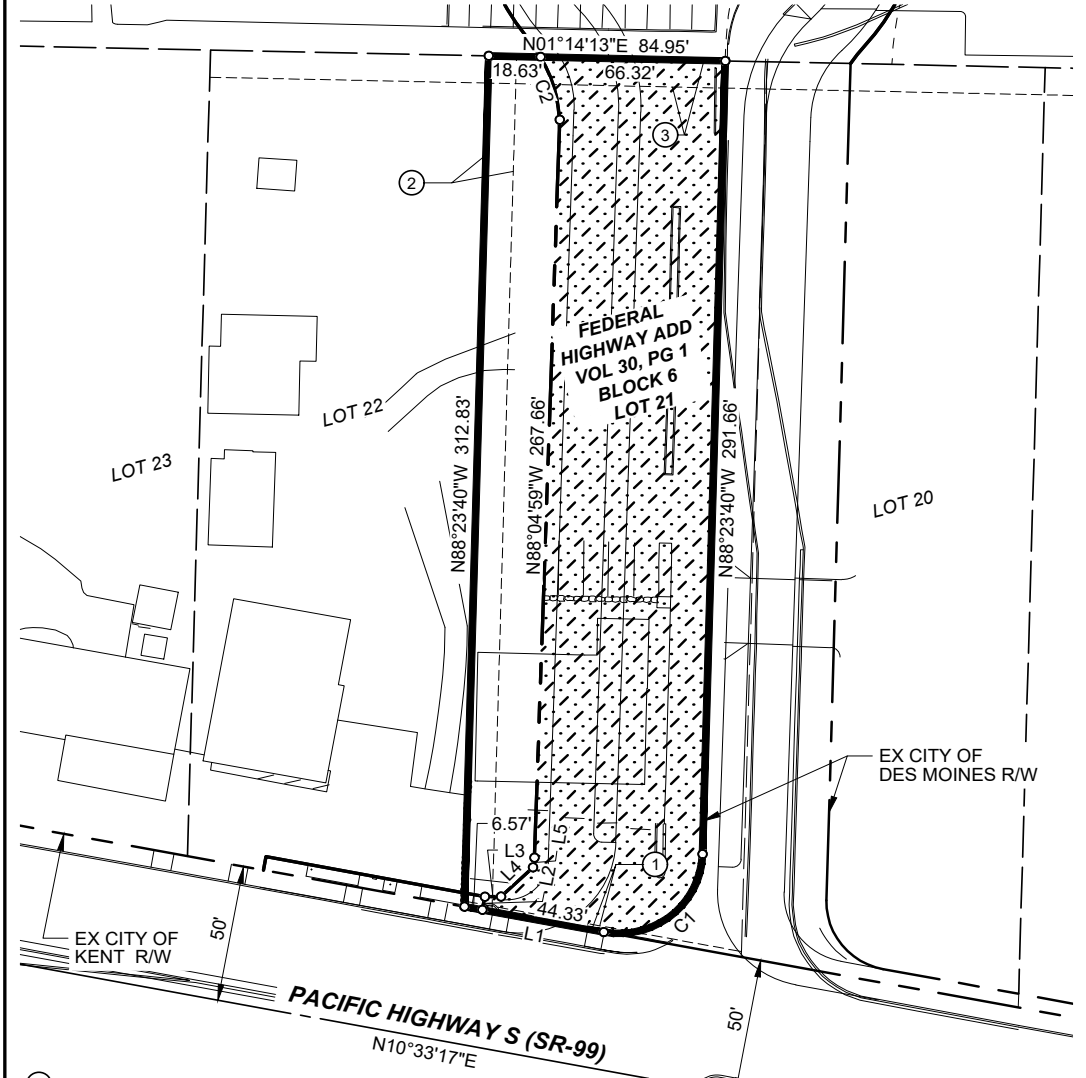
**COMMENCING** AT THE SOUTHWEST CORNER OF SAID GRANTOR'S PARCEL;  
THENCE ALONG THE WEST LINE THEREOF, NORTH 01°14'13" EAST A DISTANCE OF 18.63 FEET TO THE **POINT OF BEGINNING** AND BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 50.06 FEET, THROUGH WHICH POINT A RADIAL LINE BEARS NORTH 30°08'41" WEST;  
THENCE LEAVING SAID WEST LINE NORTHEASTERLY TO THE RIGHT ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 32°03'43", AN ARC DISTANCE OF 28.01 FEET;  
THENCE SOUTH 88°04'59" EAST A DISTANCE OF 267.66 FEET;  
THENCE SOUTH 81°14'37" EAST A DISTANCE OF 3.58 FEET;  
THENCE SOUTH 43°00'04" EAST A DISTANCE OF 15.68 FEET;  
THENCE SOUTH 00°29'45" EAST A DISTANCE OF 5.79 FEET;  
THENCE SOUTH 79°24'04" EAST A DISTANCE OF 4.98 FEET TO A POINT ON THE WEST LINE OF SAID GRANTOR'S PARCEL LYING 6.57 FEET NORTHERLY OF THE SOUTHEAST CORNER THEREOF AND THE **TERMINUS** OF SAID LINE DESCRIPTION.

CONTAINING 19,139 SQUARE FEET, MORE OR LESS.



# COLLEGE WAY RIGHT-OF-WAY TEMPORARY EASEMENT

SE 1/4 SE 1/4 SEC 16, T 22 N, R 4 E, W.M.



- ① REC NO. 2927297: 2' ESMT FOR A WATER MAIN AND METER
  - ② REC NO. 7802210681: 10' ELECT ESMT TO PSE
  - ③ REC NO. 6110541: 10' SEWER ESMT TO DES MOINES SEWER DIST (NOW MIDWAY SEWER DISTRICT)
- |    |             |        |    |                                 |
|----|-------------|--------|----|---------------------------------|
| L1 | N10°33'17"E | 50.90' | C1 | Δ=98°56'58" R=30.00' L=51.81'   |
| L2 | N79°24'04"W | 4.98'  |    | N01°36'20"E (R) S79°26'43"E (R) |
| L3 | N00°29'45"W | 5.79'  | C2 | Δ=32°03'43" R=50.06' L=28.01'   |
| L4 | N43°00'04"W | 15.68' |    | N30°08'41"W (R) N01°55'01"E (R) |
| L5 | N81°14'37"W | 3.58'  |    |                                 |

LEGEND	
	RIGHT-OF-WAY LINE
	EXISTING RIGHT-OF-WAY LINE
	STREET CENTER LINE
	PROPERTY LINE
	PARCEL BOUNDARY



<p><b>SOUNDTRANSIT</b></p>		DEDICATION AREA: 19,139 SF
		<b>EXHIBIT "C"</b> <b>R/W NO. FL-228 PARCEL MAP</b>
<p><b>FURTADO &amp; ASSOCIATES</b></p> <p>LINK LIGHT RAIL TRANSIT SYSTEM</p>		ASSESSOR NO.: 2500600660      DATE: 03/29/2024
		OWNER: SOUND TRANSIT
		BLOCK NO.: 6      LOT NO.: 21
		CITY OF DES MOINES      KING COUNTY, WA

**AGENDA ITEM**

BUSINESS OF THE CITY COUNCIL  
City of Des Moines, WA

SUBJECT: Interagency Agreement GCB 3807  
Between WSDOT and City of Des  
Moines

FOR AGENDA OF: August 8, 2024

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: July 31, 2024

ATTACHMENTS:

- 1. Agreement GCB 3807 between WSDOT and City of Des Moines including attachments

CLEARANCES:

- City Clerk \_\_\_\_\_
- Community Development \_\_\_\_\_
- Courts \_\_\_\_\_
- Director of Marina Redevelopment \_\_\_\_\_
- Emergency Management \_\_\_\_\_
- Finance \_\_\_\_\_
- Human Resources \_\_\_\_\_
- Legal /s/ MH
- Marina \_\_\_\_\_
- Police \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works MPS

APPROVED BY CITY MANAGER  
FOR SUBMITTAL: [Signature]

**Purpose and Recommendation**

The purpose of this agenda item is to authorize the City Manager to enter into an agreement with the Washington State Department of Transportation for construction of mitigation for wetland buffer and wetland conversion on the historic WSDOT owned right-of-way (ROW) at the Barnes Creek Site and termination of South 194<sup>th</sup> Street at 11<sup>th</sup> Place South as a part of the SR509 Completion Project Stage 2.

**Suggested Motion:**

**Motion:** "I move to approve the Interagency Agreement between the Washington State Department of Transportation and the City of Des Moines – Agreement GCB 3807, and further authorize the City Manager to sign said Agreement substantially in the form as submitted."



## **Background**

### **SR 509 Historic surplus ROW:**

The Washington State Department of Transportation (WSDOT) is planning the construction of the SR 509/24<sup>th</sup> Avenue South to South 188<sup>th</sup> Street – New Expressway Project, also known as the SR 509 Completion Project Stage 2 of which elements of the Project lie within the City corporate boundary. The project includes constructing mitigation or buffer impacts and wetland conversion on the historic WSDOT owned right-of-way (ROW) at the Barnes Creek Site, which is adjacent to the City's Barnes Creek Trail. The ROW was originally acquired in the early 1970's for constructing the proposed SR 509 freeway south to SR 516 along corridor west of I-5. The southern end of the SR 509 route was redesigned in the late 1990's to connect to I-5 north of the SR 526 crossing and new ROW was acquired. The excess WSDOT ROW between South 220<sup>th</sup> Street and Kent Des Moines Road is being considered for the Barnes Creek Mitigation Site (Exhibit B of Attachment 1) and is planned for future conveyance to the City consistent with the requirements of RCW 47.12.370

Several years ago, the City of Des Moines obtained a permanent trail easement between South 220<sup>th</sup> Street and Kent-Des Moines Road within the above mentioned surplus ROW. This trail easement is a key segment of the Barnes Creek Trail which ultimately will connect non-motorized users between South 216<sup>th</sup> Street and Highline College.

### **Termination of South 194<sup>th</sup> Street:**

The newly designed SR 509 expressway project is planned to impact the east end of South 194<sup>th</sup> Street just west of Des Moines Memorial Drive within the City of Sea Tac. This impact will necessitate the termination of South 194<sup>th</sup> Street and thus require some minor roadway and sidewalk work at the intersection of 11<sup>th</sup> Place South and South 194<sup>th</sup> Street (Exhibit A of Attachment 1). The work will also change the intersection from a T-intersection with a northbound stop controlled leg to a curve, eliminating the northbound to eastbound right turn.

## **Discussion**

### **SR 509 Historic surplus ROW:**

The SR 509 Expressway Completion project is impacting an identified wetland (Wetland 22.42) and thus mitigation is being planned in current surplus ROW owned by WSDOT. The environmental mitigation will be installed within the Historic SR 509 ROW (South 220<sup>th</sup> Street to Kent-Des Moines Road) adjacent to Barnes Creek. Mitigation in the vicinity of Barnes Creek will include removing all invasive plants while preserving and enhancing native plant communities to the greatest extent feasible, preserving and enhancing the forested character, removing potential hazard trees, and preventing access to sensitive restoration areas while utilizing Crime Prevention Through Environmental Design (CPTED) principles. Steep slope sensitive areas will be protected and undisturbed within the construction limits.

WSDOT will enhance the existing wetland buffer area within WSDOT ROW limits in the vicinity of Barnes Creek between South 220<sup>th</sup> Street and Kent-Des Moines Road (Exhibit D in Attachment 1) to provide mitigation for buffer impacts and wetland conversion due to the Stage 2 project. Any work proposed by WSDOT will not preclude the City from constructing the Barnes Creek Trail Improvement Capital Project.

The existing Barnes Creek Trail Easement, City of Des Moines unopened ROW for 13<sup>th</sup> and 14<sup>th</sup> Avenues, and the existing Midway Sewer maintenance trail footprint will be used by WSDOT and its Design Builder, for construction access within the construction limits (Exhibit B of Attachment 1). The City acknowledges that WSDOT, as owner of the real property containing the Barnes Creek Trail Easement, has the right to use the Barnes Creek Trail for construction access. Light construction

equipment will be used and it is mutually understood that access will be required to be maintained during the WSDOT landscape maintenance and vegetation establishment period which is understood to be ten (10) years following substantial completion. During this construction and maintenance time period, it is anticipated that WSDOT and/or its contractor will utilize Crushed Surfacing Base Course (CBSC), wood chips and geotextile fabric as necessary to ensure a stabilized path that light duty trucks can traverse and existing trail width will be maintained. It is further understood that this access will be used to facilitate oversight, monitoring for, and responding to crime and illicit activities.

Trail extension or surface improvements may be constructed upon WSDOT concurrence and payment by the City in accordance with the terms of betterments in Section 4 of the Agreement.

**Termination of South 194<sup>th</sup> Street:**

As outlined and approved in the SR 509: Corridor Completion/I-5/South Access Road Environmental Impact Statement (EIS) dated 2003, the permanent termination of South 194<sup>th</sup> Street at the new SR 509 Expressway was identified as a transportation impact. The project is proposing the following measures to address the permanent termination of South 194<sup>th</sup> Street impacts:

- Provide wayfinding signs to be installed on 8<sup>th</sup> Avenue South to advise use of South 192<sup>nd</sup> Street for connection to Des Moines Memorial Drive (DMMD) South access.
- Retain the existing weight restriction on South 194<sup>th</sup> Street as local traffic only.
- Complete the South 192<sup>nd</sup> Street bridge work and open new street crossing prior to closing South 194<sup>th</sup> Street to DMMD.
- Retain the existing alternate neighborhood connectivity to DMMD on South 196<sup>th</sup> Place.

**Alternatives**

The City Council could elect not to approve the Agreement as submitted and direct staff to continue working with WSDOT staff for a mutually agreeable interagency agreement.

**Financial Impact**

Barnes Creek Trail improvements during the Stage 2 environmental mitigation work would require City funding per the agreement terms of betterments.

**Recommendation**

Staff recommends adoption of the motion.

**Council Committee Review**

The Transportation Committee has been routinely updated on the status of this project.

**INTERAGENCY AGREEMENT  
BETWEEN  
Washington State Department of Transportation GCB 3807  
AND  
CITY OF DES MOINES**

This Agreement is between the Washington State Department of Transportation (*WSDOT*) and the City of Des Moines (*City*) individually the "Party" and collectively the "Parties."

**RECITALS**

1. WSDOT is a state agency authorized to plan, design, construct, operate and maintain highways in the State of Washington.
2. City is a local agency authorized to plan, design, construct, operate and maintain streets and alleys within their corporate boundaries in the State of Washington.
3. The Parties previously entered into agreement GCB 3046 establishing the City's financial participation in Local Agency Partner contributions to the Puget Sound Gateway Program ("Program") and the City's participation in design coordination and concurrence during implementation of the Project.
4. WSDOT is planning the construction of the *SR 509/24<sup>th</sup> Avenue S to S 188<sup>th</sup> Street – New Expressway Project* ("Project"), also known as the *SR 509 Completion Project Stage 2*, and portions thereof lie within the City corporate boundary. The project includes constructing mitigation or buffer impacts and wetland conversion on the historic WSDOT owned right-of-way ("ROW") at the Barnes Creek Site, which is adjacent to the City's Barnes Creek Trail.
5. That ROW was originally acquired in the early 1970's for constructing the proposed SR 509 freeway south to SR 516 along a corridor west of I-5. The southern end of the SR 509 route was re-designed in the late 1990's to connect to I-5 north of the SR 516 crossing and new ROW was acquired. The unused ROW is no longer needed for highway purposes and is currently vacant.
6. The excess WSDOT ROW between S 220<sup>th</sup> Street and Kent Des Moines Road for the Barnes Creek Mitigation Site (Exhibit B) may be considered for future conveyance to the City consistent with the requirements of RCW 47.12.370.

Now therefore, pursuant to Chapter 39.34 RCW the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, and the attached Exhibits A, B, C, D, E and F which are incorporated and made a part hereof, it is mutually agreed as follows:

**1. PURPOSE**

The purpose of this Agreement is to define terms and commitments of WSDOT for Project facilities located outside of WSDOT ROW within City ROW and define terms and commitments of requested changes and betterments by the City.

**2. PROJECT DEVELOPMENT AND COORDINATION**

**2.1 Review and Coordination.** Prior to advertisement of the Design-Build Request for Proposal "RFP" of this Project, WSDOT and City will identify the extent of the design elements and

improvements within the City. WSDOT will provide City with Project design plans as early as possible, and will schedule and meet with City to review, to the extent knowable by WSDOT prior to RFP advertisement, the ROW and environmental requirements, facilities design, traffic maintenance, haul routes, potential pavement mitigation, and construction scheduling to ensure the City has opportunity to comment. The Parties will thereafter work cooperatively to concur, to the extent possible, with and incorporate the desired design elements, standards, aesthetics, material/finishes, and improvements and the timing and process to establish any property commitments or permits as required under Section 2.4. All final decision making shall be in the sole discretion of WSDOT.

After Award of the Design-Build Contract, the City acknowledges its obligation to plan for and participate in each of the Project's Preliminary and Final Design plan reviews and comment resolutions and task force meetings, related to work on City-owned ROW or property, prior to the construction plan Release for Construction (RFC), at City's cost. Permit application documents that include plans can be submitted to the City, using Final Design drawings, with the intent that the permit is issued and will include the RFC drawings. WSDOT acknowledges that fees/costs for review of city permit application documents and issuance of city permits will be charged to WSDOT's Design-Builder. City will participate in the Preconstruction meetings to coordinate and resolve any outstanding issues prior to beginning construction, at City's cost. The City acknowledges that WSDOT is the owner representative in the contract with the Design-Builder and WSDOT will act on behalf of the City to ensure that the work is performed in accordance with the contract, which includes the Des Moines Municipal Code and adopted City Standards.

Review submittals to and from either Party will be transmitted prior to 12:00 pm on the due date day.

**2.2 Environmental Approach.** Mitigation for buffer impacts to Wetland 22.42, will be installed within the Historic SR509 ROW (S 220th Street to Kent-Des Moines Road) adjacent to Barnes Creek (Exhibit B). Mitigation in the vicinity of Barnes Creek will include removing all invasive plants while preserving and enhancing native plant communities to the greatest extent feasible, preserving and enhancing the forested character, removing potential hazard trees, and preventing access to sensitive restoration areas while utilizing Crime Prevention Through Environmental Design (CPTED) principles. Steep slope sensitive areas will be protected and undisturbed within the construction limits.

WSDOT will enhance the existing wetland buffer area within WSDOT ROW limits in the vicinity of Barnes Creek between S 220th Street and Kent-Des Moines Road (Exhibit D) to provide mitigation for buffer impacts and wetland conversion due to the Stage 2 project. Any work proposed by WSDOT will not preclude the City from constructing the Barnes Creek Trail Capital Improvement Project.

The existing Barnes Creek Trail Easement, 13th/14th Avenue S alley, and existing sewer construction trail footprint will be used by WSDOT and its Design Builder, for construction access within the construction limits (Exhibit B). The City acknowledges that WSDOT, as owner of the real property containing the Barnes Creek Trail Easement, has the right to use the Barnes Creek Trail for construction access as described below. Light construction equipment will be used and it is mutually understood that access will be required to be maintained during the 10-year WSDOT landscape maintenance and vegetation establishment period. This may include utilizing Crushed Surfacing Base Course (CSBC), wood chips and geotextile fabric as necessary to ensure a stabilized path that light duty trucks can traverse and existing trail width will be maintained. It is further understood that this access will be used to facilitate oversight, monitoring for, and responding to crime and illicit activities.

Any disturbance or damage to the existing trail due to construction activities will be repaired by WSDOT's Design-Builder to restore the trail surface to its pre-construction condition. Construction use



of the trail will not begin until the contractor has documented the existing condition in accordance with the contract Technical Requirements.

Trail extension or surface improvement may be constructed upon WSDOT concurrence and payment by the City in accordance with the terms of betterments in Section 4 of this Agreement.

As outlined and approved in the SR 509: Corridor Completion/I-5/South Access Road Environmental Impact Statement (EIS) dated 2003, the permanent termination of S 194th Street at the new SR 509 Expressway was identified as a transportation impact.

The Project is proposing the following measures to address the permanent termination of S 194<sup>th</sup> Street impacts:

- Provide wayfinding signs to be installed on 8th Avenue S to advise use of S 192nd Street for Des Moines Memorial Drive (DMMD) south access.
- Retain the existing weight restriction on S 194th Street as local traffic only.
- Complete the S 192nd Street bridge work and open new street crossing prior to closing S 194th Street to DMMD.
- Retain the existing alternate neighborhood connectivity to DMMD on S 196th Place

**2.3 Construction Approach.** WSDOT will include applicable sections from the Des Moines Municipal Code and adopted City standards in the WSDOT construction contract documents for Stage 2 as Mandatory Standards for all work done on City ROW and property.

If the City wants any item of work constructed to deviate from what is required by Des Moines's Municipal Code and adopted City standards and policies published at the time the RFP is advertised, the City must inform WSDOT in writing at least thirty (30) days prior to the due date for Proposals. Otherwise, any change requested by City after the Proposals due date will be funded solely by the City if such change increases the cost of the Project. See Section 4 of this Agreement below. However, changes requested by the City after the Proposals due date that are necessary to bring the work in compliance with applicable sections of the Des Moines Municipal Code and adopted City standards included in the advertised RFP, shall not be funded by the City.

The desired design elements identified below are based on WSDOT's conceptual design. Some of these commitments may become null and void based on the final design concept of the selected Design-Builder:

- a) Streetscape work within Project limits. Construct Hot Mix Asphalt (HMA) travelled way, per WSDOT standards. Construct concrete curb and gutter, and 6-foot wide sidewalks per WSDOT Standard Plans.

Terminate S 194th Street on the west side of SR 509 ROW and construct new concrete curb and gutter to convert the existing stop-controlled intersection with the 11th Place S to the south into a continuous turning street. Reconnect the existing private street to the north with a driveway approach. Construct new WSDOT standard chain link fencing along the WSDOT ROW lines and install locked gates at the former S 194th Street crossing locations, for WSDOT maintenance access.

Use WSDOT standard Methyl Methacrylate (MMA) pavement markings for permanent striping and 3M brand taped pavement markings for temporary striping. Non-standard decorative, signature, or gateway features may be constructed upon concurrence and in accordance with the terms of betterments in Section 4 of this Agreement.

- b) Structure finish and trim. Comply with requirements set forth in the SR 509 Completion Project Phase 1 Urban Design Criteria (Exhibit E) attached hereto and made a part of this Agreement.
- c) Illumination work within Project limits. New continuous street lighting may be constructed upon concurrence and in accordance with the terms of betterments in Section 4 of this Agreement.
- d) Signing work within Project limits. Replace existing street signs that are disturbed or do not meet WSDOT standards. Provide wayfinding signage within fifty (50) feet of the existing Barnes Creek Trail connections with City streets, equivalent to the existing signage at the SR516/Kent-Des Moines Road trail entrance. Signs will be ground post mounted per WSDOT standard drawings. Sign bridges, cantilevers, or bridge mounts requested by the City will be considered a betterment and paid for by the City per Section 4 of this Agreement upon approval. New signs requested by the City that did not exist prior to the Project that are not warranted for safe operation will be considered a betterment and paid for by the City per Section 4 of this Agreement upon approval.
- e) Forward compatibility. Street improvement projects planned by the City beyond the WSDOT ROW may be added to the Project by mutual executed agreement and will be the City's cost responsibility.

**2.4 Property Rights and Permitting.** In instances where the Parties agree the public ROW is outside of WSDOT ROW access control (outside Turnback line), City shall issue WSDOT and their Design-Builder a Street ROW Use Permit for the Project work. WSDOT's design-builder will obtain all necessary permits for all work within the City of Des Moines corporate boundaries for permanent and temporary project requirements.

Permitted work is expected along S 220th Street, S 222nd Street, S 223rd Street, 13th/14th Avenue S Alley, and S 224th Street.

After construction Physical Completion activities conclude, the City shall grant WSDOT a no-cost Street ROW Use Permit for the existing Barnes Creek Trail, 13th/14th Avenue S alley footprint, and Barnes Creek wetland and buffer areas for 10 years for landscape maintenance and establishment and compliance monitoring activities as permitted.

WSDOT will be responsible for notification and coordination with Midway Sewer District for project construction activities over their existing facilities within the project area. The existing sewer will be protected in place and remain in service.

**2.5 Street and Trail Closure limits and allowances.** WSDOT will coordinate the Maintenance of Traffic (MOT) conditions with the City prior to and during construction. Currently anticipated and planned traffic restrictions include the following, which are subject to change based upon the final design of the selected Design-Builder:

- a) A temporary road closure of S 192nd Street across the SR 509 ROW for up to 9 months will occur during the new bridge construction. For the duration of such closure, S 188th and S 194th Streets will remain open during this period. Access to abutting properties will be maintained 24/7 with flagging stations as needed.

b) Barnes Creek Trail will be closed intermittently during construction. Temporary closure signs will be posted at all street entrances to the trail with changeable open/closed covers for longer term closures. Flagging stations will be used for shorter term closures, as well as street crossings.

c) S 220th, S 222nd, S 223rd Streets will have restricted access intermittently between 13th Avenue S and 16th Avenue S during wetland construction activities.

d) Additional Maintenance of Traffic strategies may be necessary during construction as will be coordinated with the City.

**2.6** WSDOT shall allow City inspectors access to the Project construction site to inspect any City permitted work involving City-owned property, ROW or utilities, or property to be maintained by the City after construction and with the prior consent of WSDOT upon 48 hours prior written notice to the WSDOT project engineer. WSDOT acknowledges that compliance inspections for City permits will be charged to WSDOT's Design-Builder.

**2.7** The provisions in FHWA-1273 (Exhibit F) attached hereto and made a part of this Agreement will apply to all work on this Project.

### **3. PERIOD OF PERFORMANCE**

Subject to its other provisions, the period of performance of this Agreement shall commence upon execution and be completed on December 31, 2028, unless terminated sooner as provided in this Agreement, or extended through a properly executed amendment.

### **4. COMPENSATION**

This is a non-financial Agreement. In no event shall either party seek compensation for work performed under this Agreement.

The City acknowledges that requests for change(s) to the WSDOT construction contract, other than changes that are necessary to bring the design in compliance with applicable sections of the Des Moines Municipal Code and adopted City standards and policies, may increase costs for the City and that WSDOT will not implement any such change(s) unless the City agrees in advance in writing to be solely responsible for the costs associated with such change. All such changes shall ultimately be made at the sole discretion of WSDOT. WSDOT acknowledges that the City shall not be responsible for increased costs for any design changes requested by the City prior to the proposal due date that are necessary to bring the design or the work in compliance with applicable sections of the Des Moines Municipal Code or adopted City standards as of the Project RFP issue date.

Betterment. Notwithstanding the foregoing, if City desires to include a betterment in the above design elements work at any specific location, WSDOT will allow for betterment work to be performed, provided the Parties can coordinate the Project schedule to accommodate the betterment work without increasing Project costs or delaying the Project, in the sole discretion of WSDOT. Betterment is defined as a deviation or upgrading of the design being contemplated during the implementation of the Project that is not attributable to the highway construction or to meeting current requirements or standards and is made solely for the benefit of and at the election of City. The difference in cost between the minimum construction required as a result of the Project and City's desired betterment shall be at City's sole expense and the additional funds authorized by amendment to GCB 3046. The estimated cost of betterments to be paid by the City will be fully loaded, including but not limited to Design-Builder's change order markup, sales tax, WSDOT construction engineering management labor, and WSDOT regional overhead markup.



**5. FUNDING CONTINGENCY**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any significant way after the effective date of this Agreement and prior to completion of the work in this Agreement, WSDOT may:

- a. Terminate this Agreement with thirty (30) days advance notice. If this Agreement is terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.
- b. Renegotiate the terms of the Agreement under those new funding limitations and conditions.
- c. After a review of project expenditures and deliverable status, extend the end date of this Agreement and postpone deliverables or portions of deliverables.
- d. Pursue such other alternative as the parties mutually agree to writing.

**6. AMENDMENT**

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

**7. ASSIGNMENT**

The work to be provided under this Agreement, and any claim arising under this Agreement, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

**8. ASSURANCES**

The parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state, and local laws, rules, and regulations as they currently exist or as amended.

**9. CONTRACT MANAGEMENT**

The contract manager for each of the parties shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement.

The Contract Manager for <u>City of Des Moines</u> is:	The Contract Manager for <u>WSDOT</u> is:
<p><i>City of Des Moines</i>  <i>Attn: Public Works Director</i></p> <p><i>21650 11<sup>th</sup> Ave South</i>  <i>Des Moines, WA 98198</i></p> <p>Phone: (206) 870-6525            FAX: (206) 870-6596            E-Mail: amerges@desmoineswa.gov</p>	<p><i>Andrey Chepel – Project Construction Manager</i></p> <p><i>SR 509 Completion Project</i>  <i>18000 International Blvd., Suite 900</i>  <i>Seatac, WA 98188</i></p> <p>Phone: 206-709-6970            E-Mail: CHEPELA@wsdot.wa.gov</p>

**10. DISPUTES**

The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to, this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy. To this



end, following the dispute resolution process shown below shall be a prerequisite to the filing of litigation concerning any dispute between the Parties:

- a. The representative, as shown herein designated in this Agreement shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. The representatives shall communicate regularly to discuss the status of the tasks to be performed hereunder and to resolve any disputes or issues related to the successful performance of this Agreement. The representatives shall cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any disputes or issues arising during the term of this Agreement.
- b. A Party's representative shall notify the other Party in writing of any dispute or issue that the representative believes may require formal resolution according to this Section. The representatives shall meet within five (5) working days of receiving the written notice and attempt to resolve the dispute.
- c. In the event the representatives cannot resolve the dispute or issue, the entity, and WSDOT's Region Administrator, or their respective designees, shall meet and engage in good faith negotiations to resolve the dispute.
- d. In the event the entity and WSDOT's Region Administrator, or their respective designees, cannot resolve the dispute or issue, the entity and WSDOT shall each appoint a member to a Dispute Board. These two members shall then select a third member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. All expenses for the third member of the Dispute Board shall be shared equally by both Parties; however, each Party shall be responsible for its own costs and fees.

#### **11. INDEPENDENT CAPACITY**

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

#### **12. MAINTENANCE OF RECORDS**

- a. The parties to this Agreement shall each maintain books, records, documents, and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration of agreement. The Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.
- b. If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- c. Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available any confidential information to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties. However, the parties acknowledge that State Agencies are subject to chapter 42.56 RCW, the Public Records Act.

**13. ORDER OF PRECEDENCE**

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes, and local laws, rules and regulations;
- b. Statement of Work;
- c. Exhibits and Appendices – list separately; and
- d. Any other provisions of the agreement, including materials incorporated by reference.

**14. RESPONSIBILITIES OF THE PARTIES**

Each party to this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party assumes any responsibility to the other party for the consequences of any claim, act, or omission of any person, agency, firm, or corporation not a part to this Agreement.

**15. SEVERABILITY**

If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement.

**16. SITE SECURITY and SAFETY**

While on WSDOT premises, City, its agents, employees, or subcontractors shall comply with WSDOT safety and security policies and regulations. Including requirements for the prevention of transmission of communicable diseases such as Covid.

**17. SUBCONTRACTING**

a. "Subcontractor" means one not in the employment of a party to this Agreement, who is performing all or part of those services under this Agreement under a separate contract with a party to this Agreement. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

b. Except as otherwise provided in the Agreement, the WSDOT shall not subcontract any of the contracted services without the prior approval of the Agency. The WSDOT is responsible to ensure that all terms, conditions, assurances, and certifications set forth in this Agreement are included in any and all Subcontracts. Any failure of WSDOT or its Subcontractors to perform the obligations of this Agreement shall not discharge WSDOT from its obligations under this Agreement.

**18. TERMINATION FOR CAUSE**

This Agreement may be terminated for cause by either Party if the other Party does not fulfill in a timely and proper manner its obligations under this Agreement, or if the other Party violates any of the terms and conditions of this Agreement. The notice of intent to terminate for cause shall be issued by a Party in writing and the other Party shall have the opportunity to correct the violation or failure within fifteen (15) working days of the date of the notice. If the failure or violation is not corrected within the time allowed, this Agreement will automatically terminate.

**19. INDEMNIFICATION**

- a. To the extent permitted by law, each Party to this Agreement will protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, each Party's negligent acts or omissions with respect to the provisions of this Agreement. Neither Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and property) is

caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their agents, officials, or employees, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials, or employees.

b. The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees, or agents. For this purpose only, the Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

c. This indemnification and waiver will survive the termination of this Agreement.

## **20. INSURANCE**

City warrants that it is self-insured pursuant to a self-insurance "risk pool" duly authorized by the State of Washington and agrees to provide acceptable evidence of its self-insured status to WSDOT. City self-insurance risk pool insurance policy must provide liability coverage for its operations under this Agreement, including (i) general liability coverage for bodily injury, property damage, and personal injury of not less than Two Million and no/100 Dollars (\$2,000,000.00) combined single limit per occurrence, with a general aggregate amount of not less than Five Million Dollars (\$5,000,000.00) per policy period; coverage under policies shall be triggered on an "occurrence basis," not on a "claims made" basis; and (ii) commercial automobile liability coverage providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the operations under this Agreement, with a combined single limit of not less than One Million \$1,000,000 per occurrence.

In the event City is not a party to a state approved self-insurance "risk pool", it shall secure insurance coverage in conformance with the required of this Section 5.2 and promptly provide a certificate of insurance from an insurer licensed to conduct business in the State of Washington, evidencing the procurement of the required insurance coverages. WSDOT shall be named as an additional insured by endorsement of the liability policy required, utilizing ISO Form 2026 (Additional Insured – Designated Person or Organization) or its equivalent without modification on any such general liability policies.

## **21. WAIVER**

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the parties.

## **22. ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

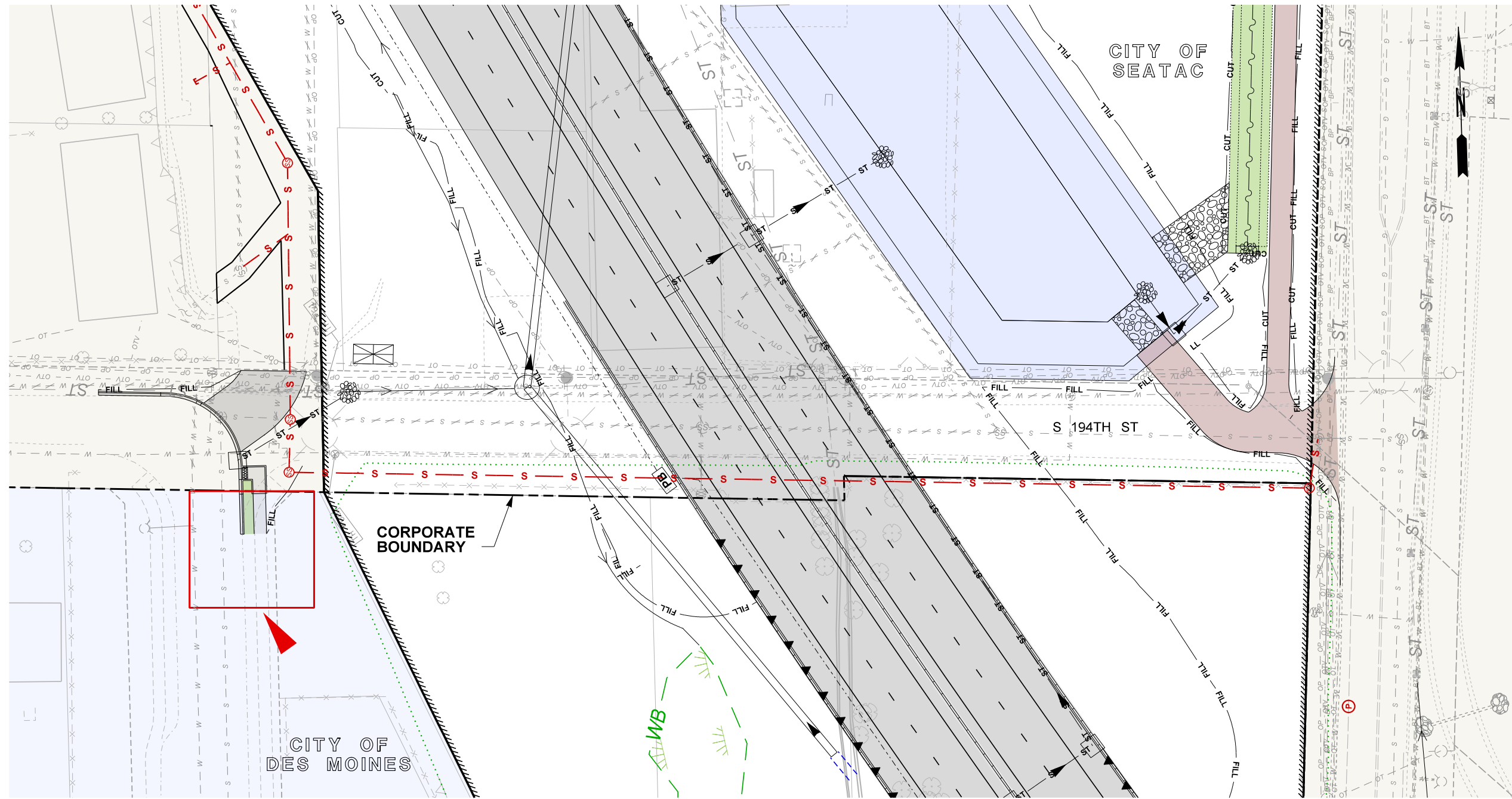
**23. COUNTERPARTS AND ELECTRONIC SIGNATURE**

This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each party, for all purposes. Electronic signatures or signatures transmitted via e-mail in a "PDF" may be used in place of original signatures on this Agreement. Each party intends to be bound by its electronic or "PDF" signature on this Agreement and is aware that the other parties are relying on its electronic or "PDF" signature.

In witness whereof, the parties have executed this Agreement.

City of Des Moines	Washington State Department of Transportation
By:	By:
Printed:	Printed:
Title:	Title:
Date:	Date:
Approved as to Form Requesting Entity	Approved as to Form Washington State Department of Transportation
By:	By: <i>Mark Schumacher</i>
Printed:	Printed: <i>MARK SCHUMACHER</i>
Title:	Title: <i>Assistant Attorney General</i>
Date:	Date: <i>7/16/2024</i>





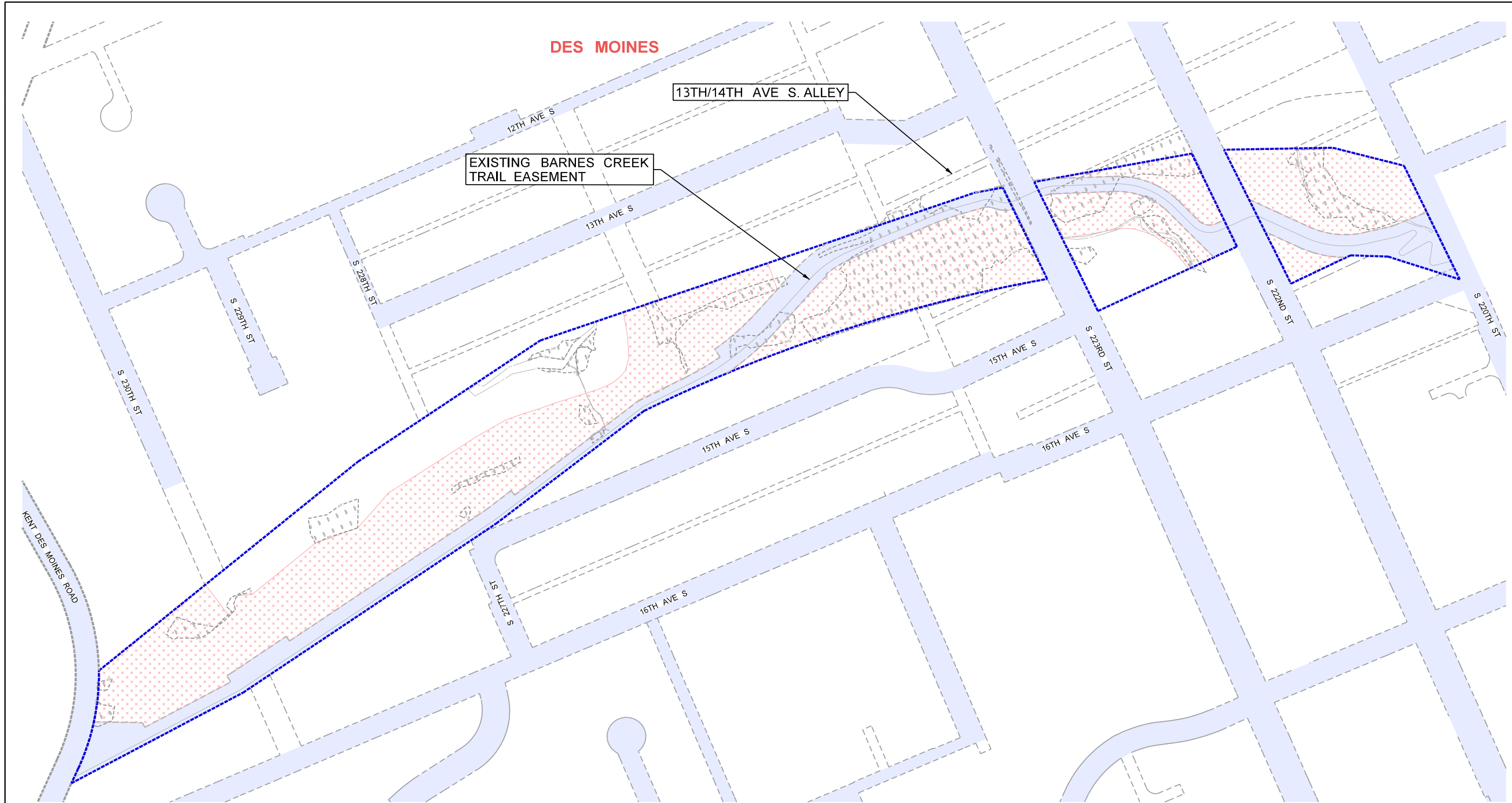
**CITIES OF SEATAC & DES MOINES  
S 194TH ST**

**Puget Sound  
GATEWAY** Program




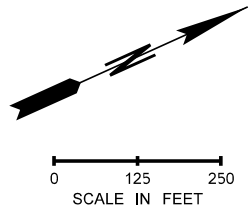
**EXHIBIT A  
SR 509/24TH AVE S TO S 188TH ST  
NEW EXPRESSWAY PROJECT  
STAGE 2 WORK WITHIN CITY LIMITS**

DATE: 06/15/2023  
 PRINTED BY: haupke  
 FILE NAME: c:\users\haupke\p\_w\sdot\46994\Exhibit A\_24thAveS-188thSt.dgn  
 MODEL NAME: \$MODELNAME\$



DATE: 2/16/2024  
 PRINTED BY: haupie  
 FILE NAME: c:\users\haupie\pwworking\2024\252\Exhibit B\_BarnesCreek-Construction\_Access.dgn  
 MODEL NAME: Default

**LEGEND**  
 VEGETATION RESTORATION



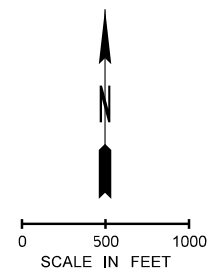
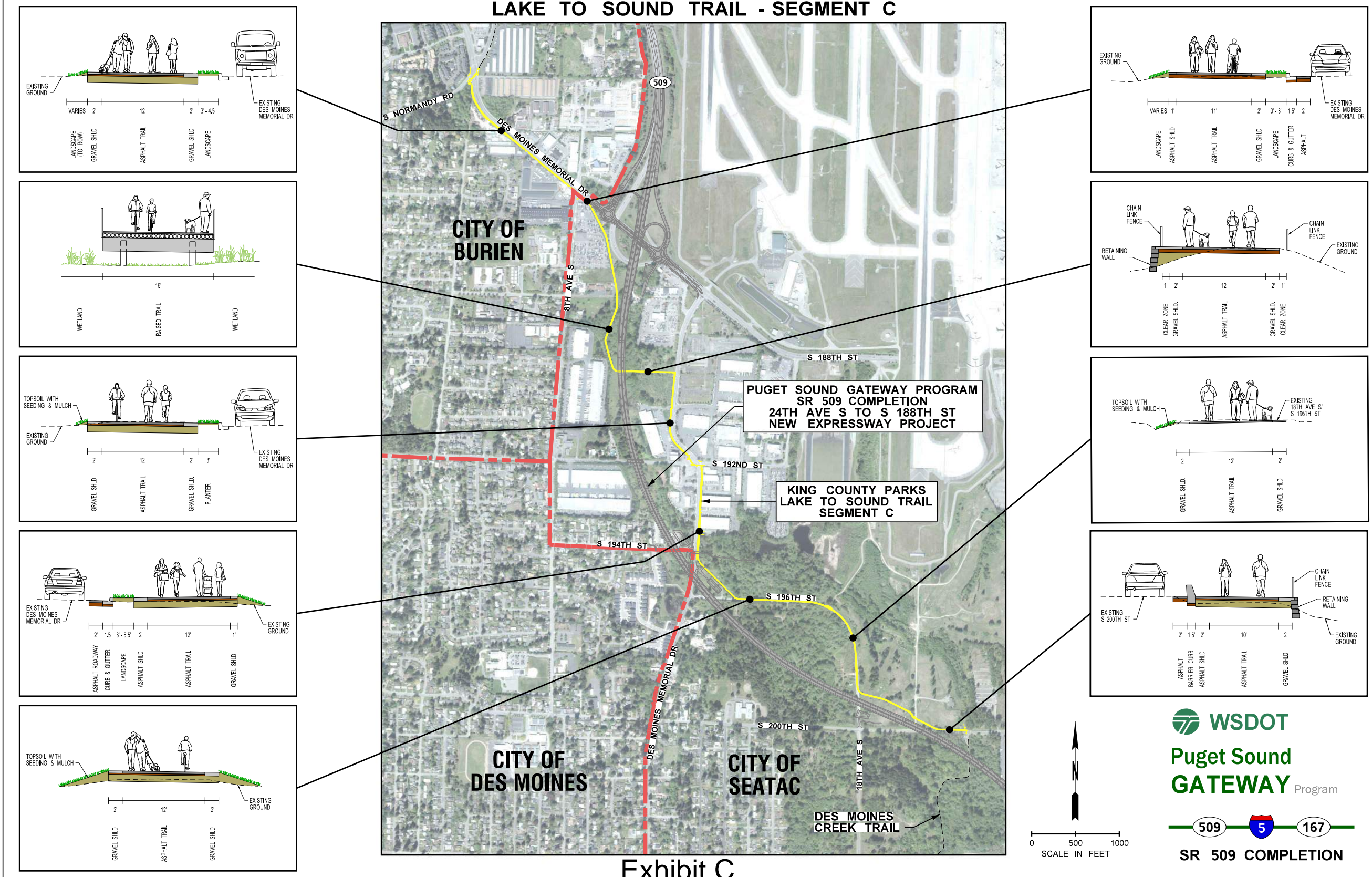
**Puget Sound GATEWAY** Program



**EXHIBIT B  
 BARNES CREEK  
 CONSTRUCTION ACCESS**



# LAKE TO SOUND TRAIL - SEGMENT C



**WSDOT**  
Puget Sound  
**GATEWAY** Program

**SR 509 COMPLETION**






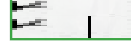






Exhibit C



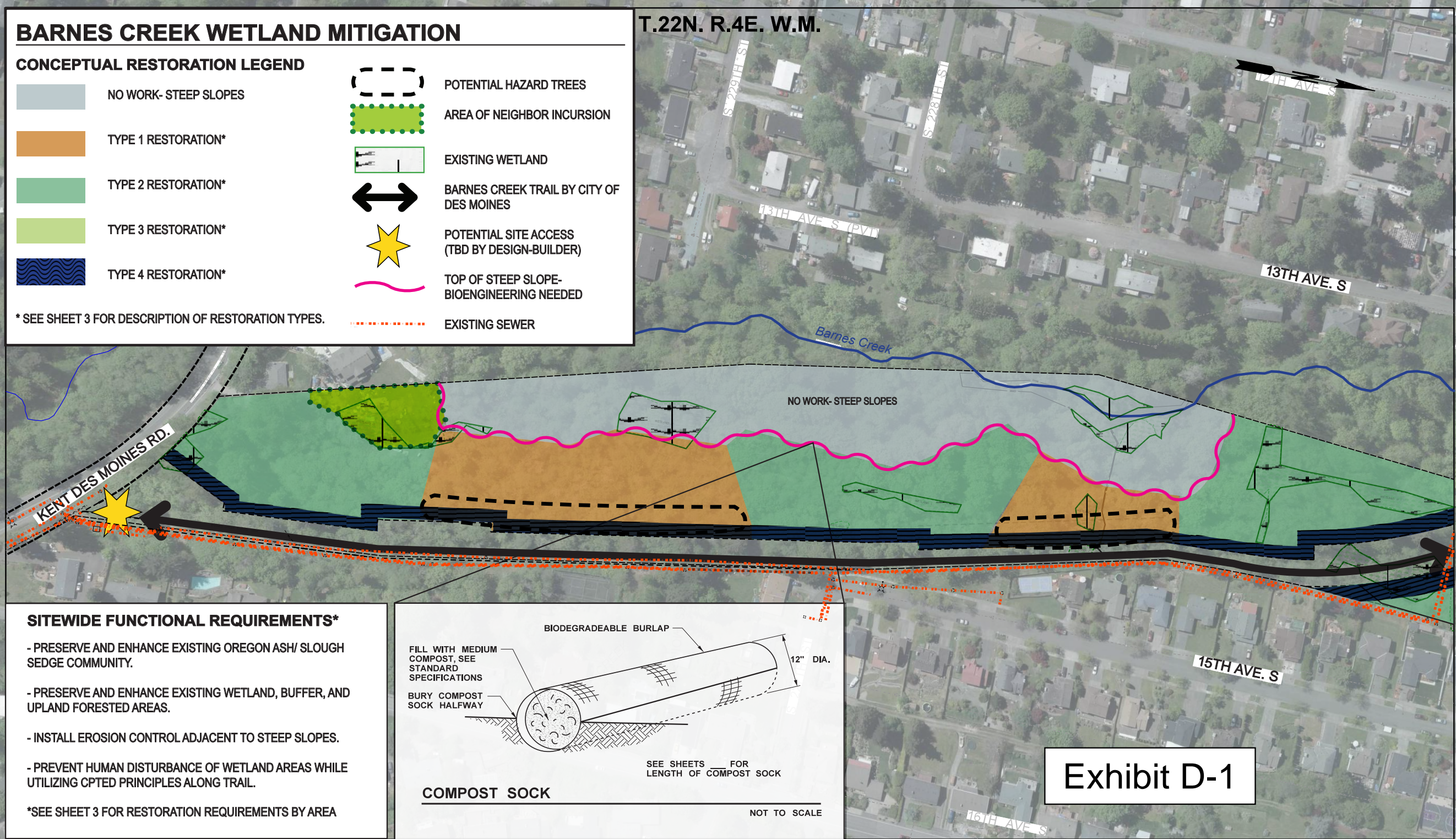
# BARNES CREEK WETLAND MITIGATION

T.22N. R.4E. W.M.

## CONCEPTUAL RESTORATION LEGEND

- |   |                       |   |   |
|---|-----------------------|---|---|
|  | NO WORK- STEEP SLOPES |  | POTENTIAL HAZARD TREES                        |
|  | TYPE 1 RESTORATION*   |  | AREA OF NEIGHBOR INCURSION                    |
|  | TYPE 2 RESTORATION*   |  | EXISTING WETLAND                              |
|  | TYPE 3 RESTORATION*   |  | BARNES CREEK TRAIL BY CITY OF DES MOINES      |
|  | TYPE 4 RESTORATION*   |  | POTENTIAL SITE ACCESS (TBD BY DESIGN-BUILDER) |
|   |                       |  | TOP OF STEEP SLOPE- BIOENGINEERING NEEDED     |
|   |                       |  | EXISTING SEWER                                |

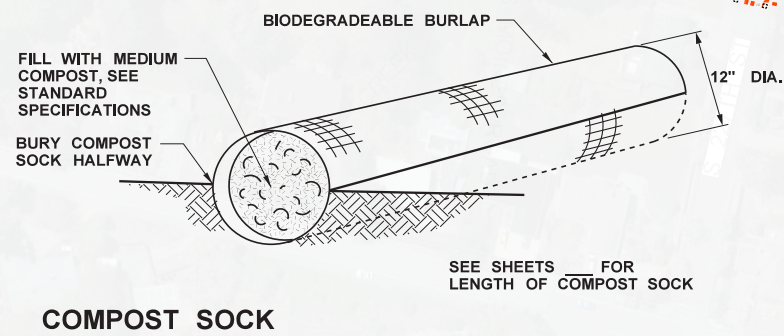
\* SEE SHEET 3 FOR DESCRIPTION OF RESTORATION TYPES.



## SITEWIDE FUNCTIONAL REQUIREMENTS\*

- PRESERVE AND ENHANCE EXISTING OREGON ASH/ SLOUGH SEDGE COMMUNITY.
- PRESERVE AND ENHANCE EXISTING WETLAND, BUFFER, AND UPLAND FORESTED AREAS.
- INSTALL EROSION CONTROL ADJACENT TO STEEP SLOPES.
- PREVENT HUMAN DISTURBANCE OF WETLAND AREAS WHILE UTILIZING CPTED PRINCIPLES ALONG TRAIL.

\*SEE SHEET 3 FOR RESTORATION REQUIREMENTS BY AREA



COMPOST SOCK

SEE SHEETS \_\_\_ FOR LENGTH OF COMPOST SOCK













NOT TO SCALE

Exhibit D-1



# BARNES CREEK WETLAND MITIGATION

## CONCEPTUAL RESTORATION LEGEND

- |   |                       |  |   |
|---|-----------------------|--|---|
|  | NO WORK- STEEP SLOPES |  | POTENTIAL HAZARD TREES                        |
|  | TYPE 1 RESTORATION*   |  | AREA OF NEIGHBOR INCURSION                    |
|  | TYPE 2 RESTORATION*   |  | EXISTING WETLAND                              |
|  | TYPE 3 RESTORATION*   |  | BARNES CREEK TRAIL BY CITY OF DES MOINES      |
|  | TYPE 4 RESTORATION*   |   | POTENTIAL SITE ACCESS (TBD BY DESIGN-BUILDER) |
|   |                       |  | TOP OF STEEP SLOPE- BIOENGINEERING NEEDED     |
|   |                       |  | EXISTING SEWER                                |
- \* SEE SHEET 3 FOR DESCRIPTION OF RESTORATION TYPES.

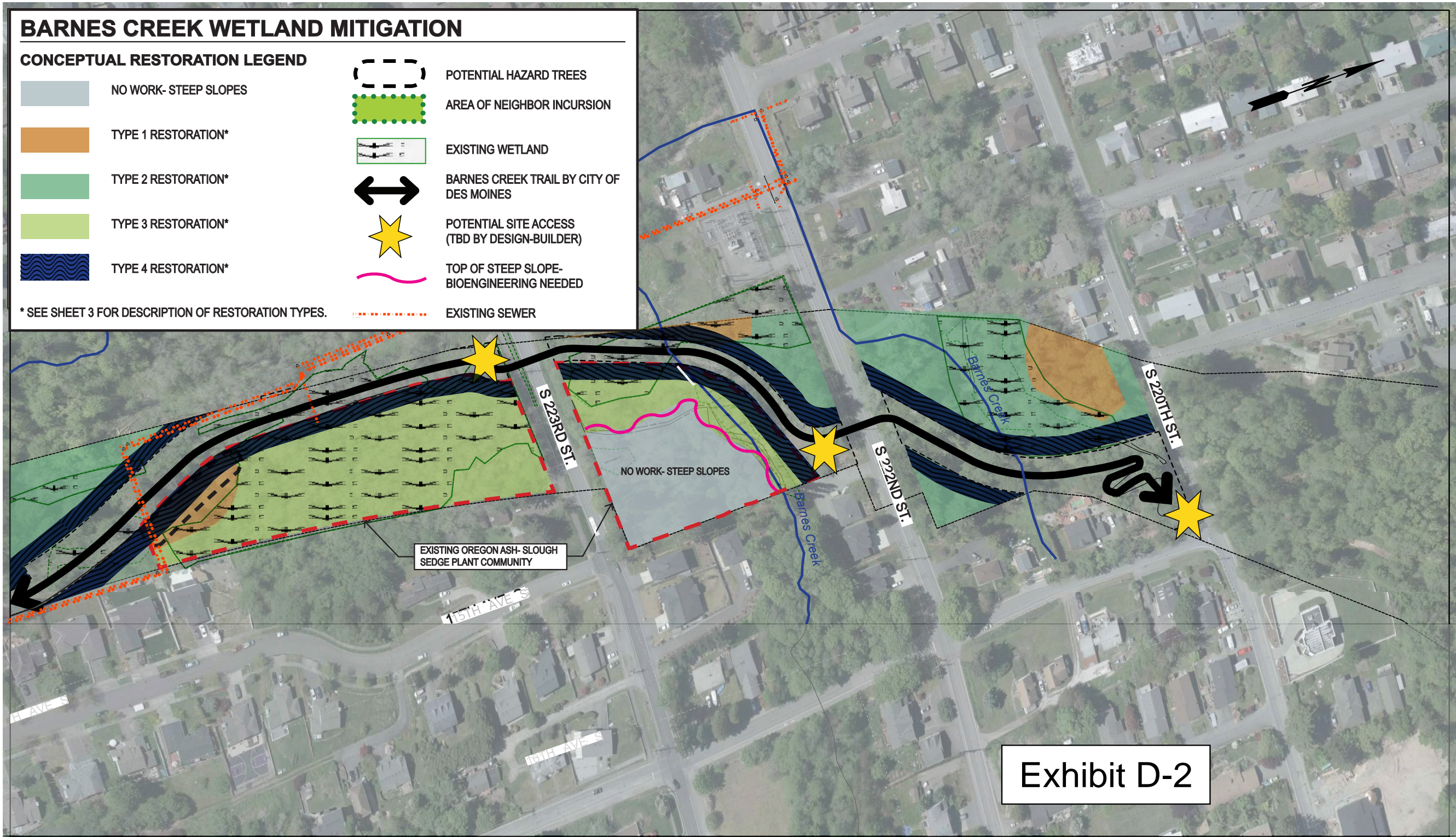


Exhibit D-2



# BARNES CREEK WETLAND MITIGATION

## RESTORATION REQUIREMENTS BY AREA (SEE CONCEPTUAL RESTORATION PLANS)

### TYPE 1 RESTORATION

#### FUNCTIONAL GOAL:

ERADICATE ALL INVASIVE PLANTS WHILE PRESERVING NATIVE SOIL AND FORESTED CHARACTER TO THE GREATEST EXTENT FEASIBLE.

#### RESTORATION REQUIREMENTS:

- ERADICATE ALL WASHINGTON CLASS A, B, AND C NOXIOUS WEEDS AND ANY PLANTS ON THE NOXIOUS WEED MONITOR LIST.
- INITIAL HERBICIDE APPLICATION AND MECHANICAL CLEARING AND GRUBBING MAY BE USED.
- ALL TREES SHALL BE EVALUATED BY A CERTIFIED ARBORIST AND REMOVED IF DEEMED HAZARDOUS TO PUBLIC TRAIL USERS, OR IF OVERTAKEN WITH IVY.
- MACHINERY USED ON-SITE SHALL BE NO MORE THAN 5 MAXIMUM PSI.
- ENSURE NO NEW GROWTH OF NOXIOUS WEEDS DURING WARRANTY PERIOD
- REPLANT ALL DISTURBED AREAS AT MAXIMUM 4' SPACING, USING THE SPECIFIED PLANTING MIXES AS APPROPRIATE FOR SITE CONDITIONS.
- PLANTING COVERAGE SHALL INCLUDE A MINIMUM OF 25% LARGE NATIVE CONIFERS AND 20% SMALLER DECIDUOUS SPECIES.
- TO PRESERVE EXISTING SOIL AND MINIMIZE WEED PRESSURE, NO SOIL AMENDMENT SHALL BE UTILIZED.
- APPLY 3" WOOD CHIP MULCH TO ALL DISTURBED AREAS.
- INSTALL COMPOST SOCKS ON SLOPES 2:1 OR GREATER.

### TYPE 2 RESTORATION

#### FUNCTIONAL GOAL:

REMOVE ALL INVASIVE PLANTS WHILE PRESERVING AND ENHANCING EXISTING NATIVE PLANT COMMUNITIES TO THE GREATEST EXTENT FEASIBLE. PRESERVE AND ENHANCE FORESTED CHARACTER.

#### RESTORATION REQUIREMENTS:

- REMOVE ALL WASHINGTON CLASS A, B, AND C NOXIOUS WEEDS AND ANY PLANTS ON THE NOXIOUS WEED MONITOR LIST.
- NO HERBICIDE SHALL BE USED. MECHANICAL AND HAND-CUTTING/ PULLING MAY BE USED TO REMOVE INVASIVE MATERIAL.
- ALL TREES SHALL BE EVALUATED BY A CERTIFIED ARBORIST AND REMOVED IF DEEMED HAZARDOUS TO PUBLIC TRAIL USERS, OR IF OVERTAKEN WITH IVY.
- MACHINERY USED ON-SITE SHALL BE NO MORE THAN 5 MAXIMUM PSI.
- ENSURE NO NEW GROWTH OF NOXIOUS WEEDS DURING WARRANTY PERIOD
- REPLANT ALL DISTURBED AREAS AT MAXIMUM 4' SPACING, USING THE SPECIFIED PLANTING MIXES AS APPROPRIATE FOR SITE CONDITIONS.
- PLANTING COVERAGE SHALL INCLUDE A MINIMUM OF 20% LARGE NATIVE CONIFERS AND 10% SMALLER DECIDUOUS SPECIES.
- TO PRESERVE EXISTING SOIL AND MINIMIZE WEED PRESSURE, NO SOIL AMENDMENT SHALL BE UTILIZED.
- APPLY 3" WOOD CHIP MULCH TO ALL DISTURBED AREAS.
- INSTALL COMPOST SOCKS ON SLOPES 2:1 OR GREATER.

### TYPE 3 RESTORATION

#### FUNCTIONAL GOAL:

PRESERVE AND ENHANCE EXISTING OREGON ASH-SLOUGH SEDGE WETLAND PLANT COMMUNITY WHILE MINIMIZING DISTURBANCE. PRESERVE AND ENHANCE OREGON ASH DECIDUOUS FORESTED CHARACTER.

#### RESTORATION REQUIREMENTS:

- REMOVE ALL WASHINGTON CLASS A, B, AND C NOXIOUS WEEDS AND ANY PLANTS ON THE NOXIOUS WEED MONITOR LIST.
- UTILIZE INFILL PLANTING IN AREAS WITH REED CANARYGRASS TO ESTABLISH SHADE, UTILIZING OREGON ASH ENHANCEMENT MIX.
- NO HERBICIDE SHALL BE USED. MECHANICAL AND HAND-CUTTING/ PULLING MAY BE USED TO REMOVE INVASIVE MATERIAL.
- ALL TREES SHALL BE EVALUATED BY A CERTIFIED ARBORIST AND REMOVED IF DEEMED HAZARDOUS TO PUBLIC TRAIL USERS, OR IF OVERTAKEN WITH IVY.
- NO HEAVY MACHINERY SHALL BE USED ON-SITE.
- ENSURE NO NEW GROWTH OF WEEDS DURING WARRANTY PERIOD
- REPLANT ANY DISTURBED AREAS AT MAXIMUM 4' SPACING, USING THE SPECIFIED OREGON ASH- SLOUGH SEDGE ENHANCEMENT MIX. UTILIZE INFILL PLANTING TO ENHANCE CANOPY COVER.
- PLANTING COVERAGE SHALL INCLUDE A MINIMUM OF 10% TREES AND 40% EMERGENT UNDERSTORY.
- TO PRESERVE EXISTING SOIL AND MINIMIZE WEED PRESSURE, NO SOIL AMENDMENT SHALL BE UTILIZED.
- APPLY 3" WOOD CHIP MULCH TO ALL DISTURBED AREAS.
- INSTALL COMPOST SOCKS ON SLOPES 2:1 OR GREATER.



### TYPE 4 RESTORATION

#### FUNCTIONAL GOAL:

PREVENT ACCESS TO SENSITIVE RESTORATION AREAS WHILE UTILIZING CPTED PRINCIPLES ALONG THE PUBLIC TRAIL.

#### RESTORATION REQUIREMENTS:

- REMOVE ALL WASHINGTON CLASS A, B, AND C NOXIOUS WEEDS AND ANY PLANTS ON THE NOXIOUS WEED MONITOR LIST.
- INITIAL HERBICIDE APPLICATION AND MECHANICAL CLEARING AND GRUBBING MAY BE USED.
- ALL TREES SHALL BE EVALUATED BY A CERTIFIED ARBORIST AND REMOVED IF DEEMED HAZARDOUS TO PUBLIC TRAIL USERS, OR IF OVERTAKEN WITH IVY.
- MACHINERY USED ON-SITE SHALL BE NO MORE THAN 5 MAXIMUM PSI.
- ENSURE NO NEW GROWTH OF WEEDS DURING WARRANTY PERIOD
- REPLANT ANY DISTURBED AREAS AT MAXIMUM 4' SPACING, USING THE SPECIFIED TRAIL EDGE PLANTING MIX.
- TO ENHANCE SAFETY BY PRESERVING SIGHTLINES, TRAIL EDGE PLANTING SHALL BE 100% SHRUB OR UNDERSTORY AND HAVE NO PLANTING ABOVE 6' HEIGHT WITHIN 15' OF THE TRAIL.
- TRAIL EDGE PLANTING SHALL INCLUDE A MINIMUM OF 30% THORNY SPECIES TO DISCOURAGE RESTORATION SITE ACCESS BY TRAIL USERS.
- TO PRESERVE EXISTING SOIL AND MINIMIZE WEED PRESSURE, NO SOIL AMENDMENT SHALL BE UTILIZED.
- APPLY 3" WOOD CHIP MULCH TO ALL DISTURBED AREAS.
- INSTALL COMPOST SOCKS ON SLOPES 2:1 OR GREATER.

## CONCEPTUAL PLANT MIXES

### TRAIL EDGE PLANTING

- SALMONBERRY/ RUBUS SPECTABILIS
- NOOTKA ROSE/ ROSA NUTKANA
- SWAMP ROSE/ ROSA PISOCARPA
- SNOWBERRY/ SYMPHORICARPOS ALBUS
- LOW OREGON GRAPE/ MAHONIA NERVOSEA
- TALL OREGON GRAPE/ MAHONIA AQUIFOLIUM
- THIMBLEBERRY / RUBUS PARVIFLORUS
- SWORD FERN/ POLYSTICHUM MUNITUM
- LADY FERN/ ATHYRIUM FELIX-FEMINA
- SALAL / GAULTHERIA SHALLON

### WETLAND EMERGENT MIX

- SLOUGH SEDGE/ CAREX OBNUPTA
- SAWBEAK SEDGE / CAREX STIPATA
- WATER PARSLEY/ OENANTHE SARMENTOSA
- DAGGER- LEAF RUSH/ JUNCUS ENSIFOLIUS
- SMALL-FRUITED BULRUSH / SCIRPUS MICROCARPUS
- SKUNK CABBAGE/ LYSICHTON AMERICANUS

### BUFFER PLANTING

- BIG LEAF MAPLE/ ACER MACROPHYLLUM
- WESTERN RED CEDAR/ THUJA PLICATA
- BEAKED HAZELNUT/ CORYLUS CORNUTA
- INDIAN PLUM/ OEMLERIA CERACIFORMIS
- NOOTKA ROSE/ ROSA NUTKANA
- RED-OSIER DOGWOOD/ CORNUS SERICEA
- EVERGREEN HUCKLEBERRY/ VACCINIUM OVATUM
- DOUGLAS SPIRAEA/ SPIRAEA DOUGLASII
- TWINBERRY/ LONICERA INVOLUCRATA
- SALAL / GAULTHERIA SHALLON

### UPLAND ENHANCEMENT PLANTING

- BIG LEAF MAPLE/ ACER MACROPHYLLUM
- DOUGLAS FIR/ PSEUDOTSUGA MENZIESII
- WESTERN RED CEDAR/ THUJA PLICATA
- GRAND FIR/ ABIES GRANDIS
- CASCARA/ RHAMNUS PURSHIANA
- WESTERN HEMLOCK/ TSUGA HETEROPHYLLA
- VINE MAPLE/ ACER CIRCINATUM
- SCOULER'S WILLOW/ SALIX SCOULERIANA
- EVERGREEN HUCKLEBERRY / VACCINIUM OVATUM
- TWINBERRY/ LONICERA INVOLUCRATA
- BEAKED HAZELNUT/ CORYLUS CORNUTA
- SALAL / GAULTHERIA SHALLON
- ELDERBERRY/ SAMBUCUS RACEMOSA

### OREGON ASH/ SLOUGH SEDGE ENHANCEMENT PLANTING

- OREGON ASH/ FRAXINUS LATIFOLIA
- RED ALDER/ ALNUS RUBRA (NO MORE THAN 1% OF MIX)
- CASCARA/ RHAMNUS PURSHIANA
- SCOULER'S WILLOW/ SALIX SCOULERIANA
- SALMONBERRY/ RUBUS SPECTABILIS
- RED ELDERBERRY/ SAMBUCUS RACEMOSA
- DOUGLAS SPIRAEA/ SPIRAEA DOUGLASII
- SLOUGH SEDGE/ CAREX OBNUPTA
- TALL MANNAGRASS/ GLYCERIA ELATA
- LADY FERN/ ATHYRIUM FELIX-FEMINA
- SWORD FERN/ POLYSTICHUM MUNITUM
- WATER PARSLEY/ OENANTHE SARMENTOSA

Exhibit D-3

## **Exhibit E**

# **SR 509 COMPLETION PROJECT PHASE 1**

Urban Design Criteria

September 15, 2023



**Contents**

Purposes and Objectives ..... 2

Retaining Walls and Noise Walls ..... 2

    Criteria ..... 2

        Wall Alignment ..... 2

        Top of Wall Profile ..... 3

        Wall Batter ..... 3

Bridges ..... 3

    Criteria ..... 3

        Superstructure ..... 3

        Piers ..... 4

        Abutments and Wing Walls ..... 4

Safety Barriers ..... 4

    Criteria ..... 4

        Roadside Barriers ..... 4

        Barriers on Structures ..... 4

Sign Structures and Toll Gantries ..... 5

    Criteria ..... 5

Right-Of-Way Fencing and Fall Protection Aesthetics ..... 5

    Criteria ..... 5

        Right-of-Way Fencing ..... 5

        Fall Protection ..... 5

        Fall Protection Exposed to Public View ..... 6

Surface Texture Aesthetics ..... 6

    Criteria ..... 6

Color Aesthetics ..... 7

    Criteria ..... 7

Lighting Aesthetics ..... 9

    Criteria ..... 9

Intelligent Transportation Systems ..... 9

    Criteria ..... 9

WSDOT Drainage and Utilities ..... 9

    Criteria ..... 9

Vegetation ..... 10

    Criteria ..... 10

SR 509 Completion Project Phase 1  
Urban Design Criteria

General.....10  
 Roadside Cut Slope Planting .....11  
 Roadside Fill Slope Planting .....13  
 Planting in Barrired Raised Areas Between Roads.....15  
 Planting in Barrired At-Grade Areas Between Roads .....16  
 Community Gateways.....16  
 Criteria.....16  
 Community Gateway Design.....16  
 References .....16

**Figures**

Figure 1: Vicinity Map..... 2  
 Figure 2: Chorded Wall Layout..... 2  
 Figure 3: Wall End Treatment..... 2  
 Figure 4: Textured Inset Location for Barriers on Bridges ..... 3  
 Figure 5: Raised Panel Concrete Surface Treatment ..... 6  
 Figure 6: Roadside Planting on Cut Slopes ..... 7  
 Figure 7: Tree Protection Area (TPA) ..... **Error! Bookmark not defined.**  
 Figure 8: Roadside Planting on Cut Slopes with Barrier or Guardrail. ....13  
 Figure 9: Roadside Planting on Fill Slope.....14  
 Figure 10: Roadside Planting on Fill Slope with Barrier or Guardrail. ....14  
 Figure 11: Planting in Barrired Areas Between Roads. ....15



Figure 1: Vicinity Map

## Purposes and Objectives

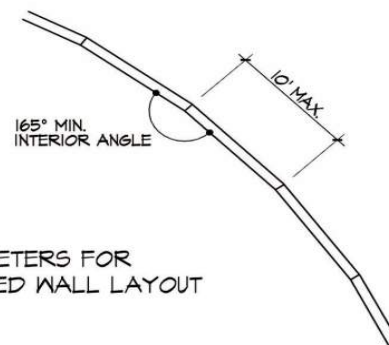
This document provides visual and aesthetic criteria for SR 509 Completion - Stage 2 Project for SR 509 between 24th Avenue S. interchange to S. 188th Street/Des Moines Memorial 8 Drive (DMMD) interchange and I-5 between the S. 272nd Street 23 interchange and the SR 516 interchange. Figure 1 The Design-BUILDER shall locate the aesthetic transitions to enhance corridor continuity, such as at ends of walls, barriers or abutments.

## Retaining Walls and Noise Walls

### CRITERIA

#### WALL ALIGNMENT

- Retaining walls on long curves shall follow the road along a curved alignment.
- If walls cannot be constructed in curved sections, walls shall be constructed in a series of short-chorded sections that appear to be on an arc or curving alignment (Figure 2).
- Walls shall parallel the highway alignment without jogs, offsets, or pronounced undulations.
- Wall transitions needed to move walls away from or toward the road shall be done gradually over long curves.
- Short jogs and zigzags in wall alignments shall only be allowed where walls parallel ROW boundaries that jog.
- Where possible, wall ends shall be curved into earth berms (Figure 3).



PARAMETERS FOR  
CHORDED WALL LAYOUT

Figure 2: Chorded Wall Layout

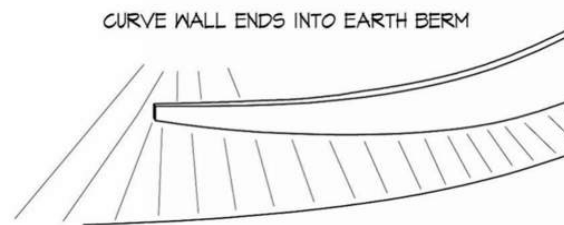


Figure 3: Wall End Treatment.



#### TOP OF WALL PROFILE

- All walls shall be capped by a 12-inch Class 2 smooth finish concrete band or cap with assigned corridor texture below.
- Abrupt sags and crests along the top of wall shall be avoided.
- Short steps along the top of retaining walls shall be avoided. For pre-cast walls, the top of the wall may be stepped. The vertical steps shall be in 2', 3', or 4' increments and be placed at joints in pre-cast wall panels. Horizontal runs shall be constructed in accordance with Section 6-12 of the Standard Specifications
- If top of wall cannot be constructed along a curved profile, the top shall be constructed in a series of short chorded sections that appear to be curved.
- When both the horizontal alignment and top of wall curve, the curves shall be coordinated to visually complement each other with vertices that align.
- Where retaining walls abut concrete bridge rails, the top of the retaining wall shall be aligned flush with the top of the concrete bridge rail.
- The profile of upper retaining walls or noise walls shall be compatible with the profile of lower walls and barrier walls. Mixing of dissimilar profiles such as steps with curves or contrary vertices shall be avoided.
- Where shown in the Conceptual Plans, the top of a retaining wall may be extended vertically to function as a barrier wall or noise wall.

#### WALL BATTER

- Front-battered cast-in-place retaining walls shall not be used. Batter that faces the retained side is permissible.

### **Bridges**

#### CRITERIA

##### SUPERSTRUCTURE

- Beam and girder depths shall be kept constant over multi-span structures.
- Beam and girder depths on closely adjacent structures visible to the traveling public shall be visually similar.
- Where an existing bridge only requires lengthening or widening, the new components shall be visually similar to the existing bridge structure type.
- Drainage pipes and other conduits shall be concealed in spaces between girders and in recessed slots or grooves in piers and abutments.
- Bird prevention spikes shall be used on all potential bird perch locations, defined as any flat surface on structures that may provide bird perching locations.
- Simple and consistent bracing patterns made up of as few members as possible shall be used. Complex bracing patterns, variable patterns, and patterns composed of many small members shall be avoided.
- Minimize superstructure depth. Maintain constant superstructure depths along the length of the bridge with necessary variations gradually and gracefully proportioned.

#### PIERS

- Round pier columns shall be used for all new bridge structures.
- Exposed projecting pier caps shall not be used.
- Where multiple piers are visible at the same time, piers of varying heights shall appear to have same width.
- Locate columns under parallel bridges along a common line at each bend.

#### ABUTMENTS AND WING WALLS

- At places where the abutments of more than one bridge are visible, the angle between the roadway and the abutment shall be equal for all the visible abutments.
- Where abutment walls and wing walls tie into retaining walls, the same patterning and color shall be used on all wall surfaces.
- Abutment slope protection shall be a minimum of 3:1 slope and shall not exceed 2:1 slope at edge of planted areas.
- Front-battered cast-in-place walls shall not be used.

### **Safety Barriers**

#### CRITERIA

##### ROADSIDE BARRIERS

For consistency throughout the SR 509 and I-5 corridors, concrete traffic barriers shall be used wherever roadside barriers are required along the highway mainline and entry/exit ramps. Single-slope concrete barriers shall be used at all locations unless specified otherwise in Chapter 2, *Technical Requirements*. In medians on SR 509, barriers shall be high performance.

- Certain barrier sections shall function as short retaining walls that support planter areas in the median and along the roadside. These barrier wall sections shall be sealed to retain soils to within 4 to 6 inches of the top of the wall. Drainage shall be provided for these planters if infiltration is not possible.
  - Where local streets cross over the highway, concrete barriers along the highway shall extend continuously under the bridge in front of piers, abutments, and retaining wall structures. Areas behind the barrier (between the barrier and the pier or abutment) shall be surfaced with concrete slope protection or capped with concrete according to Standard Detail C-85.10-00.

##### BARRIERS ON STRUCTURES

- The tops of concrete traffic barriers shall slope toward the roadway.
- Concrete traffic barriers shall be extended across the tops of the bridge wing walls for better integration of bridge components and to accentuate the horizontal lines of the bridge.
- Where concrete traffic barriers on bridges abut retaining walls, the tops of barriers shall be aligned flush with tops of walls. Class 2 smooth finish vertical bands shall be provided at ends of barriers where they abut retaining walls.
- Where concrete traffic barriers on bridges abut traffic barriers on ramps, the tops of barriers shall be aligned flush. Class 2 smooth finish vertical bands shall be provided at ends of barriers on bridges where they abut traffic barriers on ramps.

- The same surface treatment shall be used on the outside of ramp barriers as was used on bridge barriers.
- Whenever possible, the ends of the concrete barriers shall be buried in the back slope in accordance with the WSDOT *Design Manual*, and use of impact attenuators shall be minimized.
- Pedestrian guardrails will be designed to allow the maximum visibility through the railing consistent with safety requirements.

## Sign Structures and Toll Gantries

### CRITERIA

- Where signs must be located over the roadway, they shall be mounted on simple mono-tube structures. Mono-tubes for signs and toll gantries and toll gantry hangers shall be painted “Mount St. Helens Gray” on SR 509 and “Blue Gray” ( SAE AMSStandard 595 Color Number 35237) on I-5.
- Signs shall be placed on sign-mounting structures instead of on the sides of bridges.
  - Exceptions:
    - Where signs on pre-existing bridges will be replaced with new signs.
    - Where signs must be mounted on a bridge overpass to serve the under-passing road, the signs shall be attached unobtrusively. The tops of the signs shall not extend above the tops of the bridge rails, and the bottoms of the signs shall not extend below the bottoms of the bridge structures.
- Where local streets cross over the highway, erecting signs on the over-crossing bridge to serve the over-crossing roadway shall be avoided; instead, signs shall be located before or after the bridge.
  - Exception:
    - Where pre-existing signs on over-crossing roadway will be replaced with new signs.
- Where signs must be mounted on new bridges, a mounting monotube or bar shall be placed spanning all lanes of traffic to accommodate sign movements for future potential re-channelization of traffic.
- The size and location of signs and mounting structures shall be compatible with other highway structures, lighting, and landscaping.

## Right-Of-Way Fencing and Fall Protection Aesthetics

### CRITERIA

#### RIGHT-OF-WAY FENCING

- Fencing shall be Type 3, in accordance with the WSDOT *Standard Plans*.
- Fencing shall be coated in accordance with the WSDOT General Special Provisions (GSPs) in the color “Black.”

#### FALL PROTECTION

- Fall protection shall be galvanized cable fence, as detailed in the WSDOT *Bridge and Design Manual*, Chapter 8.



#### FALL PROTECTION EXPOSED TO PUBLIC VIEW

- Fall protection exposed to public view shall have all galvanized surfaces painted in accordance with Section 6-07.3(11)A of the WSDOT *Standard Specifications for Road, Bridge, and Municipal Construction*. The color of the finish coat, when dry, shall match the color of the wall or barrier in which it is mounted.

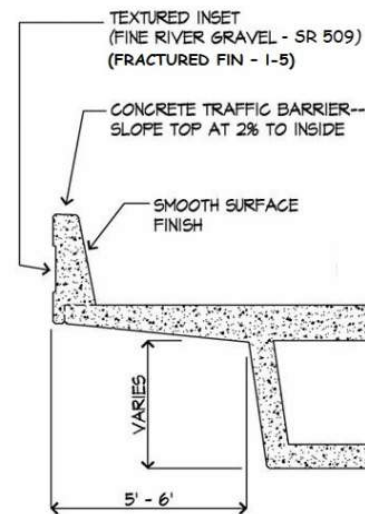
### Surface Texture Aesthetics

#### CRITERIA

The surfaces of concrete elements shall be finished or textured as follows:

- SR 509:
  - Noise walls shall be “Coarse River Gravel” on the side facing SR-509 and “Ashlar” on the community-facing side.
  - Abutment support walls, abutment wing walls, retaining walls and noise walls shall be “Coarse River Gravel”.
    - Form liners of abutment support walls, abutment wing walls, and retaining walls shall be Mammoth Cobblestone Pattern Number 1536, supplied by Spec Formliners, Inc., Santa Ana, California, 92701, telephone number (714) 429-9500.
  - Bridge columns and superstructures, including bridge deck cantilevers, shall be Class 2 smooth textured.
  - Concrete traffic barriers on bridges and on retaining walls shall be textured as shown in 4.
    - The inset for concrete traffic barriers shall be “Fine River Gravel” as described below.
    - Form liners for concrete traffic barriers on bridges shall be 1-inch Round Stone Pattern Number 1609 as supplied by Spec Formliners, Inc., 1038 East 4<sup>th</sup> Street, Santa Ana, California, 92701; telephone number (714) 429-9500.
  - Traffic barriers on grade shall be Class 2 smooth textured. This does not apply to barriers over buried structure retaining walls. See above for surface finish requirements for this condition.
- I-5:
  - Abutment support walls, abutment wing walls, and retaining walls shall be “Raised Panel” (Figure 5).
  - Noise wall texture on highway side “Fractured Fin” (see the WSDOT Standard Concrete Finishes for Bridge & Structure Construction in Highway Projects, Appendix L)
  - Noise wall texture on community side “Ashlar Stone Finish” (see the WSDOT *Standard Concrete Finishes for Bridge & Structure Construction in Highway Projects*, Appendix L)
  - Bridge columns and superstructures, including bridge deck cantilevers, shall be Class 2 smooth textured.

Exterior surface of concrete traffic barriers on bridges and I-5 over Veterans Drive Tunnel shall be textured with “Fractured Fin”. Top and interior surfaces shall be smooth. See Appendix L2



**Figure 4: Textured Inset Location for Barriers on Bridges and Retaining Walls.**

WSDOT *Standard Concrete Finishes for Bridges & Structure Construction in Highway Projects* for Fractured Fin details.

- The inset shall be “Fractured Fin”; see WSDOT *Standard Concrete Finishes for Bridge & Structure Construction in Highway Projects*, Appendix L.
- Traffic barriers on grade shall be Class 2 smooth textured.

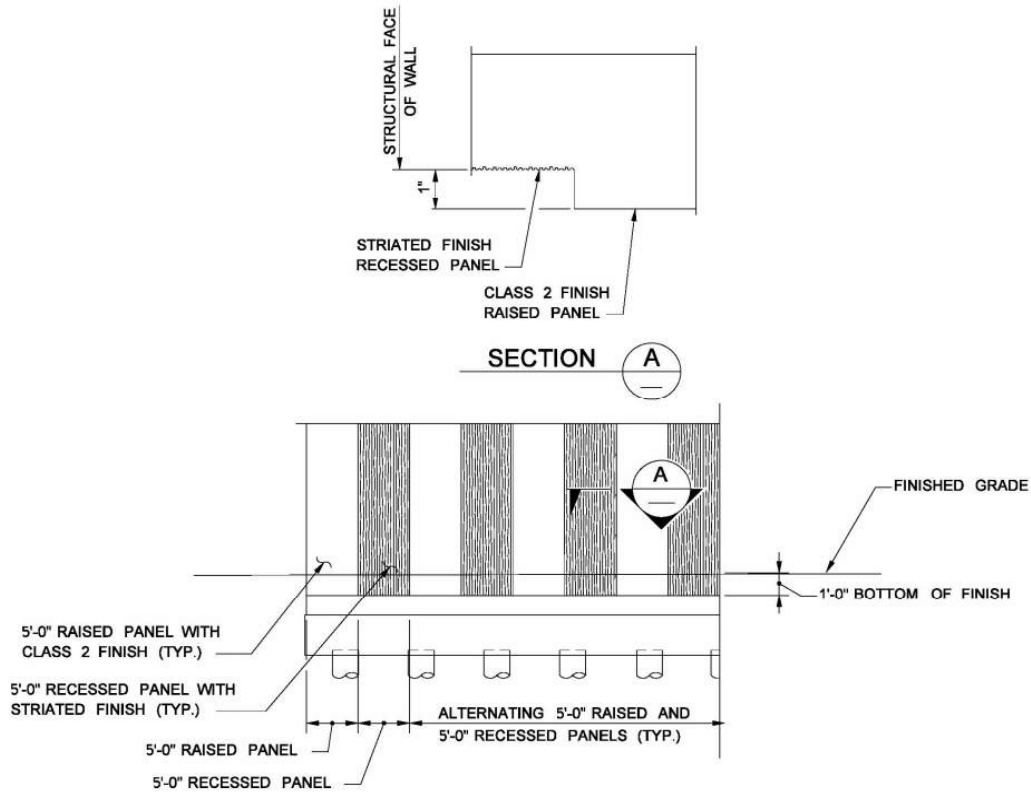


Figure 5: Raised Panel Concrete Surface Treatment.

## Color Aesthetics

### CRITERIA

All concrete surfaces except for pavement shall be treated with a pigmented sealer.

- Bridge structures including exterior side and bottom of exterior girders, all sides of the superstructure, all sides of every cap beam, and all above-grade portions of every column to 1-foot below grade.
  - SR 509:
    - The color for abutment walls, wing walls and pier columns shall be “Mount St. Helens Gray.”
    - The color for bridge superstructures, deck cantilevers, and concrete bridge rails shall be “Washington Gray.”

- I-5:
  - The color for all concrete shall be “Washington Gray.”
- Retaining walls and noise walls to 1-foot below grade
  - SR 509:
    - The color for retaining walls and noise walls shall be “Mount St. Helens Gray.”
    - The color for bridge superstructures, deck cantilevers, and concrete bridge rails shall be “Washington Gray.”
  - I-5:
    - The color for all concrete shall be “Washington Gray.”
- Fencing
  - Fencing shall be coated in accordance with the WSDOT General Special Provisions (GSPs) in the color “Black.”
- Barriers
  - SR 509:
    - The color for roadside barriers shall be “Mount St. Helens Gray.”
    - The color for barriers on structures shall be “Washington Gray.”
  - I-5:
    - The color for roadside barriers shall be “Washington Gray.”
- Railings
  - Fall protection exposed to public view shall have all galvanized surfaces painted in accordance with Section 6-07.3(11)A of the WSDOT *Standard Specifications for Road, Bridge, and Municipal Construction*. The color of the finish coat, when dry, shall match the color of the wall or barrier in which it is mounted.
- Sign Structures and Toll Gantries
  - SR 509:
    - Mono-tubes for signs and toll gantries and toll gantry hangers shall be painted “Mount St. Helens Gray
  - I-5:
    - Mono-tubes for signs and toll gantries and toll gantry hangers shall be painted “Blue Gray” (Federal Standard 595 Color Number 3527).
- Lighting
  - SR 509:
    - Light-mounting poles shall be “Galvanized”
  - I-5:
    - Light-mounting poles shall be “Galvanized.”
  - On city streets outside of WSDOT ROWs, the color shall be according to Local Agency standards.



- Downspout drains and scuppers on bridges
  - Where visible to the public, downspout drains and scuppers on bridges shall be painted to match the bridge structure pigmented sealer.
- All metal Work including but not limited to camera poles and ramp meter signal poles shall be:
  - SR 509:
    - “Galvanized”
  - I-5
    - “Galvanized.”
  - On city streets outside of WSDOT ROWs, the color shall be according to Local Agency standards.

## Lighting Aesthetics

### CRITERIA

The corridor light fixture shall be a standard WSDOT Type 3 medium-cut-off fixture with flat glass optics and an LED source. The mounting pole shall be a WSDOT Type 1 galvanized steel pole with finishes as indicated below.

- The proposed standards and luminaires shall be consistent throughout the SR 509 and I-5 corridors. The proposed lighting for local roads shall be designed and constructed in accordance with local jurisdiction standards.
- The lighting plan shall be coordinated with the design of walls and bridges.
- For short bridge spans, lights should be located off the structure or only at the ends of the structure, if possible.
- Where continuous lighting is used on a bridge, lighting shall be located at uniform intervals in locations that are visually integrated with the bridge structure, such as at pier lines.
- On Des Moines Memorial Drive corridor, pedestrian lighting shall be in accordance with the requirements that are outlined in the *Des Moines Memorial Drive plan*.

## Intelligent Transportation Systems

### CRITERIA

- WSDOT Intelligent Transportation System (ITS) cabinet locations and finish shall comply with the maintenance access and placement requirements in Section 2.18, *Intelligent Transportation Systems*, and shall not be placed within the clear zone or sight triangles.

## WSDOT Drainage and Utilities

### CRITERIA

- When extending utilities across bridges, pipes and conduit shall be concealed in the bridge superstructure. Neither conduit nor pipes shall be attached to visually exposed surfaces on bridges and walls.
- Additional conduits for future use shall be provided on all bridges.
- Use of bridge drains is discouraged. If water must be drained on a bridge, a drop drain shall be used if possible. If a drop drain is not possible, the bridge engineering, hydraulic

engineering, bridge maintenance staff, and landscape architect shall jointly design an acceptable bridge drain location. Ideally, the bridge drain will be concealed in the recessed slots in the piers.

## Vegetation

### CRITERIA

#### GENERAL

The following planting criteria apply to all planting areas within the project and Barnes Creek Mitigation site outside of the project limit. For visual consistency and integration with the adjacent landscape, plants in the SR 509 and I-5 corridors shall be mostly natives or have the visual characteristics of native plants. Plants in Barnes creek mitigation site shall be only native and in accordance with the conceptual plans. All use of plant and soil material, as well as stream and buffer restoration at UNT to South Fork McSorely Creek, shall follow the requirements of *Plant, Soil, and Environmental Restoration Design Criteria* (Appendix L)

- Plant mixes along the extended and reconstructed highway, as well as along I-5, shall be characteristic of the region, be suited to local climate and soils, have low maintenance requirements, and provide year-round visual buffering. Use mixes and cultivars resistant to disease.
- Disturbed ROW along I-5 will be restored to blend with existing I-5 corridor vegetation and the proposed FWLE vegetation and to provide visual buffering from and for adjacent properties.
- Plant species selected for city streets shall meet the requirements of the Local Agency of the city street.
- Selected plant species shall meet the criteria for planting near airports. Specifically, species height shall be restricted within the Port of Seattle Flight Safety Corridor and attraction of birds that might flock around aircraft shall be minimized within 10,000 feet of the runways. Taller species may be used in lower tiers of cut sections of roadway, but because of flight path considerations, only species that at maturity will not become obstructions within the Port of Seattle Flight Safety Corridor shall be used.
- Selection of plant species and final placement and layout of plants shall be coordinated with the WSDOT NWR Landscape Architecture Office. Planting conditions to be implemented for the SR 509 extension and I-5 reconstruction are described in the following sections.
- The planting for SR 509 and I-5 shall be in accordance with the Built Character outlined in the WSDOT *Roadside Policy Manual* with the exception that Roadside Zone 2 will be planted with shrubs and groundcovers. Seeding (includes erosion control grasses, turf grass and any sod or seeded mix) shall only occur as described in the following sections. The planting shall improve visual quality through visual continuity and view buffering. The planting shall consist predominantly of coniferous trees with intermittent deciduous trees. Low and medium height shrubs or vining plants shall be used on the ground plane to stabilize soils, eliminate the need for mowing and trimming around trees and shrubs, and inhibit the growth of invasive plants. The layout and composition of the vegetation buffer shall be adapted to work with cross-section grading, ROW width, clear zone and sight distance requirements, and stormwater collection and treatment facilities. For all other planting requirements, see the *Plant, Soil, and Environmental Restoration Design Criteria*.
- The planting for Barnes creek mitigation site shall be in accordance with the requirements outlined in the conceptual plans.

- Planting areas shall meet the roadside functions outlined in the WSDOT *Roadside Policy Manual* and be designed in accordance with the WSDOT *Roadside Manual*.
- All planting areas shall meet the requirements described in the *Plant and Soil Material Design Criteria* (Appendix L).

#### VEGETATION PROTECTION

For existing trees to be protected within the project area or adjacent to the Impact Area Line, a certified arborist shall establish the Tree Protection area (TPA). See figure 7 for the standard calculation of the TPA.

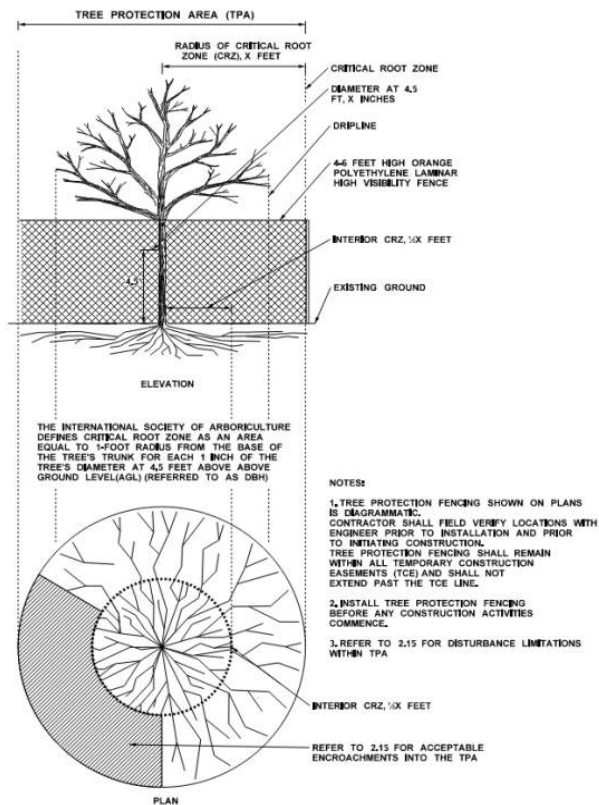


Figure 5: Tree Protection Area (TPA)

#### ROADSIDE CUT SLOPE PLANTING

The following planting criteria are for a roadside cross-section consisting of ditch or swale, with a cut slope extending above the ditch to approximately the ROW line. The roadside may be with or without a barrier or guardrail.

- Coniferous trees shall be provided on upper parts of slopes; they shall be planted in slightly irregular rows two to three plants deep, outside of the clear zone and within the ROW.
- Intermittent short gaps in conifers shall be provided every 100 to 300 yards. Upper-story and lower-story deciduous trees shall be inserted into gaps. Deciduous trees shall be far enough from the roadway to minimize the amount of leaves that enter the drainage systems.

- Medium/low shrubs shall be planted among trees and, in places, in front of trees.
- Within the clear zone, on the lower slope below the trees, and above the ditch (if present), medium to low shrubs or non-climbing vining ground covers shall be provided to create a gradation or transition from grass to trees. Shrubs and ground covers may undulate in and out of the clear zone (Figure 7).
- Where barrier or guardrail are provided continue shrub and tree planting to barrier or guardrail with a minimum 5 feet setback. (Figure 4).
- Plants shall be laid out in informal, slightly irregular massings (Figure 7).
- Grass shall only be planted where barrier or guardrail are not provided and shall be limited to one-pass mowing no wider than 10 feet.
  - Exceptions:
    - Roadside ditch and ditch side slopes shall be planted with permanent erosion control grasses.

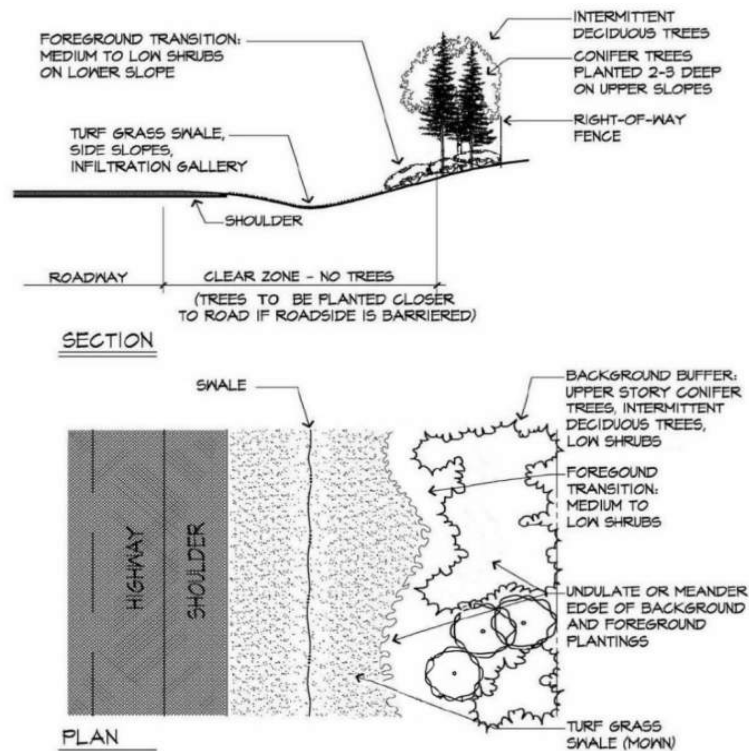
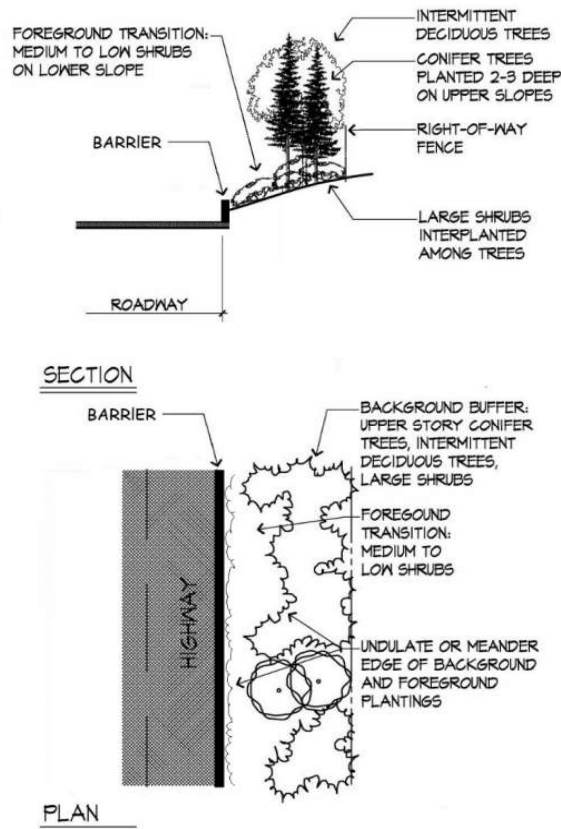


Figure 7: Roadside Planting on Cut Slopes





**Figure 4: Roadside Planting on Cut Slopes with Barrier or Guardrail.**

**ROADSIDE FILL SLOPE PLANTING**

The following planting criteria are for a roadside cross-section consisting of a fill slope between the edge of shoulder and existing grade or ROW line. The roadside may include stormwater treatment facilities. The roadway may be with or without a barrier/guardrail.

- Coniferous trees shall be provided on lower parts of slopes. They shall be planted in slightly irregular rows two to three plants deep, outside of the clear zone and within the ROW (Figure ).
- Intermittent gaps in conifers shall be provided every 100 to 300 yards and upper story and lower story deciduous trees shall be inserted into gaps. Deciduous trees shall be far enough from the roadway to minimize the amount of leaves that enter the drainage systems.
- Small-medium shrubs shall be planted among conifer trees and, in places, in front of conifer trees.
- Within the clear zone, on the upper slope above the conifers, medium to low shrubs and/or non-climbing vining ground covers shall be provided to create a stepped or graduated transition from grass to trees. The edge of the shrub or ground cover foreground shall undulate slightly toward and away from the road.

- Plants shall be laid out in informal, slightly irregular massings.
- Unless a barrier or guardrail is present, the upper part of slopes shall be planted with erosion control grasses limited to one-pass mowing no wider than 10 feet.
- Where barrier or guardrail are provided continue shrub and tree planting to barrier or guardrail (Figure ).

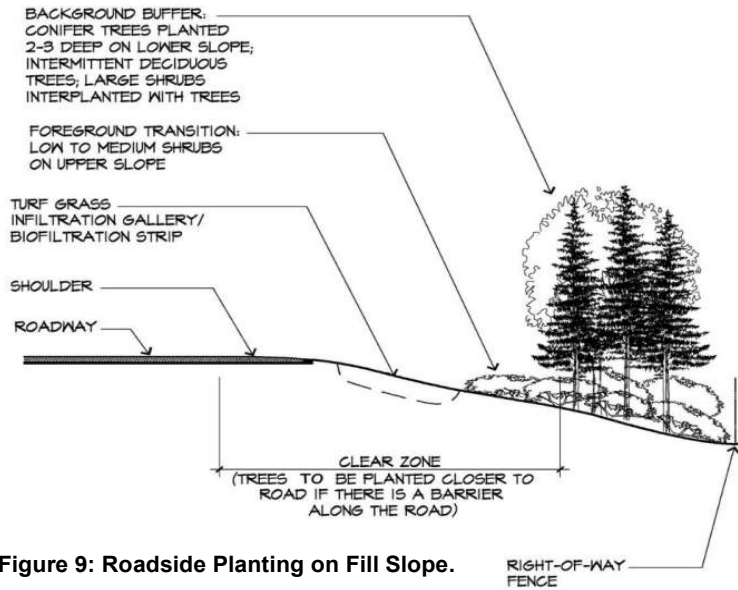


Figure 9: Roadside Planting on Fill Slope.

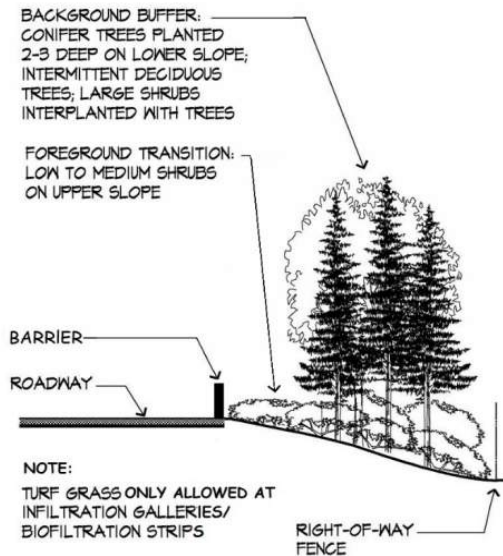
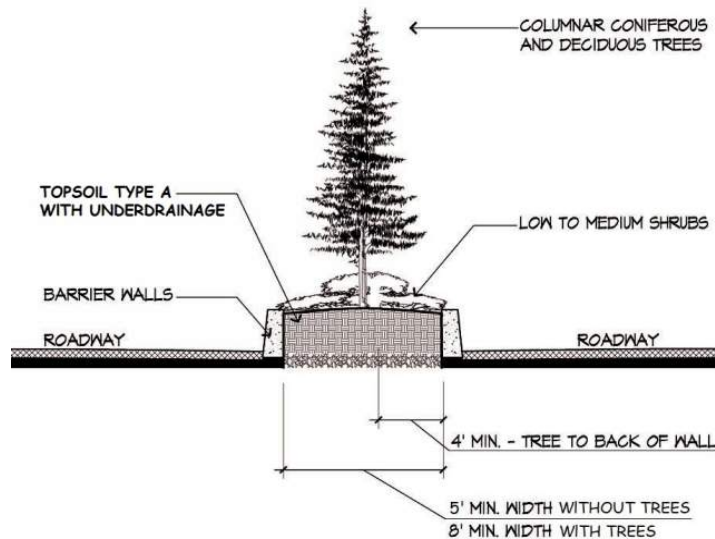


Figure 10: Roadside Planting on Fill Slope with Barrier or Guardrail.

**PLANTING IN BARRIERED RAISED AREAS BETWEEN ROADS**

The following planting criteria are for raised planter areas between concrete barriers. This situation would occur where narrow medians are flanked by barriers and the area between barriers is filled with soil to form a raised planter strip. A similar condition would occur in linear areas between the mainline highway and on/off-ramps.

Generally, these planter strips shall be planted with trees and shrubs that provide vertical mass and density to improve drivability and guidance by shielding headlight glare and screening visual clutter and the distraction of on-coming traffic. Plantings in these areas shall create as much visual separation between pavements as possible without overhanging the roadway or violating clear zones. Widths are measured from back of barrier to back of barrier.



**Figure 5: Planting in Barriered Areas Between Roads.**

- The minimum raised planter width shall be 5 feet. Trees in planter areas 8 feet to 10 feet wide shall be predominantly narrow conifers spaced to form linear and fairly uniform vertical plant masses. Low to medium-height shrubs shall be used to cover open ground areas in the planter strips.
- Raised planter strips 10 feet wide and greater shall be planted with a combination of columnar deciduous and conifer trees. Trees shall be spaced to form fairly uniform linear plant masses. Groups of coniferous trees shall be alternated with groups of deciduous trees for visual interest. So that drainage systems are not clogged by falling leaves, deciduous trees shall not be located near drains. Low to medium shrubs shall be used to cover open ground in planter areas.
- Strips between barriers less than 5 ft. wide shall be capped with concrete in accordance with Standard Plan C-85.10-00 to prevent accumulation of debris between barriers.
- Planter strips between barriers shall be raised (Figure 5).
  - Exceptions:
    - Where stormwater facilities require lower grades planter areas shall meet the requirements of Planting in Barriered At-Grade Areas Between Roads.
    - Grade transitions to these areas shall be gradual in compliance with Slope Treatment Standard Plan A-20.10-00 with slopes not exceeding 3:1.

#### PLANTING IN BARRIERED AT-GRADE AREAS BETWEEN ROADS

The following planting criteria are for at-grade median areas and areas between the highway mainline and on/off-ramps where raised planters are not feasible.

Stormwater treatment facilities in these areas shall have linear or curvilinear configurations, and, depending on the layout and size of the treatment system, plants shall be located around the treatment facility. Plantings shall be closely coordinated with requirements for siting, operating, and maintaining stormwater facilities. Permanent irrigation is not allowed in areas near the infiltration systems. Plants selected shall be appropriate for the hydrozones.

The planting criteria for Planting in Barriered Raised Areas Between Roads shall apply to this section, with the following additional requirements:

- The minimum distance between plants and stormwater facilities shall be 6 feet.
- Only evergreen trees and shrubs shall be used near stormwater facilities.
- Surface treatments and plant coverings (such as grass) for stormwater facilities shall be determined by the WSDOT Engineer. Grass behind barriers shall be limited to stormwater facilities. Maintenance equipment access for parking and mowing shall be provided.
  - Access to grass areas for maintenance and mowing shall be provided for in the design.

#### MAINTENANCE ACCESS PLANTING

The I-5 culvert access path surface shall be paved within the design vehicle wheel track only. Paved area shall not exceed 40% of total access route surface. All other areas within the access path shall be planted in Topsoil Type A, with full mulch coverage. For planting and soil preparation requirements see the *Plant, Soil, and Environmental Restoration Criteria (Appendix L)*.

The I-5 culvert access turnaround area shall be surfaced with pavers within truck turn footprint, with a buffer of 5'-0" from the outside edge of the wheel path. Pavers shall have a minimum dimension of 18" x 18" and shall have 18" planted gaps. Paver area shall not exceed 25% of total turnaround footprint. All other areas within the turnaround area shall be planted in Topsoil Type A, with full mulch coverage. For planting and soil preparation requirements see the *Plant, Soil, and Environmental Restoration Criteria (Appendix L)*.

## Community Gateways

### CRITERIA

#### COMMUNITY GATEWAY DESIGN

The Design-Builder shall initiate and facilitate the process to determine specific design and character elements for the community gateway at 24<sup>th</sup> Avenue South with the City of SeaTac. The design must meet the WSDOT *Roadside Policy Manual* parameters for community gateways and Chapter 950 of the WSDOT *Design Manual*, and be consistent with previous stages of the project. Design elements will need to be approved by WSDOT. The Design-Builder shall facilitate and implement the community gateway design, construction and agreements.

### References

- Washington State Department of Transportation. *Roadside Manual* M 51-02 (Appendix D).
- Washington State Department of Transportation. *Roadside Policy Manual* M 3110 (Appendix D).



SR 509 Completion Project Phase 1  
Urban Design Criteria

- Washington Stated Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction M 41-10 (Appendix D)
- Washington State Department of Transportation. Standard Concrete Finishes for Bridge & Structure Construction in Highway Projects. (Appendix L)
- Washington State Department of Transportation. *Standard Plans* M 21-01 (Appendix D).

# Exhibit F

FHWA-1273 – Revised October 23, 2023

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

### II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurances Required:**

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:



(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

## 2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901-3907](#).

### 3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention*. All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required*. Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits*. Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship*. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission*. The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required*. The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker ( e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHDL/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance*. Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH-347*. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for the submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

#### **4. Apprentices and equal employment opportunity (29 CFR 5.5)**

a. *Apprentices* (1) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeymen under this part must be in conformity with



the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

**6. Subcontracts.** The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.** a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

**11. Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

\* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

### 3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its reprocurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901-3907](#).

4. **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

### VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and  
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

#### **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

#### **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

**IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

**X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

**1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

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**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

\* \* \* \* \*

**3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

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**4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

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**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

# AGENDA ITEM

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

SUBJECT: Collective Bargaining Agreement:  
Police Support Guild

FOR AGENDA OF: August 8, 2024

DEPT. OF ORIGIN: City Manager's Office

ATTACHMENTS:

DATE SUBMITTED: August 1, 2024

1. Collective Bargaining Agreement by and between City of Des Moines, Washington and Police Support Guild ("PSG") (Representing the Police Support Personnel)

CLEARANCES:

- Community Development \_\_\_\_\_
- Marina \_\_\_\_\_
- Parks, Recreation & Senior Services \_\_\_\_\_
- Public Works \_\_\_\_\_
- Legal /s/ MH
- Finance *[Signature]*
- Human Resources *[Signature]*
- Courts \_\_\_\_\_
- Police \_\_\_\_\_

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

**Purpose and Recommendation**

The purpose of this agenda item is to review and approve the Collective Bargaining Agreement ("Agreement") between the City of Des Moines and the Police Support Guild (PSG) for the period, effective upon ratification through December 31, 2026.

**Suggested Motion**

**Motion 1:** "I move to approve the attached Collective Bargaining Agreement between the City of Des Moines and the Police Support Guild and to authorize the Interim City Manager to sign the Agreement substantially in the form as attached."



## **Background**

In August of 2022, the Washington State of Public Employment Relations Commission confirmed the eligibility and establishment of the employees and/or positions whom would be included in the PSG. On January 29, 2024, the PSG attorney contacted the City to begin the bargaining process. The City and the PSG began negotiations on March 29, 2024 for the new Police Support Guild collective bargaining agreement. The City and the PSG met nine (9) times over four (4) months to review the various provision proposals. The City and the PSG utilized meaningful dialogue to gain a better understanding of the issues at hand and to propose solutions that effectively addressed the interests of both parties. Throughout the bargaining process, the City and the PSG leadership remained fully committed to achieving mutually acceptable outcomes, which allowed us to reach a tentative agreement on July 24, 2024.

## **Discussion**

The City successfully negotiated a compensation package with the PSG that respects our budgetary constraints while ensuring that staff receive equitable wages. This approach reflects our commitment to maintaining a financially sustainable and balanced budget. Effective upon ratification and acceptance by the Council, PSG members (who were not eligible for general wage increases provided to other staff due to pending contract negotiations since 2022) will receive a lump sum payment of eighteen and five tenths percent (18.5%) reflecting missed annual wage increases. This lump sum payment, calculated based on the potential cumulative increases for each missed year, aims to fairly compensate staff without considering retroactive adjustments. It ensures that employees receive equitable compensation comparable to those who received general wage increases during their contract negotiation period that PSG members did not receive.

In 2025, PSG will receive a 3.0% percent increase as a general wage increase. In 2026, PSG will receive a minimum 2.0% increase and a maximum of 3.5%. Granting general wage increases is crucial for maintaining the purchasing power of employees' wages in the face of rising living costs. These general wage increases supports salaries keeping pace with inflation, which helps to retain talented staff and avoid wage erosion. Analysis by the Financial Department indicated this agreement to include the general wage increases would be consistent with maintaining a sustainable budget for the City.

The City successfully maintained many existing pay practices and benefits, which helped to control costs in alignment with our financial forecasts and budget projections. This approach also ensured that essential elements valued by the bargaining group were preserved. The City and the PSG also successfully preserved the status quo for PSG members and their dependents regarding existing health plan options. This achievement is particularly significant given that the cost of medical and health benefits to the employer is substantial.

Additional provisions include:

- Ability to establish a grandfather clause for legacy employees that allows them to maintain status quo on many pay practices while creating the ability to hire new employees in the same classification under provisions more aligned with the majority of the bargaining group.
  - This allows for some decrease in cost of benefits once additional or new staff are hired in the positions covered under the legacy provisions.
- Ability to ensure when the Digital Evidence Field Technician position is vacant the City can decrease the wage range by approximately 25%.

- Provides for bilingual pay (though this is an additional cost albeit minimal), the City considers this an enhancement in our ability to attract and retain staff who are able to communicate with the City's diverse population.

**Alternatives**

The Council could choose not to approve the Agreement and direct the Interim City Manager to move forward with the mediation process. (Not recommended).

**Recommendation or Conclusion**

Administration recommends approval of the proposed Agreement as it is in alignment with the changes and compromises authorized by the Council and is comparable to agreements with other employee groups.

**COLLECTIVE BARGAINING AGREEMENT**

**By and Between**

**CITY OF DES MOINES**

**and**

**DES MOINES POLICE GUILD –  
POLICE SUPPORT UNIT**

**Expires December 31, 2026**

## Table of Contents

ARTICLE 1.	PURPOSE.....	3
ARTICLE 2.	DEFINITIONS.....	3
ARTICLE 3.	RECOGNITION .....	3
ARTICLE 4.	NON-DISCRIMINATION AND COMPLIANCE.....	4
ARTICLE 5.	EMPLOYER RIGHTS.....	4
ARTICLE 6.	COMMUNICATION.....	5
ARTICLE 7.	PERFORMANCE OF DUTY.....	6
ARTICLE 8.	HOURS OF WORK AND OVERTIME .....	6
ARTICLE 9.	VACATION.....	9
ARTICLE 10.	LEAVES .....	10
ARTICLE 11A.	HOLIDAYS (For Community Service Officers hired prior to ratification of the 2024 collective bargaining agreement) .....	12
ARTICLE 11B.	HOLIDAYS (Holidays for all bargaining unit employees not provided for in Article 11A) .....	13
ARTICLE 12.	CLOTHING AND EQUIPMENT .....	15
ARTICLE 13.	GUILD ACTIVITIES .....	15
ARTICLE 14.	COLLECTIVE BARGAINING.....	16
ARTICLE 15.	REDUCTION IN FORCE PROCEDURES .....	16
ARTICLE 16.	GRIEVANCE PROCEDURE.....	17
ARTICLE 17.	INSURANCE PROTECTION.....	24
ARTICLE 18.	BENEFIT PLANS .....	24
ARTICLE 19.	COMPENSATION .....	27
ARTICLE 20.	ENTIRE AGREEMENT.....	28
ARTICLE 21.	SAVINGS CLAUSE.....	28
ARTICLE 22.	TERM OF AGREEMENT.....	28
APPENDIX A.....		29



## **ARTICLE 1. PURPOSE**

The purpose of the Employer and Guild in entering into this agreement is to set forth their complete agreement with regard to wages, hours, and working conditions for the employees in the Bargaining Unit so as to promote the efficiency of law enforcement, public safety, morale and security of employees covered by this agreement; and harmonious relations, giving recognition to the rights and responsibilities of the Employer, the Guild and the employees.

## **ARTICLE 2. DEFINITIONS**

Terms used in this agreement are defined as follows:

1. "Employer" or "City" means the City of Des Moines, Washington.
2. "Guild" means the Des Moines Police Guild.
3. "Employee" means regular full-time and regular part-time nonuniformed employees (meaning employees who are not fully commissioned peace officers in the City of Des Moines Police Department) (in the Bargaining Unit as defined in subparagraph D). New positions shall be subject to regulation for inclusion or exclusion in the bargaining unit.
4. "Bargaining Unit" shall include all full-time and regular part-time nonuniformed employees working at the City of Des Moines Police Department, excluding supervisors, confidential employees, and all other employees.
5. "Department" means the Des Moines Police Department.

## **ARTICLE 3. RECOGNITION**

The Employer recognizes the Guild as the exclusive bargaining representative on matters concerning wages, hours, and working conditions for the employees in the Bargaining Unit.

1. Within thirty (30) days of hire or transfer into the bargaining unit, each employee has the option to attend a thirty (30) minute orientation session with the designated Guild representative. The purpose of the orientation is for the Guild to provide information related to coverage under this Agreement and enrollment in Guild membership.
2. Upon proper written authorization from an employee within the bargaining unit, the Employer agrees to deduct from the wages of that employee, a sum as certified by the Guild secretary, twice each month and forward the sum to the Guild, within seven (7) working days after the payroll withholding date. Any employee who wishes to cancel the written

authorization for dues deduction must notify the Employer and Guild in writing, at which time the Employer will discontinue the deduction.

3. The Employer **will** provide a monthly report to the Guild transmitted with transfer of deducted dues owed to the Guild (“the transferred amount”). Such report shall include all information required by RCW 41.56.035.
4. The Guild agrees to defend, indemnify and hold the Employer harmless against any and all claims, suits, orders or judgments brought or issued against the Employer by third parties as a result of any action taken or not taken by the Employer under the provisions of this article, pursuant to authorization by the Guild.
5. The Guild agrees to refund to the City any amounts paid to it in error on account of the provisions of this article upon presentation of proper evidence.

#### **ARTICLE 4. NON-DISCRIMINATION AND COMPLIANCE**

The Employer and Guild will cooperate to ensure that no employee is discriminated against by reason of membership or non-membership in the Guild. The Employer and Guild will also cooperate to assure compliance with non-discrimination laws. The parties agree that there shall be no unlawful discrimination and both shall comply with Federal, State and Local laws.

#### **ARTICLE 5. EMPLOYER RIGHTS**

It is recognized that the City of Des Moines retains the right to make decisions, manage the affairs of the City, and direct the work force, whether or not such rights have been previously exercised. Such functions include, but are not limited to:

1. The City has the authority to adopt rules and policies for the operation of the Department and conduct of its employees provided such rules are not in conflict with provisions of this Agreement or with applicable law.
2. To organize and reorganize the structure, work or reporting relationships within the department.
3. To determine the need for a reduction or an increase in the work force whether or not a vacancy exists for purposes of this agreement, in accordance with Article 16 of this Agreement.
4. To discipline or discharge for just cause.
5. To determine the promotional opportunities and need for, and qualifications of employees, transfers and promotions in a manner consistent with State law, Civil Service rules, or other specific provisions of this Agreement.

6. To determine job descriptions and job content.
7. To implement new, and to revise or discard old equipment, tools and facilities.
8. To assign work and equipment, schedule employees, and establish and change work schedules so long as the schedules and changes are not inconsistent with the scheduling provisions of Article 7.
9. To determine the City budget and financial policies.
10. To establish and administer a personnel system which provides for all types of personnel transactions, including determining the procedures and standards for hiring, promotion, transfer, assignment, layoff, discipline, retention, and classification of positions in a manner consistent with State Law, Civil Service rules, or other specific provisions of this Agreement.
11. To establish reasonable work and productivity standards and from time to time to change those standards.
12. Select and determine the number of employees, including the number assigned any particular work, and increase or decrease that number.
13. Determine the necessity for, and schedule which overtime shall be worked.
14. To make, establish, and enforce safety rules, operational policies and procedures, and rules of conduct for the department.
15. To inspect locker or other spaces assigned to Employees and provided notice is granted to the Employer.

The City retains the right to exercise its management rights as described above but nothing herein shall constitute a waiver of the Guild's right to bargain impacts to mandatory subjects of bargaining.

#### **ARTICLE 6. COMMUNICATION**

In order to facilitate continued good communications between the Guild and the Employer, the Employer and the Guild shall meet once quarterly or more often if needed, upon request, to raise issues that require discussion between and input from both parties. An annual calendar of these meetings will be established before January 15<sup>th</sup> of each year this Agreement is in effect.

## **ARTICLE 7. PERFORMANCE OF DUTY**

The Guild and the Employer agree that there shall be no strikes, walk-outs, slow-downs, stoppages of work, "sick outs," or any interference with the efficient operation of the department.

## **ARTICLE 8. HOURS OF WORK AND OVERTIME**

### **Section 8.1 Schedule Defined.**

**Section 8.1.1 Community Service Officer/Code Enforcement.** The Community Service Officer/Code Enforcement Officer schedule shall consist of a 7 day work week, consisting either of 4 consecutive days of work and 3 consecutive days off at 10 hours per day or 5 consecutive days of work and 2 consecutive days off at 8 hours per day.

**Section 8.1.2 Digital/Field Evidence Technician.** The Evidence Technician schedule shall consist of a 7 day workweek, consisting either of 4 consecutive days of work and 3 consecutive days off at 10 hours per day or 5 days of work and 2 days off at 8 hours per day.

**Section 8.1.3 Records.** The schedule for Record Specialists shall consist of a 7 day work week, consisting either of 4 consecutive days of work and 3 consecutive days off at 10 hours per day; or 5 consecutive days of work and 2 consecutive days off at 8 hours per day.

**Section 8.1.3.1 Records Specialist Staffing:** When a full shift vacancy is created for a Records Specialist the vacancy shall be filled by a Records Specialist on overtime. If no Records Specialist accepts the overtime, the Records Supervisor may work down in a Records Specialist position to cover that vacancy only to prevent a mandatory overtime.

**Section 8.1.4 Animal Control Officer.** The Animal Control Officer position is currently vacant and Animal Control services are contracted with C.A.R.E.S. Should the City discontinue the services of C.A.R.E.S., it agrees to post a recruitment to rehire the Animal Control Officer position within sixty (60) days of termination of the Burien Cares contract. The City further agrees that the position will be represented by this bargaining unit in the event that the Animal Control Officer position is rehired.

**Section 8.1.5 Crisis Response Specialist** The schedule for Crisis Response Specialist shall consist of a 7 day work week, consisting either of 4 consecutive days of work and 3 days off at 10 hours per day; or 5 consecutive days of work and 2 days off at 8 hours per day.

**Section 8.2 Employer Scheduling Right.** The Employer reserves the right to schedule



individual hours of work, shift assignments, days off, and to schedule overtime.

**Section 8.3 Short-Term Schedule Changes:** The Employer will make a reasonable effort to notify Employees of such changes thirty (30) days in advance of the change, provided the Employer has advance knowledge of the need for a change in schedule. Short term schedule changes shall be defined as a change for a period of under one hundred and eighty (180) days.

**Section 8.4 Long-Term Schedule Changes:** The Employer may change regular long-term schedules and work weeks listed above, provided the Employer agrees to bargain such changes with the Guild, in accordance with RCW 41.56.

**Section 8.5 New Positions.** The Employer retains the right to schedule any new positions or assignments created within the police department, as needed to meet the needs of the community. The Employer will follow the scheduling provisions of this article as well as consult with and seek input from the Guild on scheduling of new positions.

**Section 8.6 Overtime.** All overtime will be paid at a rate of one and one half (1-1/2) times the employees FLSA regular rate. Overtime will be paid for any time worked in excess of the employees scheduled workday or scheduled workweek. Scheduled overtime will be offered first on a voluntary basis. Overtime will be calculated in 15 minute increments.

**Section 8.7 Compensatory Time –**

**Community Service Officers hired prior to ratification of the 2024 collective bargaining agreement compensatory time shall be as follows:**

At the employee's discretion, the employee may choose to take compensatory time in lieu of overtime pay. All compensatory time accumulated will be accrued at a rate of one and one half (1.5) hours for each overtime hour worked. The employee shall indicate whether he/ she is accruing compensatory time or overtime in the pay period earned. The maximum amount of compensatory time that may be accumulated shall be equivalent to eighty (80) hours. An employee may submit a request in writing to the Chief of Police to carry over more than the allowed amount for that employee. This request is subject to final approval from the City Manager and/or designees.

**For all employees in the bargaining unit and those Community Service Officers hired after ratification of the 2024 collective bargaining agreement compensatory time shall be as follows:**

In lieu of overtime pay, compensatory time-off may be accrued upon the request of the employee and the approval of the employer. Scheduling of compensatory time-off shall be subject to the approval of the employee's supervisor. Compensatory time-off shall be taken at the rate of one and one-half (1.5) times the hours worked. The maximum number of hours that can be accumulated is forty (40) hours.

**Section 8.8 Compensatory Time Carryover.** Compensatory time can be carried over from

year to year. An employee can choose to cash in compensatory time at their FLSA regular rate of pay for any pay period between the months of January through October indicated by the employee. The use of compensatory time will be governed by the same criteria as vacation time. Any accrued compensatory time not used prior to an employee's separation from service will be paid on the last pay check.

**Section 8.9 Shift Extensions.** Shift extensions are paid at the employee's overtime rate of pay or in compensatory time off.

**Section 8.10 Emergency Call Back.**

**For Community Service Officers hired prior to ratification of the 2024 collective bargaining agreement call back shall be as follows:**

In the event an employee is called back to work in an emergency, more than one hour before or more than one-half hour after normal duty hours, the employee will be compensated at the employee's overtime rate with a four (4) hour minimum. If the work time continues into normal duty hours, the employee's FLSA regular rate shall be paid for the hours worked during their normal duty hours. If the employee is held over after their shift, it will be considered a shift extension and there will be no four (4) hour minimum unless there is a break in excess of one-half hour after normal duty hours.

**For all employees in the bargaining unit and those Community Service Officers hired after ratification of the 2024 collective bargaining agreement call back shall be as follows:**

An employee who has left work and is called back to work after completion of a regular day's shift, is called in to work before the beginning of the employee's shift, or is called in on the employee's day-off shall be paid a minimum of three (3) hours at one and one-half (1.5) times the employee's FLSA regular rate of pay starting at the time the employee is contacted and reports for the assignment; provided however, if the employee's regular shift starts less than three (3) hours from the time the employee started work on the callback, the employee shall receive one and one-half (1.5) times the employee's FLSA regular rate of pay only for such time as occurs prior to the commencement of the employee's regular shift.

**Section 8.11 On-Call.** Employees who are assigned to on-call status are required to respond and are limited in their personal activities. Given the inconvenience in serving on-call outside of regularly scheduled work hours, Employees who are on-call shall be compensated at the rate of \$20 per day (\$140 per week) while they are serving in an on-call status. Such status requires that the Employee be available to respond by telephone within 15 minutes and to return to the station within 45 minutes. When placed on standby status, employees will remain near a telephone (unless equipped with a pager, in which case the employee shall remain within paging distance) and will leave a number where they can be reached. While on standby duty, it is the employee's responsibility to be ready and able to work if called (for example: be able to get to work and not be impaired by drugs or alcohol).

Employees who are called back to work outside their regularly scheduled shift shall be entitled to call back pay.

**Section 8.12 Court.** When a court appearance falls outside the normal duty hours, the employee will be paid at the overtime rate with a three (3) hour minimum (or a four [4] hour minimum for Community Service Officers hired prior to ratification of the 2024 collective bargaining agreement). A court appearance is any appearance directed by a subpoena or court related conference requested by the prosecutor or judge.

**Section 8.13 Mandatory Training or Meetings.** Any mandatory training or meetings which fall outside of the employee's normal work schedule will be compensated at the employees over time rate with a three (3) hour minimum (or a four [4] hour minimum for Community Service Officers hired prior to ratification of the 2024 collective bargaining agreement). However, the minimum shall not apply to mandatory training sessions or meetings held less than one-half hour before or after normal duty hours. This would pertain to short training sessions or meetings which are less than one (1) day in duration. Any training session which falls into the normal workday and is less than the employee's regular shift in duration will show as actual hours of training. If the employee chooses not to return to work for the remaining hours of the shift, vacation, compensatory or Holiday hours may be used to fulfill the remaining time of the shift.

If the training sessions fall on the employee's day off the employee will be compensated at the employee's overtime rate. If a training session of one (1) day or more falls on the employee's day off, the immediate supervisor may reschedule the employee so that the training session shows as the employee's day worked. If the training day is in addition to the employee's work week the employee will be compensated at the employee's regular overtime rate. If the training day is in place of the employee's workday the employee will receive straight time.

**Section 8.14 Working out of Classification.** Employees temporarily assigned to work at a supervisory classification for one full shift or more shall be paid an additional 7.5% of base pay for the hours worked at the higher classification.

## ARTICLE 9. VACATION

**Section 9.1** Annual paid vacation shall be granted to all full-time employees and part time employees on a pro rata basis. Paid vacation will be granted according to the following schedule:

Years of Service	Monthly Accrual	Annual Carryover
0-3 years	8 hours per month	240 hours
4-6 years	10 hours per month	240 hours
7-10 years	12 hours per month	288 hours
11-15 years	14 hours per month	336 hours
16+ years	16 hours per month	384 hours

**Section 9.2** Annual vacations are subject to the rules contained in the City of Des Moines Personnel Manual. Vacation leave hours used are to be considered hours worked for calculation of overtime.

**Section 9.3** Employees accrue one-half of their monthly vacation accrual at the end of the first pay period of the month and the second half at the end of the second pay period. Employees are eligible to use earned vacation leave after six (6) months of employment. The department director can waive the six-month waiting period. Regular part-time employees earn vacation leave on a pro-rated basis.

**Section 9.4** All vacation must be scheduled with and approved by the Chief or designee. Vacations shall be scheduled at such times as the Employer finds most suitable after considering the wishes of the Employee and the requirements of the department.

**Section 9.5** Employees are encouraged to use vacation in the year it is earned. The maximum vacation hours that any employee can carry in their vacation balance is according to the schedule listed in this Article.<sup>1</sup> Where City operations make it impractical for an employee to use vacation time, the City Manager may authorize the employee to carry more hours, provided that the employee submits a request to carry the additional hours.

**Section 9.6** Upon separation from employment, employees shall be paid for all accrued but unused vacation time on their final paycheck at their current straight-time rate. Employees who are retiring are encouraged to use unused vacation time prior to the effective date of their retirement. Retiring employees may be paid for that portion of unused vacation time that does not create a retirement financial liability or obligation for the City on their final paycheck.

## **ARTICLE 10. LEAVES**

**Section 10.1 Sick Leave.** All full time employees shall accrue sick leave benefits at the rate of eight (8) hours each calendar month of continuous employment. Such sick leave shall be separated into two (2) separate accrual banks, "State sick leave" and "City sick leave." Employees shall accrue one-half of their monthly sick leave accrual at the end of the first pay period of the month and the second half at the end of the second pay period. Part-time employees shall accrue sick leave benefits on a pro rata basis according to hours worked.

**Section 10.1.1** All employees shall accrue one (1) hour of paid State sick leave for every forty (40) hours worked. Employees are not entitled to accrue State sick leave for hours paid while not working (such as during a suspension without pay, leave without pay, vacation, paid holidays, or while using State sick leave).

**Section 10.1.2** In addition, regular full-time employees shall accrue City sick leave, which when combined with their State sick leave, will total eight (8) hours of sick leave per month (prorated for part-time employees).

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<sup>1</sup> For Community Service Officers hired prior to ratification of the 2024 collective bargaining agreement, such Employees may exceed the cap until December 31 of each year, at which time their vacation time is forfeited down to the cap.



- State sick leave+ City sick leave= (8) hours of sick leave per month Such sick leave will be accrued each pay period as follows:
- State sick leave+ City sick leave= (4) hours of sick leave per pay period

**Section 10.1.3** State sick leave benefits accrue from the date of employment and employees are entitled to use their accrued State sick leave beginning on the ninetieth (90th) calendar day after the start of their employment. City sick leave benefits are earned from the date of employment, and may be utilized from date of employment.

**Section 10.1.4** Employees will continue to earn City sick leave while on paid City sick leave, vacation leave, holiday leave and/ or compensatory leave. Employees shall not earn any City sick leave benefits during a suspension without pay or a leave without pay.

**Section 10.1.5** Unused State sick leave balances in excess of forty (40) hours remaining at the end of the calendar year shall be credited to the employee's City sick leave balance the following year. State sick leave balances of forty (40) hours or less must carry over to the following calendar year.

**Section 10.1.6** City sick leave benefits not used during the calendar year in which they are earned may be carried over and used during succeeding calendar years. Such benefits may be carried over into successive calendar years so long as the employee remains employed by the City. Employees who transfer to another department retain any accumulated sick leave benefits after transfer to their new position.

**Section 10.1.7** Accrued State sick leave must be utilized first, followed by City sick leave once the employee's State sick leave is exhausted.

**Section 10.1.8** State and/or City sick leave hours used are to be considered hours worked for calculation of overtime, provided that:

1. Employees who are pre-scheduled to work overtime and utilize State and/or City sick leave in the same workweek prior to working the overtime shall be removed from the overtime schedule and the overtime shall be offered to all eligible employees using the current process for scheduling overtime. If no other employee is able to work the overtime and the need for overtime work still exists, the employee originally scheduled may work the overtime at the overtime rate.
2. Employees who utilize State and/or City sick leave in a work week and are not scheduled to work overtime at the time the sick leave is used may subsequently work extra hours and be paid at the overtime rate.

**Section 10.1.9** All State and City sick leave used in conjunction with an L & I injury shall be counted as hours worked for calculation of overtime.

**Section 10.1.10** State and City sick leave may be utilized according to the rules contained in the City of Des Moines Personnel Manual.

**Section 10.1.11** For Community Service Officers hired prior to ratification of the 2024 collective bargaining agreement only, with a sick leave balance over one hundred and fifty (150) hours shall have upon request one (1) hour of their monthly City sick leave accrual of eight (8) hours cashed and deposited into their 457 Deferred Compensation plan administered by MissionSquare Retirement. Such Employees with a sick leave balance over two hundred and fifty (250) hours shall have upon request two (2) hours of their monthly City sick leave accrual of eight hours (8) cashed and deposited into their 457 Deferred Compensation plan administered by MissionSquare Retirement.

**Section 10.1.12** Upon the separation from service, an employee in good standing with at least ten (10) years of service with the City of Des Moines in a position represented by the Des Moines Police Guild or upon the death of any employee regardless of years of service, the Employer will cash out twenty- five (25%) percent of the employee's sick leave balance or two-hundred (200) hours, whichever is less. Employees with at least twenty (20) years of service, the City will cash out four hundred (400) hours or fifty (50%) percent of the employee's sick leave balance, whichever is less. As a tax savings to the employee, the City shall pay any sick leave cash out provided under this Section, by contributing the entire cash-out value of all unused sick leave hours accrued and available to the employee's HRA-VEBA account.

**Section 10.2 Other Leaves.** Medical, maternity, paternity, Family Medical Leave, Washington State Sick Leave ("State" sick leave,) Paid Family and Medical Leave, military leave, reserve training, and other leaves shall be as specified in the City of Des Moines Personnel Manual.

**ARTICLE 11A. HOLIDAYS** (For Community Service Officers hired prior to ratification of the 2024 collective bargaining agreement)

**Section 11A.1 Holidays.** of pay:

- New Year's Day
- Martin Luther King Jr.'s Birthday
- Presidents' Day
- Memorial Day
- Juneteenth
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- the Friday following Thanksgiving Day
- Christmas Day
- Two floating holidays

**Section 11A.2 Holiday Leave Bank.** Members of the Guild shall receive a bank of one hundred and four hours (104) hours of leave time on January 1 of each year in compensation for the thirteen (13) holidays. Such leave time to be administered as holiday time, and considered as hours worked for calculation of overtime. The use of holiday time will be governed by the same criteria as vacation time. Employees may cash in fifty two (52) hours of holiday pay at the end of November to be paid on the first payday in December. Employees must use the additional fifty-two (52) hours by the end of the calendar year in which the holidays are credited.

**Section 11A.3** Community Service Officers required to work Independence Day, shall be paid of one-and one- half (1 1/2) times their regular rate of hourly pay for all hours worked on those days.

**Section 11A.4** In the event an employee uses all the holiday time and employment is terminated with the City prior to the end of the year, the remaining holiday pay will be paid back to the City out of the employee's final paycheck.

**Section 11A.5** In the event an employee is placed on administrative leave or on an alternative schedule due to an internal investigation, the employee will be placed on a Monday through Friday work schedule. If a holiday occurs while the employee is on administrative leave or on the alternative schedule and the employee does not work, hours for the holiday shall be deducted from the employee's holiday bank provided that, when the employee's holiday bank is equal to or less than forty (48) hours, no holiday hours shall be deducted. If the internal investigation results in the termination of an employee's employment, hours for the holidays that occur during the leave period shall be deducted from the employee's holiday bank until the holiday bank is exhausted.

**ARTICLE 11B. HOLIDAYS** (Holidays for all bargaining unit employees not provided for in Article 11A)

**Section 11B.1 Holidays.** An employee is eligible for a paid holiday if the Employee is on paid status during the work day before and after the holiday. Employees shall receive the following holidays off with eight (8) hours of compensation at their regular straight-time hourly rate of pay:

- New Year's Day
- Martin Luther King Jr.'s Birthday
- Presidents' Day
- Memorial Day
- Juneteenth
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- the Friday following Thanksgiving Day

Christmas Day

**Section 11B.2** Employees shall receive four (4) hours off at their regular straight-time hourly rate of pay the afternoon of Christmas Eve Day, December 24, providing they are scheduled to work.

**Section 11B.3** Employees shall receive twenty-four (24) floating holiday hours as scheduled by the employee and approved by the supervisor.

**Section 11B.4** The above holidays shall be observed on those dates set by State law. For employees who do not work on Saturday or Sunday, any holiday falling on a Sunday shall be observed on the following Monday and any holiday falling on a Saturday shall be observed on the preceding Friday.

**Section 11B.5** Community Service Officers required to work Independence Day, shall be paid of one-and one- half (1 1/2) times their regular rate of hourly pay for all hours worked on those days.

**Section 11B.6** If a holiday occurs while an employee is on vacation or sick leave, the holiday shall be utilized rather than charged against the employee's accrued vacation or sick leave.

**Section 11B.7** Employees on alternative work schedules must use vacation, compensatory-time or floating holiday hours to account for the difference between the eight (8) hour holiday and their longer regular shift, using two (2) hours if on a "4-10s" schedule. However, when such employees have actual hours worked on a holiday under Section 8.2.3 above, they shall not also use vacation, compensatory-time, or floating holiday hours to supplement the eight (8) hour holiday.

**Section 11B.8** In the event the observation of a holiday falls on an employee's regular day off, the employee may receive their eight (8) hours of holiday compensation on their next paycheck or, with their supervisor's approval, schedule an alternate day off with eight (8) hours of pay during their workweek.

**Section 11B.9** Employees are eligible to use their floating holiday after six (6) months of employment. The Chief or designee may waive this six (6) month waiting period. The annual floating holiday does not carryover from one year to the next. It must be used in the calendar year earned or is forfeited. The floating holiday is not compensated in any form upon separation of employment. The City Manager shall have the discretion to designate a particular day during the year as the floating holiday for all eligible employees. The City Manager may take an advisory ballot of all the eligible employees



to determine for that year whether the employees wish to leave the floating holiday to individual discretion or to consolidate the floating holiday for one particular citywide day off.

**Section 11B.10** Records Specialists who work New Year's Day, Independence Day, Thanksgiving Day, or Christmas Day will be paid two (2) times their FLSA regular rate of pay. Other employees who voluntarily work on the holidays listed above shall be paid their FLSA regular rate of pay rather than the holiday premium rate but shall receive the holiday premium rate listed above if they are called in and required to work. For purposes of this provision, the holiday begins at 0000 hours on the night of the holiday and concludes twenty-four (24) hours later at 0000 hours.

## **ARTICLE 12. CLOTHING AND EQUIPMENT**

**Section 12.1** The Employer agrees to provide all clothing and equipment which an employee is authorized to wear and authorized to purchase by the Chief of Police.

**Section 12.2** The Employer agrees to provide necessary cleaning of all such clothing and equipment.

**Section 12.3** The Employer agrees to replace or repair clothing and equipment which is damaged in the line of duty including "fair wear and tear".

**Section 12.4** Employees shall be allowed to select two clothing options in the form of jackets and outerwear from the City approved catalog not to exceed \$150 per year.

## **ARTICLE 13. GUILD ACTIVITIES**

**Section 13.1** Employees shall be granted use of City meeting space and release time from duty for a maximum of one (1) hour per month for Guild meetings. However, the Chief of Police may require an appropriate number of officers remain on patrol during the meeting at his discretion. On duty members must remain in ready status and respond to any calls for service. Time granted for such meetings shall not be cumulative. Negotiation meetings with City representatives without loss of pay, to the extent that such meetings are scheduled during the working hours of the members attending and the meetings do not affect the City's ability to respond to calls.

**Section 13.2** Designated members of the Guild shall be granted release time (subject to subsection B above) for all mutually agreed meetings between the City and the Guild, when such meetings take place at a time during which such members are scheduled to be on duty. Meetings scheduled with City representatives during off duty hours are not considered compensated time.

**Section 13.3** The City shall allow Guild representatives a reasonable amount of time while on duty to process grievances. The immediate supervisor of the Guild representative must authorize the activity. The City will allow Guild material to be distributed to members by use of City employee mailboxes.

**Section 13.4** The City shall provide space on existing bulletin board(s) for the Guild to post notices of meetings, elections and other items of interest to Guild members. These materials may not be inflammatory or personal in nature or be derogatory about the City.

**Section 13.6** The Guild may utilize City copy machines, faxes, telephones and other equipment provided reimbursement is made to the City in accord with Department of Finance guidelines.

#### **ARTICLE 14. COLLECTIVE BARGAINING**

Collective bargaining between the parties shall be carried out by the City Manager and/or designees, on behalf of the City Council, and a person or persons representing the Guild.

All agreements reached not otherwise included in this Collective Bargaining Agreement shall be reduced to writing in a separate Memorandum of Agreement which shall be signed by the City Manager and the Guild representative.

Upon the settlement of the Collective Bargaining Agreement, the City will make the agreement available to each member affected by the agreement by posting it on the City's internet.

#### **ARTICLE 15. REDUCTION IN FORCE PROCEDURES**

**Section 15.1** Layoff and recall shall be in accordance with established rules and regulations of the Des Moines Civil Service Commission with the following exceptions:

**Section 15.1.1** Seniority will be determined by the employee's most recent hire date in the bargaining unit and/or job classification. In the event of two or more employees with the same date of hire, seniority will be determined by the placement on the eligibility list.

**Section 15.1.2** In the event of layoff, employees will be laid off in the order of their reverse seniority in classification with the lowest seniority employees being laid off first.

**Section 15.1.3** Employees laid off shall be placed on a reinstatement list for the classification from which the layoff demotion took place.

**Section 15.1.4** Employees who are laid off shall remain on the reinstatement list for a maximum of twenty-four (24) months. Laid off employees who are offered

reinstatement will receive a conditional offer of reinstatement, provided they are qualified for the position. Members who refuse a conditional offer of reinstatement will be removed from the reinstatement list and not have a right to the **next** available position. Employees on the reinstatement list shall provide the City with up-to-date contact information.

**Section 15.1.5** An individual will lose rights to reinstatement and/or be removed from the reinstatement list if the employee commits an act that would be cause for termination of employment.

**Section 15.1.6** Appointments from the reinstatement list shall be made in reverse order of the layoff. The employee on the reinstatement list who has the most seniority shall be reinstated first.

**Section 15.2** Employees with the potential of being laid off or demoted will be given at least ninety (90) days' notice prior to the layoff demotion.

**Section 15.3** The City shall endeavor to provide laid off employees the opportunity to apply for other vacant positions within the City for which they are qualified.

## **ARTICLE 16. GRIEVANCE PROCEDURE**

### **Section 16.1. Intent**

It is the desire of the City, its management, Guild and its members to resolve grievances that may arise during the term of this Agreement informally and at the lowest level possible. A "grievance" means a claim or dispute by an employee (or the Guild in the case of Guild rights) with respect to the interpretation or application of an express provision of this agreement. Except as provided in Section 4 of this Article, disciplinary actions are not subject to the grievance procedure beyond Step 2. Any step in the grievance process may be skipped upon mutual written agreement of both the Guild and the City.

### **Section 16.2. Procedure**

- Step 1. An Employee must present a grievance in writing within twenty-one (21) calendar days of its alleged occurrence to Assistant Chief. The written grievance shall include a statement of the issue, the section of the Agreement violated and the remedy sought. The Assistant Chief shall attempt to resolve it and respond in writing within seven (7) calendar days after it is presented. If the grievance is not pursued to the next level within fourteen (14) calendar days in writing from the date of the written response from the Assistant Chief, it shall be presumed resolved.
- Step 2. If the Employee is not satisfied with the solution by the Assistant Chief, the grievance may be presented, in writing, within fourteen (14) calendar days of the Assistant Chief's response to the Chief of Police by a Guild representative. The

written grievance shall include a statement of the issue, a chronological listing of the pertinent events that took place, the section of the Agreement violated and the remedy sought. Such information shall be submitted on an official grievance form, which shall be provided by the Guild. The Chief of Police shall attempt to resolve the grievance and respond in writing within fourteen (14) calendar days after it has been presented.

Step 3. If the Employee and/or the Guild is not satisfied with the solution by the Chief of Police, the grievance may be presented within fourteen (14) calendar days to the City Manager. The City Manager shall attempt to resolve and respond in writing to the grievance within seven (7) calendar days after it is presented.

Step 4. If the grievance is not resolved by the City Manager, the grievance may, within fifteen (15) calendar days, be referred to a mediator upon mutual agreement. At that time, the Guild or the City Manager shall forward a request to the executive director of the Public Employment Relations Commission (PERC) to assign a mediator from PERC. Upon designation of the mediator, the parties will make every attempt to schedule a date for mediation within fifteen (15) days.

- a. Proceedings before the mediator shall be confidential and informal in nature. No transcript or other official record of the mediation conference shall be made.
- b. The mediator shall attempt to ensure that all necessary facts and considerations are revealed. The mediator shall have the authority to meet jointly and/or separately with the parties and gather such evidence as deemed necessary.
- c. The mediator shall not have the authority to compel resolution of the grievance. If the mediator is successful in obtaining agreement between the parties, he/she shall reduce the grievance settlement to writing. Said settlement shall not constitute a precedent unless both parties so agree.
- d. If mediation fails to settle the dispute, the mediator may not serve as an arbitrator in the same matter nor appear as a witness for either party. Nothing said or done in mediation may be referred to or introduced into evidence at any subsequent arbitration hearing.

Step 5. **Arbitration Procedure.** If the grievance is not settled in accordance with the foregoing procedures, the Guild or Employer may refer the grievance to arbitration within thirty (30) calendar days after the completion of mediation or in the event mediation is bypassed, within thirty (30) calendar days after completion of Step 3. If the request for arbitration is not filed by the Guild staff representative or the Employer within thirty (30) calendar days, the Guild or Employer waives the right to pursue the grievance through the arbitration procedure.



The City and the Guild shall attempt to select a sole arbitrator by mutual agreement. In the event the parties are unable to agree upon an arbitrator, either party may request the Public Employment Relations Commission (PERC) to submit a panel of nine (9) arbitrators. Both the City representative and the Guild representative shall have the right to strike four (4) names from the panel. The party striking the first name shall be determined by a flip of a coin. The other party shall then strike the next name and so on. The remaining person shall be the arbitrator.

The arbitrator shall be notified of selection by a joint letter from the Employer and the Guild requesting that the arbitrator set a time and place subject to the availability of the City and the Guild representatives.

The arbitrator shall have no right to amend, modify, ignore, add to, or subtract from the provisions of this agreement. The arbitrator shall consider and decide only the specific issues submitted to the arbitrator in writing by the City and the Guild and shall have no authority to make a decision on any other issue not submitted. The arbitrator shall submit the arbitrator's decision in writing within thirty (30) calendar days following the close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension thereof. The decision shall be based solely upon the arbitrator's interpretation of the meaning or application of the express terms of this Agreement to the facts of the grievance presented. The decision of the arbitrator shall be final and binding. Each party shall be responsible for compensating its own representatives and witnesses.

### **Section 16.3. Special Provisions.**

**Section 16.3.1** The cost of the arbitration shall be borne equally by the parties including the arbitrator's fees and expenses, room rented and cost of record. Each party shall bear the cost of the preparation and presentation of its own case.

**Section 16.3.2** The term "Employee" as used in this article shall mean an individual employee, a group of employees, and/or their Guild representative.

**Section 16.3.3** One representative from the Guild shall be granted time off, when regularly scheduled to work, without loss of pay for the purpose of attending a hearing on a grievance.

**Section 16.3.4** A grievance may be entertained in, or advanced to, any step in the grievance procedure if the parties so jointly agree.

**Section 16.3.5** The time limits within which action must be taken or a decision made as specified in this procedure may be extended by mutual written consent of the parties involved. A statement of the duration of such extension of time must be signed by both parties.

**Section 16.3.6** Any grievance shall be considered settled at the completion of any step if the Employee is satisfied or advanced to the next Step, if the matter is not appealed within the prescribed period of time.

**Section 16.3.7** Grievance claims involving retroactive compensation shall be limited to one hundred twenty (120) days prior to the written submission of the grievance.

**Section 16.4.            Discipline**

The parties are committed to resolving internal investigation matters involving members of the Guild in a manner that is expeditious, fair, and thorough, and is designed to resolve issues at the lowest possible level.

An investigation based on a complaint must be conducted in an open and fair manner, with the truth as the primary objective. The Employer accepts complaints against any of its employees and fully investigates all such complaints to the appropriate disposition.

The Employer has acknowledged its responsibility by establishing disciplinary procedures which not only shall subject the employee to corrective action when improper action is evident, but also shall provide procedural protection to all employees throughout all steps of this process.

It is the purpose of these procedures to provide a prompt, just, and open disposition of complaints regarding the conduct of employees of the Des Moines Police Department.

When an investigation is being initiated regarding an employee, for an act that could lead to punitive action, including dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer, for purpose of punishment, and because of such investigation the employee is being interrogated, such interrogation shall be conducted under the following terms and conditions:

**Section 16.4.1** An investigation is defined as a formal inquiry into an allegation that an employee or employees violated a law or a department policy or regulation that is supported by reasonable cause to believe the violation may have occurred as alleged. Preliminary investigations which are conducted to determine if reasonable cause **exists** to conduct an investigation, informed discussions regarding work performance, and meetings to discuss performance evaluations and Personal Action Forms are not investigations and not the subject of this Article. Nothing in this Article or agreement prohibits an employee from invoking the Employee's right to have a representative present during a preliminary investigation, discussion, or meeting if the employee reasonably believes disciplinary action might result.

**Section 16.4.2** All investigative interrogations shall be at a reasonable hour. The employee under investigation and the Guild shall be informed in writing of the nature of the

investigation and the person in charge of the investigation, and will be allowed to bring a Guild attorney or Guild Representative to represent the employee in the matter when the investigation may involve any discipline up to and/or including termination of the employee.

**Section 16.4.3** The length of time of the interrogation shall be reasonable, and the employee being interrogated shall have the right to attend to the employee's own personal physical necessities.

**Section 16.4.4** If the investigation may lead to criminal charges, the Employer shall inform the employee if he/she is being ordered to answer questions and the employee may invoke the employee's rights under the Garrity court decision.

**Section 16.4.5** Disciplinary actions may include, but not be limited to the following: verbal warning, written reprimand or written letters of warning, loss of accrued vacation days, suspension, demotion, or discharge. Discipline shall generally be progressive in nature except where the offense warrants higher levels of discipline.

**Section 16.4.6** No employee shall be required to take a polygraph test and no adverse comment may be included in the Employee's personnel file or disciplinary hearing for the employee declining to take such polygraph test (RCW 49.44.1.20).

**Section 16.4.7** Lockers or other space assigned to an employee is considered public property and may be inspected without consent, provided the employee or guild representative has a right to be present.

**Section 16.4.8** The employee shall not be subjected to profane language, nor shall the employee be threatened with dismissal or other disciplinary punishment as a guise to obtain the resignation of the employee. The Chief of Police will endeavor to impose the discipline in a manner that is least likely to embarrass the employee.

**Section 16.4.9 Investigative Timeline**

If an employee is facing discipline due to an investigation, the following shall govern the timeliness of the investigation:

**Section 16.4.9.1** Investigations shall be completed within ninety (90) calendar days, subject to the provisions of paragraphs 2, 3, and 4 below. In the event the investigation has not been completed within ninety (90) days, and no notice of extension has been provided to the Guild and employee, a grievance may be filed, but shall not be dispositive of the investigation, unless there was no good faith basis for the delay. In the event exigent circumstances such as an Emergency Declaration is declared by the City Manager or Governor, timelines relating to internal investigations will stop and the emergency no longer exists.

**Section 16.4.9.2** The Employer shall notify the employee and the Guild at the start of the investigation and upon completion of an investigation with a notice of intent to discipline, or a Loudermill process.

**Section 16.4.9.3** Investigations may be extended due to determined, exigent circumstances beyond the control of the Employer or Guild. Such circumstances shall include the following: (a) complexity of the investigation, (b) pre-scheduled, extended leave (including extended annual leave or mandatory training) or unexpected illness of personnel integral to the investigation, (c) unavailability of witnesses after reasonable efforts to locate, (d) undue delays in transcription of interview recordings, (e) delays caused by the Guild or its representatives, (f) the Chief of Police may request an extension to review completed investigation files or (g) emergencies.

**Section 16.4.9.4** Investigations covered by the paragraph may also be extended if the Chief of Police requests specific, additional investigation. An extension on this basis shall required the notification in Section 16.4.9.5 below and shall be only for such time necessary to complete the additional investigation but no more than thirty (30) additional days at a time without additional notification. If the reason for the additional time stated in the extension request does not fall under Section 16.4.9.3, the extension must be agreed upon by the Employer and the Guild.

**Section 16.4.9.5** The Employer shall notify the employee being investigated and the Guild of any extension. The notification shall include the following information: (a) when the Employer anticipates completing the investigation, and (b) explanation of the reason for the extension. If the investigation is not completed on the anticipated completion date the notification shall be repeated. An extension on this basis shall be only for such time necessary to complete the additional investigation but no more than thirty (30) additional days at a time without additional notification.

**Section 16.4.9.6** The Employer's obligation to limit extensions of investigation under paragraph 3 shall be subject to the grievance procedure in Article 16, to include arbitration.

**Section 16.4.9.7** Investigations shall be deemed completed when the employee is advised of the Employer's notice of intent to discipline, pre-discipline process begins (Loudermill) or in the event the investigation has determined the allegations are not sustained and a final review is completed by the Chief of Police.

**Section 16.4.9.8** At the conclusion of the investigation and no later than three (3) business days, (not to include weekends) prior to a pre-disciplinary process, the employee and the Guild shall be advised of the results of the investigation and the recommended disposition (which may be a range of possible dispositions). The employee and the Guild shall be provided with a copy of the complete investigatory



file no less than three (3) business days (not to include weekends), prior to the pre-disciplinary process, for the employee to prepare a response at the disposition hearing.

**Section 16.4.10 Psychological or Medical Evaluations.**

**Section 16.4.10.1** When there is reasonable suspicion to believe an employee is psychologically and/or medically unfit to perform the employee's duties, the Employer may require the employee to undergo a psychological and/or medical examination. Any relevant medical and/or psychological history of an employee the examining doctor requests shall be released by the employee only to the examining doctor. The doctor shall provide a written report to the City and the employee. The doctor's report shall only identify if the employee is fit for duty, needs in modifying work conditions and what modifications are recommended and the extent or duration of the modifications. The doctor will keep all information made available to the doctor confidential, following HIPAA privacy rules.

As used in the above paragraph, "doctor" refers to a physician, psychologist or psychiatrist.

**Section 16.4.10.2** The Guild/Employee shall have an opportunity at its expense to discuss with the Employer's examining professional their conclusion and reasons therefor. If the Employee believes that the conclusions of the examining professional are in error, they may obtain an additional examination at their own expense and the Employer will provide the examining professional with documents which were utilized by the Employer's examining professional. In the event the Employee and/or Guild seek to contest the conclusion of the first examining professional, the Employee's request shall be in writing and shall be available to the Employer.

**Section 16.4.10.3** The report shall be kept as confidential medical information and any use outside of the accommodation or fit for duty process shall be subject to a written medical release by the Employee. The Employee shall authorize the second examining professional to respond to reasonable questions clarifying the opinion, at the Employer's expense. Nothing herein prohibits the examining professionals from making safety disclosures required by law.

**Section 16.4.10.4** Should an Employee Grieve a disciplinary discharge action taken as a result of an examination, the Employer shall allow release of the examination and supporting documents upon which it relies for the action, and all other prior examinations of the Employee.

**Section 16.4.10.5** Should an Employee Grieve a demotion, discharge or other action subject to the Grievance process taken as a result of an examination, the Employer and Employee shall allow release of all examinations and supporting documents upon which it will rely in the proceedings and all other prior

examinations of the Employee determined to be relevant by the Arbitrator after a confidential review.

**Section 16.4.11 Personnel Records.**

**Section 16.4.11.1 Contents.** A “personnel file” shall be defined as any file pertaining to the bargaining unit member’s employment status, work history, training, disciplinary records, or other personnel related matters pertaining to the bargaining unit member. It is further understood a personnel file does not include material relating to medical records, pre-appointment interview forms, investigative files, or applicant background investigation documents such as, but not limited to, psychological evaluations and polygraph results.

**Section 16.4.11.2** The Employer will promptly notify an employee upon receipt of a public disclosure request for information in the employee’s personnel file. The Employer will also provide at least three (3) business days, not to include weekends, notice before releasing any requested documents. The Employer will allow the employee and the Guild the fullest possible opportunity to legally object to unwarranted disclosures.

**Section 16.4.11.3** Each employee’s personnel file shall be open for review by the employee, provided employees shall not have the right to review polygraph, medical, psychological evaluations or supervisor’s notes prepared for the purpose of tracking an employee’s performance or preparing employee evaluations. The Employer shall not maintain any other personnel file exempt from an employee’s review, other than those previously identified in this section.

**Section 16.4.11.4** Employees may request removal of certain documents pertaining to disciplinary actions from their official City personnel files. Employees must direct such requests in writing to the Chief of Police. Suspensions of less than forty (40) hours, will no longer be active for the purpose of progressive discipline after five (5) years provided the same or similar incidents have not recurred within that time. Written reprimands and memos of concern will no longer be active for the purpose of progressive discipline after three (3) years provided the same or similar incidents have not occurred within that time.

**ARTICLE 17. INSURANCE PROTECTION**

If an action or proceeding for damages is brought against an employee arising from acts or omissions made while acting or, in good faith purporting to act, within the scope of the employee's official duties, then the City will provide a defense of the action or proceeding for the employee and indemnify the employee from any damages arising from such an action or proceeding in accordance with DMMC Chapter 2.24 and RCW 4.96.041.

**ARTICLE 18. BENEFIT PLANS**

**Section 18.1 Medical, Dental, and Vision:** Regular full-time employees and regular part-time employees budgeted for thirty (30) or more hours per week shall be eligible to participate in the City's health insurance plans. Premiums shall be paid by the City on behalf of all full-time

employees and all part-time employees budgeted for thirty (30) or more hours per week according to the following schedule:

**Section 18.1.1 Health and Welfare – Community Service Officers hired prior to ratification of the 2024 collective bargaining agreement**

1. Guild members will participate in their choice of the following medical plans:
  - Kaiser Permanente \$200 deductible Plan
  - LOEFF Plan F
2. Effective upon ratification through December 31, 2026, the City will pay one hundred percent (100%) of the premiums for the applicable medical plans listed in Section 18.1.1.1; and each employee, as a payroll deduction, shall reimburse the City for the following employee's premium share percentage: a minimum of five percent (5%) of the employee premium and a minimum of ten percent (10%) of the spouse and dependents premiums, subject to Section 18.1.1.3 below.
3. If an employee opts out of the City's medical plans entirely, the employee will receive their choice of cash or Section 457 deferred compensation payments in lieu of the medical benefits. Such payment will be equal to twenty-five percent (25%) of the City's savings, based on the LOEFF Trust Plan F medical premiums plus the HRA-VEBA contributions the City would have paid for the employee and any spouse and/ or dependents who are eligible for City medical coverage. To be eligible for such payments, the employee must provide proof of comprehensive group medical coverage through an employer or other entity that covers all individuals in a group. Individual medical insurance purchased on an individual or family basis does not qualify under this option.
4. The City will provide a Health Reimbursement Arrangement Voluntary Benefit Arrangement (HRA-VEBA) with an annual City contribution of seven hundred and fifty dollars (\$750) for employee only or twelve hundred and fifty dollars (\$1250) for employee and one or (1) more dependents for the calendar year 2024, 2025, and 2026. For new hire employees, HRA-VEBA funding will be prorated based on the number of months covered for the remainder of the calendar year.
5. Dental Insurance - For regular full-time employees and regular part-time employees whose positions are budgeted for thirty (30) or more hours per week, the City shall pay each month one-hundred percent (100%) of the premium necessary for the purchase of employee coverage and dependent coverage under the Association of Washington Cities (AWC) Washington Dental Service Plan F and Plan II Orthodontia.
6. Vision Insurance - For regular full-time employees and regular part-time employees whose positions are budgeted for thirty (30) or more hours per week, the City shall pay each month one-hundred percent (100%) of the premium necessary for the purchase of employee coverage and dependent coverage under the Association of Washington Cities (AWC) Vision Service Plan (VSP), Full Family \$25 Deductible. Vision coverage is included in the

LEOFF Trust Plan F medical plan.

**Section 18.1.2 Health and Welfare – All other employees:**

The City will pay ninety percent (90%) of the employee's premium and eighty percent (80%) of the spouse and dependents' premiums for the following Association of Washington Cities Health Insurance Plans:

- i. HealthFirst 250 Plan
  - ii. Kaiser Permanente \$200 Deductible Plan
  - iii. LEOFF Plan F – for all eligible EEs.
1. The City will pay one hundred percent (100%) of the eligible employee's premium and ninety percent (90%) of the spouse and dependents' premiums for the Association of Washington Cities High Deductible Health Plans with Regence and Kaiser Permanente.
  2. For employees who select a High Deductible Plan the City will provide a notional Health Reimbursement Arrangement (HRA) of one thousand six hundred dollars (\$1,600) for employee only coverage or three thousand two hundred dollars (\$3,200) for any family coverage. The City will fund the notional HRA by preloading a benefits debit card for each employee on an annual basis.
  3. Once the deductible has been met, and the employee has paid the coinsurance costs of one thousand four hundred dollars (\$1,400) above any beyond the deductible for employee only coverage, or two thousand eight hundred dollars (\$2,800) above and beyond the deductible for any family coverage, the City will pay any further coinsurance costs which apply to the employee's annual-out-of-pocket limit.
  4. The unused balance in the notional HRA will be rolled over into the HRA VEBA accounts of current employees in April of the following year.
  5. For those employees who select the HealthFirst 250 Plan, the Kaiser Permanente \$200 Deductible Plan, and the LEOFF Plan Trust, the City will make the following contributions to the employee's HRA VEBA account:
    - i. Employee only: seven hundred and fifty dollars (\$750)
    - ii. Employee plus dependents one thousand two hundred and fifty dollars (\$1,250)
  6. Should the City voluntarily agree to a higher HRA or HSA amount with any other group, the Union members covered by this agreement, shall receive the same amount(s). This provision shall not apply to any HRA or HSA amounts imposed on the Employer as a result of any arbitration or court decision.
  7. Dental Insurance - For regular full-time employees and regular part-time employees whose positions are budgeted for thirty (30) or more hours per week, the City shall pay each month one-hundred percent (100%) of the premium necessary for the purchase of employee coverage and dependent coverage under the Association of Washington Cities (AWC) Washington Dental Service Plan F and Plan II Orthodontia.
  8. Vision Insurance - For regular full-time employees and regular part-time employees whose positions are budgeted for thirty (30) or more hours per week, the City shall pay each month one-hundred percent (100%) of the premium necessary for the



purchase of employee coverage and dependent coverage under the Association of Washington Cities (AWC) Vision Service Plan (VSP), Full Family \$25 Deductible.

**Section 18.2 401(a) and 457(a) Plans, Long Term Disability, SIB, AD&D and Life Insurance:**

In lieu of Social Security, all Employees are covered under a qualified 401 (a) retirement plan administered by ICMA-RC. The City will continue to contribute an amount equal to five percent (5%)<sup>2</sup> of the employee's wage, while the employee contributes an amount equivalent to the current employee Social Security deduction rate. The City will contribute an additional one point five two percent (1.52%) for each employee (excluding legacy CSOs as described in FN2 below), covered by the Police Support Guild Bargaining Agreement, to their 457(a) account.

To qualify for this program Employees must be regular full-time or regular part-time and work a minimum of thirty (30) hours per week.

In addition to the LTD and SIB coverage, the City will provide for each Guild employee Term Life Insurance, with Accidental Death and Dismemberment (AD&D) coverage, in an amount equal to one and one-half times (1.5x) each member's annual salary, excluding overtime. The City and Guild agree the City will be responsible for any future increased cost and will also retain any savings resulting from a decrease in the cost of the premium.

**ARTICLE 19. COMPENSATION**

**Section 19.1 Compensation.** See Appendix A

**Section 19.2 Longevity Premium.** See Appendix A

**Section 19.3 Specialty Pay Premium.** See Appendix A

**Section 19.4 Light Duty.** "Light Duty" is a temporary assignment that may be made by the Employer when an employee is restricted from performing the duties of his or her job as determined by their treating physician. If a light duty assignment is made available, the Chief or their designee will determine the assignment, length of assignment and work schedule based upon the restrictions provided by the treating physician. The light duty assignment should not exceed six months in duration. If after six months on a temporary light duty assignment, an employee is not capable of returning to their original duty assignment, they may request for the Chief to provide an extension of their temporary light duty assignment in accordance with all applicable federal, state, and local laws regarding medical and disability accommodations. All temporary light duty assignments are subject to approval by the Chief or their designee. As a condition of continued assignment to temporary Light duty, officers may be required to submit physical assessments of their condition to the Human Resources Department.

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<sup>2</sup> For Community Service Officers hired prior to ratification of the 2024 collective bargaining agreement, such Employees shall receive a 6.52% match, rather than the 5% match.

**Section 19.5 PFML.** Eligible employees are covered by Washington's Family and Medical Leave Program, RCW 50A.04. Eligibility for leave and benefits are established by state law and therefore independent of this Agreement. Benefits for this program are funded by both Employer and employee payroll deductions, with payroll deductions for eligible employees based on the default maximum percentages listed in RCW 50A.04.115.

**ARTICLE 20. ENTIRE AGREEMENT**

The Agreement expressed herein in writing constitutes the entire agreement between the parties and no oral statement shall add to or supersede any of its provisions.

**ARTICLE 21. SAVINGS CLAUSE**

If any provision of the agreement shall be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance or enforcement of any provision shall be restrained by such tribunal pending a final determination as to its validity, the remainder of this agreement shall not be held invalid and will remain in full force and effect.

**ARTICLE 22. TERM OF AGREEMENT**

The Collective Bargaining Agreement shall become effective upon ratification. This agreement shall remain in full force and effect through December 31, 2026.

**APPENDIX A**  
**Compensation**

**Wage Table Placement**

G-13

- Digital & Field Evidence Specialist (New Employees Only)
- Records Specialist

G-20

- Crisis Responder
- Community Service Officer/Code Enforcement Officer (Movement to G-20 results in a 1.35% additional increase, in addition to the proposed increases reflected to the existing G-20 scale)
- Digital & Field Evidence Specialist (Existing Employees Legacied at G-20)

Article 24. Compensation

**Increases**

Effective upon ratification, base wages shall increase by eighteen and five tenths percent (18.5%), reflecting missed annual wage increases of six and one half (6.5%), eight percent (8%), and four percent (4%). These increases shall be provided cumulatively, as if they were provided in the previous years they were missed, but shall not be retroactive, consistent with the attached documents for each Wage Scale.

Effective January 1, 2025, base wages shall increase by three percent (3%) as a general wage increase. (Table to be updated upon tentative agreement).

Effective January 1, 2026, base wages shall increase by two percent (2%) as a general wage increase. (Table to be updated upon tentative agreement). In the event a public safety tax levy lift passes prior to January 1, 2026, an additional one and one half percent (1.5%) general wage increase shall be provided for a total general wage increase of three and one half percent (3.5%).

**Specialty Pay:**

Training – 5% while training new employees for CSOs only.

Bi-lingual – Employees considered conversationally proficient by subject matter experts from Language Testing International (LTI) or a mutually agreed upon professional in American Sign Language (ASL) or Signing Exact English (SEE), Hindi, Punjabi, Russian, Samoan, Somali, Spanish, Tigrinya, and Vietnamese will be paid one percent (1%) of salary. If LTI does not have a subject matter expert available, the Employee seeking bilingual premium shall have the burden to obtain a subject matter expert from another mutually agreeable source.

**Retention Incentive:**

Active full-time and part-time workers as of the date of ratification shall receive a lump sum payment equal to eighteen and five tenths percent (18.5%) of their base wages as of December 31, 2022 within ninety (90) days of ratification.

For employees who did not have a full year's wage for 2022, active full-time and part-time workers as of the date of ratification shall receive a lump sum payment equal to twelve percent (12%) of their base wages as of December 31, 2023 within ninety (90) days of ratification.



### G-13 Wage Table

Year	COMMENTS	GRADE/RANK OR PAYBAND	STEP/L EVEL	Sum of HOURLY RATE	Sum of PERIOD SALARY	Sum of ANNUAL SALARY
2021	Base Year	G13	1	24.59	2,131.00	51,144.00
			2	25.82	2,237.50	53,700.00
			3	27.11	2,349.50	56,388.00
			4	28.46	2,467.00	59,208.00
			5	29.89	2,590.50	62,172.00
2022	Change was made by 6.5000% No Dollar amount used.	G13	1	26.19	2,269.51	54,468.24
			2	27.49	2,382.94	57,190.56
			3	28.87	2,502.22	60,053.28
			4	30.31	2,627.36	63,056.64
			5	31.83	2,758.88	66,213.12
2023	Change was made by 8.0000% No Dollar amount used.	G13	1	28.28	2,451.08	58,825.92
			2	29.69	2,573.58	61,765.92
			3	31.18	2,702.41	64,857.84
			4	32.74	2,837.55	68,101.20
			5	34.38	2,979.59	71,510.16
2024	Change was made by 4.0000% No Dollar amount used.	G13	1	29.41	2,549.12	61,178.88
			2	30.88	2,676.53	64,236.72
			3	32.43	2,810.50	67,452.00
			4	34.05	2,951.05	70,825.20
			5	35.75	3,098.77	74,370.48
2025	Change was made by 3.0000% No Dollar amount used.	G13	1	30.29	2,625.60	63,014.40
			2	31.81	2,756.83	66,163.92
			3	33.40	2,894.81	69,475.44
			4	35.07	3,039.59	72,950.16
			5	36.83	3,191.74	76,601.76
2026	Change was made by 2.0000% No Dollar amount used.	G13	1	30.90	2,678.11	64,274.64
			2	32.44	2,811.96	67,487.04
			3	34.07	2,952.71	70,865.04
			4	35.77	3,100.38	74,409.12
			5	37.56	3,255.57	78,133.68

### G-20 Wage Table

Year	COMMENTS	GRADE/RANK OR PAYBAND	STEP/L EVEL	Sum of HOURLY RATE	Sum of PERIOD SALARY	Sum of ANNUAL SALARY
2021	Base Year	G20	1	32.35	2,804.00	67,296.00
			2	33.97	2,944.00	70,656.00
			3	35.66	3,091.00	74,184.00
			4	37.45	3,245.50	77,892.00
			5	39.32	3,408.00	81,792.00
2022	Change was made by 6.5000% No Dollar amount used.	G20	1	34.46	2,986.26	71,670.24
			2	36.18	3,135.36	75,248.64
			3	37.98	3,291.92	79,006.08
			4	39.88	3,456.45	82,954.80
			5	41.88	3,629.52	87,108.48
2023	Change was made by 8.0000% No Dollar amount used.	G20	1	37.21	3,225.16	77,403.84
			2	39.07	3,386.19	81,268.56
			3	41.02	3,555.27	85,326.48
			4	43.07	3,732.96	89,591.04
			5	45.23	3,919.88	94,077.12
2024	Change was made by 4.0000% No Dollar amount used.	G20	1	38.70	3,354.16	80,499.84
			2	40.63	3,521.64	84,519.36
			3	42.66	3,697.48	88,739.52
			4	44.79	3,882.28	93,174.72
			5	47.04	4,076.68	97,840.32
2025	Change was made by 3.0000% No Dollar amount used.	G20	1	39.86	3,454.79	82,914.96
			2	41.85	3,627.29	87,054.96
			3	43.94	3,808.40	91,401.60
			4	46.14	3,998.75	95,970.00
			5	48.45	4,198.98	100,775.52
2026	Change was made by 2.0000% No Dollar amount used.	G20	1	40.66	3,523.88	84,573.12
			2	42.69	3,699.83	88,795.92
			3	44.82	3,884.57	93,229.68
			4	47.06	4,078.72	97,889.28
			5	49.42	4,282.96	102,791.04

# CITY COUNCIL REGULAR MEETING

## Speaker Sign-Up Sheet

August 02, 2024



NAME (PLEASE PRINT)	ADDRESS	TOPIC	PHONE/E-MAIL ADDRESS
✓ KOJO WARD	Blueberry Ln	194th Closure	206 235-1126