

AGENDA

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, December 8, 2022 - 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

COMMENTS FROM THE PUBLIC VIA ZOOM/Written PUBLIC COMMENT

CITY MANAGER REPORT

- Item 1. COMMUNITY EMERGENCY RESPONSE TEAM (CERT) GRADUATES
- Item 2. DES MOINES FARMERS MARKET
- Item 3. MARK EVERTON, SEATTLE SOUTHSIDE

CONSENT CALENDAR

- Item 1. APPROVAL OF VOUCHERS
Motion is to approve for payment vouchers through November 23, 2022 in the attached list and further described as follows:

EFT's Vendor Payments	#7538-7573	\$842,373.58
Wires	#2077-2091	\$721,650.23
Accounts Payable Checks	#164492-164520	\$ 64,328.69

Total Checks and Wires for A/P and Payroll: \$1,628,352.50

- Item 2. CITY MANAGER 2022 PERFORMANCE REVIEW
Motion is to approve a 5% pay increase for the City Manager effective January 1, 2023.

[2023 City Manager Agenda Item Salary Increase](#)

- Item 3. 2023-2028 STREET SWEEPING SERVICES

Motion is to award McDonough and Sons Inc. the 2023-2028 Street Sweeping Services Contract in an amount not to exceed \$695,926.08, and authorize the City Manager to sign substantially in the form as submitted.

[2023 – 2028 Street Sweeping Services](#)

- Item 4. CONSULTANT CONTRACT AMENDMENT #4 FOR SERVICES BETWEEN THE CITY OF DES MOINES AND JOSEPH DUSENBURY
Motion is to approve Contract Amendment #4 with Joseph Dusenbury to continue to provide consulting services to the City through 2023 in an amount not to exceed \$30,000, and authorize the City Manager to sign the Amendment substantially in the form as attached.

[Consultant Contract Amendment #4 for services between The City of Des Moines and Joseph Dusenbury](#)

- Item 5. COMMERCE GMA UPDATE GRANT AGREEMENT FOR THE CITY OF DES MOINES

Motion is to authorize the City Manager to sign the GMA Update Grant Agreement (Contract No. 23-63210-010) between the City of Des Moines and the Washington State Department of Commerce, substantially in the form as attached, and to sign subsequent contract amendments for the remaining grant funds.

[Commerce GMA Update Grant Agreement for the City of Des Moines](#)

- Item 6. S. 223rd STREET GREEN STREET PLANNING PROJECT

Motion 1 is to approve the 2022-2023 On-Call General Civil Engineering Task Assignment W5 with KPG PSOMAS that will provide design services for the S. 223rd Street Green Street Planning Project in the amount of \$299,812.00 and authorize the City Manager to sign said Formal Task Assignment substantially in the form as submitted.

Motion 2 is to authorize the acceptance of the Washington State Department of Commerce 2022 Supplemental State Capital Budget Appropriation in the amount of \$299,730.00 and further authorize the City Manager to sign the Washington State Department of Commerce Local Government Division General Grant Contract 22-96515-036 substantially in the form as submitted.

[S 223rd Street Green Street Planning Project](#)

- Item 7. MASSEY CREEK POCKET ESTUARY PROJECT: ENGINEERING SERVICES AGREEMENT

Motion is to approve the 2022-2023 On-Call General Civil Engineering Task Assignment 2022-06 with Parametrix, Inc., to provide preliminary engineering and permitting services for the Massey Creek Pocket Estuary Project in the amount of \$201,816.84, and further authorize the City Manager to sign said Task Assignment substantially in the form as submitted.

[Massey Creek Pocket Estuary Project Engineering Services Agreement](#)

Item 8. CONTRACT WITH JAYMARC AV FOR COURT ROOM AUDIO SYSTEM
Motion is to approve the contract with Jaymarc AV in the amount of \$67,070.26 for the purposes of improving the audio system within the courtroom of the City of Des Moines Municipal Court and authorize the City Manager to sign the Contract substantially in the form as attached.
[Contract with Jaymarc AV for Court Room Audio System](#)

Item 9. COLLECTIVE BARGAINING AGREEMENT - DES MOINES POLICE GUILD
Motion is to approve the attached Collective Bargaining Agreement between the City of Des Moines and the Des Moines Police Guild and to authorize the City Manager to sign the Agreement substantially in the form as attached.
[Collective Bargaining Agreement - Des Moines Police Guild](#)

PUBLIC HEARING/CONTINUED PUBLIC HEARING

Item 1. DRAFT ORDINANCE NO: 22-070: PUBLIC HEARING ON CONTINUING MORATORIUM FOR NEW DEVELOPMENT IN THE BUSINESS PARK AREA AND ADOPTING FINDINGS OF FACT
Staff Presentation by Community Development Director Denise Lathrop
[Draft Ordinance No 22-070 Public Hearing on continuing moratorium for new development in the business park area and adopting findings of fact](#)

NEW BUSINESS

INTRODUCTION OF ITEMS FOR FUTURE CONSIDERATION – 10 Minutes

BOARD & COMMITTEE REPORTS/ COUNCILMEMBER COMMENTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

EXECUTIVE SESSION

NEXT MEETING DATE

January 12, 2023 City Council Regular Meeting

ADJOURNMENT

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: City Manager 2022 Performance
Review

FOR AGENDA OF: December 8, 2022

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: December 2, 2022

ATTACHMENTS:

CLEARANCES:

- City Clerk _____
- Community Development _____
- Courts _____
- Director of Marina Redevelopment _____
- Emergency Management _____
- Finance *Bethanne Wake*
- Human Resources _____
- Legal /s/ TG
- Marina _____
- Police _____
- Parks, Recreation & Senior Services _____
- Public Works _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *BVG*

Purpose and Recommendation

The purpose of this agenda item is for the City Council to review the 2022 performance of City Manager Michael Matthias and to consider a 5% pay increase.

Motion

Motion 1: "I move to approve a 5% pay increase for the City Manager effective January 1, 2023."

Background

The City Council has been provided the opportunity to complete a formal written performance evaluation. Based on the outcome of this performance evaluation, the City Council can consider approving a 5% pay increase consistent with the an annual increase percentage that eligible staff members may receive upon a successful performance evaluation.

Financial Impact

A 5% (five percent) wage increase represents approximately (allow for rounding) a \$13,434 increase in annual compensation.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: 2023 – 2028 Street Sweeping Services

FOR AGENDA OF: December 8th, 2022

ATTACHMENTS:

1. 2023 – 2028 Street Sweeping Goods and Services Contract
2. Street Sweeping Services Bid Tabulation

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: November 29th, 2022

CLEARANCES:

- City Clerk _____
- Community Development _____
- Courts _____
- Director of Marina Redevelopment _____
- Emergency Management _____
- Finance *Beckham Weir*
- Human Resources _____
- Legal */s/ TG*
- Marina _____
- Police _____
- Parks, Recreation & Senior Services _____
- Public Works *Michael Myers*

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

Purpose and Recommendation

The purpose of this agenda item is for Council to award the Goods and Services Contract for 2023 – 2028 Street Sweeping Services (Attachment 1) to McDonough and Sons Inc. in an amount not to exceed \$695,926.08.

Suggested Motion

Motion : “I move to award McDonough and Sons Inc. the 2023 – 2028 Street Sweeping Services Contract in an amount not to exceed \$695,926.08, and authorize the City Manager to sign substantially in the form as submitted.”

Background

On November 1 and November 8, 2022, an invitation for bids was advertised in both the Seattle Times and the Seattle Daily Journal of Commerce for multi-year Citywide street sweeping services. The bid specifications were also posted to the Builder's Exchange of Washington (bxwa) website on November 1, 2022. Bids were opened and publicly read aloud on November 16, 2022. The City received a total of 1 bid, with McDonough and Sons Inc. being the apparent lowest responsive bidder. A bid summary is provided (Attachment 2).

The current 6-year plus extension street sweeping contract expires on December 31, 2022 and is currently being performed by McDonough and Sons, Inc. Services rendered under this contract meet all expectations including response to on-call and emergency needs.

Discussion

Street sweeping services are part of the City's annual Public Works Operations to ensure clean, safe, and maintainable roadways and surface water drainage systems. The City performs routine litter cleanup and catch basin cleanouts, but does not have staff or specialized equipment resources for general roadway sweeping.

The new contract proposed begins on January 1, 2023 and ends on December 31, 2028; and includes a 2-year extension provision based upon satisfactory performance (at no additional bid pricing increase to the City). This is similar to past street sweeping contracts for services that are required annually.

Alternatives

The City Council could choose not to award the Goods and Services Contract for street sweeping services. The City would have no capacity to perform this service which would result in lower roadway maintenance and increase in storm water pollution with roadway runoff. Given only one bidder, staff does not recommend rebidding in efforts to seek additional vendors.

Financial Impact

The City's annual operating budget has sufficient revenue budgeted for this contracted service.

Recommendation

Staff recommends awarding the 2023 – 2028 Street Sweeping Services Contract to McDonough and Sons Inc.

Council Committee Review

N/A



GOODS & SERVICES CONTRACT **between the City of Des Moines and** **McDonough and Sons Inc.**

THIS CONTRACT is made by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and McDonough and Sons Inc. organized under the laws of the State of Washington, King County, located and doing business at 27218 SE Kent Kangley Rd., Ravensdale, WA. 98051, (425) 432-1054, Pam Meitmann (hereinafter the "Vendor").

CONTRACT

I DESCRIPTION OF WORK.

Vendor shall provide the following goods and materials and/or perform the following services for the City:

2023 - 2028 Street Sweeping Services" as described in Exhibit "A" and depicted in Exhibit "B" (both incorporated into, and attached). The duration of this contract shall be seventy-two (72) months, commencing on January 1, 2023 and ending on December 31, 2028.

Vendor acknowledges and understands that it is not the City's exclusive provider of these goods, materials, or services and that the City maintains its unqualified right to obtain these goods, materials, and services through other sources.

II. TIME OF COMPLETION. Upon the effective date of this Contract, Vendor shall commence work on January 1, 2023, and complete the work and provide all goods, materials, and services by December 31, 2028. This Contract shall include a satisfactory performance extension (at no additional bid pricing increase to the City) of twenty-four (24) months. The City will notify the Vendor in writing a minimum of thirty (30) days in advance of the contract termination date of the intent to extend the contract twenty-four (24) months based upon satisfactory performance.

III. COMPENSATION. The City shall pay the Vendor an annual amount not to exceed \$115,987.68, which includes all applicable Washington State Sales Tax, for the goods, materials, and services contemplated in this Contract. The City shall pay the Vendor the following amounts according to the following schedule:

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(Includes WSST)

The Vendor shall invoice the City monthly for the services rendered per Exhibit "A".

If the City objects to all or any portion of an invoice, it shall notify Vendor and reserves the option to only pay that portion of the invoice not in dispute. In that event, the parties will immediately make every effort to settle the disputed portion.

- A. Defective or Unauthorized Work. The City reserves its right to withhold payment from Vendor for any defective or unauthorized goods, materials or services. If Vendor is unable, for any reason, to complete any part of this Contract, the City may obtain the goods, materials or services from other sources, and Vendor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Contract price specified above. The City further reserves its right to deduct these additional costs incurred to complete this Contract with other sources, from any and all amounts due or to become due the Vendor.
- B. Final Payment: Waiver of Claims. VENDOR'S ACCEPTANCE OF FINAL PAYMENT SHALL CONSTITUTE A WAIVER OF CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY VENDOR AS UNSETTLED AT THE TIME REQUEST FOR FINAL PAYMENT IS MADE.

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

The State of Washington prevailing wage rates applicable for this goods and services project, which is located in King County, may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>. Based on the bid submittal deadline for this project, the applicable effective date for prevailing wages for this project is 11/16/2022. A copy of the applicable prevailing wage rates are also available at the office of

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(Includes WSST)

the Owner, located at 21650 11th Avenue South, Des Moines, WA, 98198.

V. INDEPENDENT CONTRACTOR. The parties intend that an Independent Contractor-Employer Relationship will be created by this Contract and that the Vendor has the ability to control and direct the performance and details of its work; however, the City shall have authority to ensure that the terms of the Contract are performed in the appropriate manner.

VI. TERMINATION. Either party may terminate this Contract, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Contract.

VII. CHANGES. The City may issue a written amendment for any change in the goods, materials or services to be provided during the performance of this Contract. If the Vendor determines, for any reason, that an amendment is necessary, Vendor must submit a written amendment request to the person listed in the notice provision section of this Contract, section XVI(C), within fourteen (14) calendar days of the date Vendor knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Vendor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Vendor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Vendor shall proceed with the amended work upon receiving either a written amendment from the City or an oral order from the City before actually receiving the written amendment. If the Vendor fails to require an amendment within the time allowed, the Vendor waives its right to make any claim or submit subsequent amendment requests for that portion of the contract work. If the Vendor disagrees with the equitable adjustment, the Vendor must complete the amended work; however, the Vendor may elect to protest the adjustment as provided in subsections A through E of Section VIII, Claims, below.

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

VIII. CLAIMS. If the Vendor disagrees with anything required by an amendment, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Vendor may file a claim as provided in this section. The Vendor shall give written notice to the City of all claims within fourteen (14) calendar days of the occurrence of the events giving rise to the claims, or within fourteen (14) calendar days of the date the Vendor knew or should have known of the facts or events giving rise to the claim, whichever occurs first. Any claim for damages, additional payment for any reason, or extension of time, whether under this Contract or otherwise, shall be conclusively deemed to have been waived by the Vendor unless a timely written claim is made in strict accordance with the applicable provisions of this Contract.

At a minimum, a Vendor's written claim shall include the information set forth in

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subsections A, items 1 through 5 below.

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

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

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

B. Records. The Vendor shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The City shall have access to any of the Vendor's records needed for evaluating the protest. The City will evaluate all claims, provided the procedures in this section are followed. If the City determines that a claim is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

C. Vendor's Duty to Complete Protested Work. In spite of any claim, the Vendor shall proceed promptly to provide the goods, materials and services required by the City under this Contract.

D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Vendor also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Vendor completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

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

X WARRANTY. This Contract is subject to all warranty provisions established under the Uniform Commercial Code, Title 62A, Revised Code of Washington. Vendor warrants goods are merchantable, are fit for the particular purpose for which they were obtained, and will

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perform in accordance with their specifications and Vendor's representations to City. The Vendor shall correct all defects in workmanship and materials within one (1) year from the date of the City's acceptance of the Contract work. In the event any part of the goods are repaired, only original replacement parts shall be used—rebuilt or used parts will not be acceptable. When defects are corrected, the warranty for that portion of the work shall extend for one (1) year from the date such correction is completed and accepted by the City. The Vendor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Vendor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Vendor shall pay all costs incurred by the City in order to accomplish the correction.

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

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

XIII. INSURANCE. The Vendor shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with products and materials supplied to the City. Vendor shall obtain insurance of the type described below:

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

A. Minimum Scope of Insurance

Vendor shall obtain insurance of the type described below:

Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover products liability. The City shall be named as an insured under the Vendor's Commercial General Liability insurance policy using ISO Additional Insured-Vendors Endorsement CG 20 15 or a substitute endorsement providing equivalent coverage.

B. Minimum Amounts of Insurance

Vendor shall maintain the following insurance limits:

Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$1,000,000 general aggregate and a \$2,000,000 products liability aggregate limit.

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

D. Acceptability of Insurers

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

E. Verification of Coverage

Vendor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Vendor before goods, materials or supplies will be accepted by the City.

F. Notice of Cancellation. The Vendor shall provide the city with written notice of any policy cancellation, within two business days of their receipt of such notice.

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

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

XV. CITY'S RIGHT OF INSPECTION. Even though Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Contract, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

XVI. MISCELLANEOUS PROVISIONS.

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

full force and effect.

B. Resolution of Disputes and Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Washington, If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Contract, then the following shall be the means for resolving the dispute:

1. Alternative Dispute Resolution. If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written Contract of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.
2. Applicable Law and Jurisdiction. This Contract shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to this Contract cannot be submitted to arbitration, then it shall be commenced exclusively in the King County Superior Court or the United States District Court, Western District of Washington as appropriate. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section XII of this Contract.

C. Written Notice. All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of the Contract, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Contract by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to

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(Includes WSST)

any assignment, the terms of this Contract shall continue in full force and effect and no further assignment shall be made without additional written consent.

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

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

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

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

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

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

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

<p>VENDOR:</p> <p>By: _____ <i>(signature)</i></p> <p>Print Name: _____ Its _____ <i>(Title)</i></p> <p>DATE: _____</p>	<p>CITY OF DES MOINES:</p> <p>By: _____ <i>(signature)</i></p> <p>Print Name: <u>Michael Matthias</u> Its <u>City Manager</u> <i>(Title)</i></p> <p>DATE: _____</p> <p style="text-align: right;">Approved as to form: _____ City Attorney</p> <p style="text-align: right;">DATE: _____</p>
<p>NOTICES TO BE SENT TO:</p> <p>VENDOR:</p> <p>Pam Meitmann McDonough and Sons Inc. 27218 SE Kent Kangley Rd. Ravensdale, WA. 98051 (425) 432-1054 (telephone) pam@msisweep.com (e-mail)</p>	<p>NOTICES TO BE SENT TO:</p> <p>CITY OF DES MOINES:</p> <p>Scott J. Romano City of Des Moines 21650 11th Ave. S. Des Moines, WA. 98198 (206) 870-6539 (telephone) sromano@desmoineswa.gov (e-mail)</p>

At the direction of the Des Moines
 City Council taken at an open public
 Meeting on _____.

**EXHIBIT "A" – SCOPE AND SCHEDULE OF
WORK**

EXHIBIT "A" SCOPE AND SCHEDULE OF WORK

2023 – 2028 STREET SWEEPING SERVICES

1. TERM AND PAYMENT

- 1.1 **Term.** The contract for service shall be in effect for a term of seventy-two (72) months and shall commence on January 1, 2023, and shall end on December 31, 2028. The contract shall also include a satisfactory performance extension (at no additional bid pricing increase to the City) of twenty-four (24) months. The City will notify the Vendor in writing a minimum of thirty (30) days in advance of the contract termination date of the intent to extend the contract twenty-four (24) months based upon satisfactory performance.
- 1.2 **Payment.** Vendor shall be paid monthly (inclusive of all applicable sales tax) for complete sweeping of the streets listed within Exhibit "B" according to the schedule stated within the Exhibit and for any Extra or Emergency Callout Sweeping performed in compliance with all terms and conditions of this contract, for each month of services rendered.
- 1.3 **Payment for Change Orders consistent with Scope of Contract.** If the City executes change orders consistent with the scope of this contract increasing or decreasing the total linear curb footage beyond that originally set forth in this contract (whether it be public streets or approved private streets), the city shall pay Vendor for the additional footage at rates calculated as follows:
 - 1.3.1 Establish the street sweeping frequency schedule for the added or deleted street(s);
 - 1.3.2 Determine the total additional footage per sweeping schedule for the added street(s), or the total subtracted footage per sweeping schedule for the deleted street(s);
 - 1.3.3 Determine the Vendor's price per foot for each affected street schedule from the costs, linear curb footage, and schedules established in this contract;
 - 1.3.4 Multiply the total additional footage (or subtracted footage) per sweeping schedule by the contract price per foot for that schedule.
- 1.4 **Missed Streets.** In the event streets are missed during the sweeping cycle defined in this contract, the City may, at its sole option, elect to require the Vendor to sweep the missed streets at no extra charge to the City, **OR** may elect to reduce the payment owed to the Vendor. If the City elects to reduce the payment owed to the Vendor, the reduction shall be calculated as follows:
 - 1.4.1 Determine the Vendor's contract price per linear curb foot swept from the costs, linear curb footage, and schedules established in this contract;
 - 1.4.2 Multiply the contract price per linear curb foot swept by the total number of linear curb feet that the Vendor failed to sweep in a given month;
 - 1.4.3 Reduce the next monthly payment due to the Vendor by the total reduction calculated in 1.4(b).
- 1.5 **Invoice and Payment Schedule.** Invoices shall be submitted to the City by the second business day of each month. Payment for services rendered during each month will be

paid as soon as possible under the City's standard schedule for processing invoices. The estimated time for payment shall be thirty (30) calendar days from the date of proper receipt of Vendor's invoices. Invoices shall certify that all applicable zones were swept and shall include dates, operators, odometer readings, zones completed, and plotted GPS maps.

2. DEFINITIONS

- 2.1 **Alley.** The entire width between the boundary lines of right-of-way, publicly maintained.
- 2.2 **Auxiliary Lane.** The portion of the street adjoining the traveled way for parking, speed change, turning, storage for turning, weaving, truck climbing, or for other purposes supplementary to through traffic movement.
- 2.3 **City.** City of Des Moines, a Washington Municipal Corporation, whose mailing address is 21630 11th Avenue South, Des Moines, Washington, 98198.
- 2.4 **Curb.** A vertical or sloping member generally along and defining the edge of street, or median.
- 2.5 **Emergency Callout.** A condition of imminent work need as determined by the City of Des Moines including but not limited to wind or rain storms, vehicle accidents, discharge of materials from vehicles, earthquakes, or riots.
- 2.6 **Extra Sweeping.** Extra sweeping may include things like parade route cleaning, parking lot cleaning in preparation for City-sanctioned community events, and fun run or jogging route cleaning; or other situations as determined by the City.
- 2.7 **Intersection.** The area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of two streets which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different streets joining at any other angle may come in conflict. The junction of an alley with a street shall also be known as an intersection.
- 2.8 **Street.** Referred to as in this contract shall be defined as the entire surface from curb to curb OR edge of pavement to edge of pavement including island, traffic curbs, intersection areas, auxiliary lanes, and those paved areas between curbs that exist where alleys intersect streets.
- 2.9 **Sweeping Material.** The material, debris, or waste that is swept from the street or traveled way.
- 2.10 **Vendor.** The individual, firm, joint venture, co-partnership or corporation, and its heirs, executors, administrators, successors, and assigns, or the lawful agent of any such individual, firm, partnership, covenantor or corporation, or its surety under the contract bonds, constituting one of the principles to the contract and undertaking to perform the work herein specified. Where any pronoun is used as referring to the word "Vendor", it shall mean the Vendor as defined above.
- 2.11 **Work.** Work shall mean the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the service and carrying out of the duties and obligations imposed by the contract.

3. SCOPE OF SERVICES

- 3.1 **General Obligations.** The Vendor shall do all work and furnish all tools, materials, and equipment for street sweeping in accordance with and as described in this contract, including all attached exhibits and forms. The Vendor shall be responsible to obtain and pay for any permits or licenses required by the City or any other local, State, or Federal Government authority that are necessary to perform the contract.
- 3.2 **Schedule to be Submitted.** Within seven (7) days of the effective date of this contract, the Vendor shall submit for the City's approval, a monthly sweeping schedule together with a planned route outline on GPS maps furnished by the Vendor. Vendor shall designate which holidays it will observe and indicate all schedule modifications if the holiday falls on a regular sweeping day. Should the Vendor need to modify the schedule as submitted, the Vendor shall give not less than seven (7) calendar days written notice to the City of any changes.
- 3.3 **Independent Vendor.** Vendor is and shall be at all times acting as an independent Vendor and not as an employee of the City. The Vendor shall secure at its expense, and shall be responsible for all payments of income tax, social security, state disability insurance compensation, unemployment compensation, and all other payroll deductions for the Vendor, officers, agents, employees and subVendors. The Vendor shall also secure all applicable business licenses in connection with the contract services, including all required licenses for Vendor's officers, agents, employees, and subVendors.
- 3.4 **Vendor Employee Requirements.** Vendor shall comply with the following employee requirements:
 - 3.4.1 All workers shall be **competent and skilled** in the performance of the work to which they may be assigned. Failure or delay in the performance of this contract due to the Vendor's inability to obtain workers of the **number and skill required** shall constitute a material breach of this contract. **Payment of Prevailing Wages is REQUIRED for this contract pursuant to RCW 39.04.010.**
 - 3.4.2 Vendor shall require that all operators of its street sweeping equipment maintain current, valid appropriate Washington State Driver's Licenses and any other pertinent requirements thereof, including Washington State Commercial Driver's Licenses.
 - 3.4.3 The Vendor shall require all employees to be courteous at all times, to abstain from the use of loud or profane language, and to perform their work as quietly as possible. All employees shall be neat in appearance. The City reserves its absolute right to determine whether Vendor is in compliance with this subsection.
- 3.5 **Sweeping Frequency Schedule.** The following street sweeping frequency schedule shall be adhered to for the duration of this contract:
 - 3.5.1 Public Streets (12 sweeps total per year)
 - 3.5.1.1 Peak → October through January → every 2 weeks → 8 sweeps
 - 3.5.1.2 Off Peak → February through September → every other month → 4 sweeps
 - 3.5.2 High Priority Streets (16 sweeps total per year)
 - 3.5.2.1 Peak → October through January → every 2 weeks → 8 sweeps
 - 3.5.2.2 Off Peak → February through September → every month → 8 sweeps
 - 3.5.3 High Debris Area (20 sweeps total per year)

- 3.5.3.1 Peak → October through January → every week → 16 sweeps
- 3.5.3.2 Off Peak → February through September → every other month → 4 sweeps
- 3.5.4 Both High Priority and High Debris Area (24 sweeps total per year)
- 3.5.4.1 Peak → October through January → every week → 16 sweeps
- 3.5.4.2 Off Peak → February through September → every month → 8 sweeps
- 3.5.5 Approved Private Streets:
- 3.5.5.1 Zone 8 – Huntington Park (12 sweeps total per year)
- 3.5.5.2 Peak → October through January → every 2 weeks → 8 sweeps
- 3.5.5.3 Off Peak → February through September → every other month → 4 sweeps
- 3.6 **Emergency Callout Priority.** In any emergency, the City reserves the right to hire any street sweeping service provider to perform any amount of work for any length of time at such rates as the City determines to be in the City’s best interests during the time of that emergency. However, the City will use its best efforts to utilize Vendor for these emergency services whenever practicable. When called out for this work, Vendor shall be onsite within two (2) hours of receipt of notification of need.
- 3.7 **Route Restrictions.**
- 3.7.1 **Coordination with Garbage Collection.** Sweeping operations shall be coordinated with the City’s garbage collection provider, so that curb lines and pavement edges are not obstructed by garbage containers, recycling containers, and/or yard waste containers. Vendor shall coordinate its sweeping schedule based upon the City’s Garbage Collection Provider pick-up schedule. Currently, Cleanscapes provides garbage services for the City. Cleanscapes can be reached via phone at (206) 793-7683.
- 3.7.2 **Protection of Traffic Counter Hoses.** The Vendor shall lift their sweeping brushes, etc. when traveling over traffic counter hoses, or reschedule the sweeping of those streets with traffic counter hoses installed on them. The City will provide a list of traffic counter hose locations to the Vendor one week prior to the traffic hoses being set. The City will reduce payment to the Vendor equal to the traffic counter hose and/or traffic counter damage for failure to take due care in these locations.
- 3.8 **Work Quality Standards.** The following work quality standards shall be in-place for the duration of this contract:
 - 3.8.1 Streets shall be swept clean and no piles of debris shall be left anywhere within any street or right-of-way.
 - 3.8.2 Intersections shall be swept clean and Vendor shall hand sweep areas skipped by the sweeping machines.
 - 3.8.3 Water shall be used as required by the City to control dust.
 - 3.8.4 The Vendor shall be responsible for the cleaning of all debris spilled or tracked on any street, alley, or public place by any of its equipment. If the Vendor fails to clean the same within twenty-four (24) hours of being given notice by the City Manager or his designee, the City Manager or his designee may cause such streets to be cleaned and

charge the costs to the Vendor. The City is authorized to deduct such cost from any payments due to the Vendor.

- 3.9 **Unforeseen Conditions.** The Vendor assumes the risk of all conditions foreseen and unforeseen and agrees to continue to perform the work described in this contract without additional compensation under its regular weekly schedule as provided to the City. Specifically, additional debris on streets caused by excessive rainfall or caused by street sanding operations during or after snowfall shall not give rise to claim for additional compensation or allow substantial variance on the weekly schedule.
- 3.10 **Emergency Callout.** When called out for this work, Vendor shall be onsite within two (2) hours of receipt of notification of need. Vendor shall be paid a minimum of two (2) hours per each notification of the need for *Emergency Callout* work. Payment for said work shall be in accordance with the Bid Proposal. This work will be paid as *Emergency Callout*. **NOTE: This is only an estimated annual amount that may or may not be fulfilled, and NOT a guarantee of services.**
- 3.11 **Extra Sweeping.** Vendor shall commence sweeping of said streets within seven (7) days of receiving notice from the City; City will provide a minimum of seven (7) days advance notice of this need. Payment for said work shall be in accordance with the Bid Proposal. This work will be paid as *Extra Sweeping*. **NOTE: This is only an estimated annual amount that may or may not be fulfilled, and NOT a guarantee of services.**

4 SPECIAL PROVISIONS

- 4.1 **Equipment Requirements.** The Vendor shall comply with the following equipment requirements:
- 4.1.1 A minimum of two (2) full size sweepers shall be dedicated to the performance of the contract work in the City, and these two sweepers shall be not more than ten (10) years old at any time during the life of this contract. The sweepers shall be equipped with regenerative air/broom assist, and shall have a minimum six (6) yard holding capacity. However, vacuum sweepers may be used for leaf and small debris pickup as needed.
- 4.1.2 Vendor shall submit a list of sweeping equipment that he/she currently owns. The Vendor also must illustrate the equipment listed primarily for the purpose of performing this contract.
- 4.1.3 Should Vendor intend to add, acquire, purchase, lease, or replace any equipment in order to qualify for consideration, Vendor shall state so and show proof of such commitment and timing of the availability of equipment, which must be in Vendor's exclusive control no later than December 31, 2022. Additionally, during the course of the contract, the Vendor shall notify the City of its intention to replace any of the equipment listed and obtain the City's approval prior to any replacement.
- 4.1.4 The acceptability of Vendor's street sweepers for the City's needs under this contract shall be subject to the approval or disapproval of the City's Public Works Director or his designee; however, such approval shall not be unreasonably withheld.

- 4.1.5 Street sweepers required for performance shall be maintained in good working condition, equipped with proper warning lights, and operated and equipped in accordance with Chapter 46.37 RCW as it applies to slow moving and/or maintenance vehicles.
- 4.1.6 At any time street sweepers are found to be in need of repair (or found to be creating excessive dust clouds) as observed by the City, Vendor shall make said repair within 24 hours of notification by the City. In the event additional time is required to repair street sweeper, the Vendor shall notify the City of the anticipated repair duration. During the term of this contract, extended repair durations shall not cause a decline in the service standards.
- 4.1.7 Each of Vendor's sweepers, dedicated to the performance of this contract work stated herein, shall be equipped with a functioning Global Positioning System (GPS) mobile unit. The GPS mobile unit shall be capable of tracking the sweepers' position, direction, speed and time when operating within the City limits in any weather. Vendor shall maintain daily electronic files of the said GPS tracking information. Further, the Vendor shall use the GPS electronic files to produce a plotted map (or maps), on a monthly basis, reflecting the Vendor's sweeping activities of the previous month. Said map(s) shall be produced in an electronic format. Hand drawn maps will not be accepted. The plotted map(s) shall be submitted each month with the Vendor's monthly sweeping invoice. Invoices submitted without the required map(s) will not be processed for payment until such time that the required map(s) have been received. Each map shall include a title and/or legend that describes the work shown on the map. The Vendor shall retain, for the duration of this contract, copies of all electronic data stated herein. The Vendor shall, upon request, provide the City with any electronic files or maps requested. The Vendor shall notify the City immediately via e-mail or facsimile if a GPS unit is not operating. Vendor shall identify equipment number and anticipated length of time the GPS unit will be inoperable.
- 4.1.8 Sweeping vehicles shall be numbered and shall have the Vendor's name and vehicle number painted in letters and numbers of contrasting color at least four (4) inches high on each side and on the rear of each vehicle. No advertising shall be permitted other than the name of the Vendor. All vehicles shall be kept in a clean and sanitary condition, and all sweeping vehicles shall be cleaned at least once a week. Repainting of all vehicles shall be done as needed to maintain an acceptable appearance, or within thirty (30) days after the written notification by the Public Works Director or his designee.
- 4.2 **Work Familiarity.** The Vendor acknowledges that it has made its own examination, investigation, and research regarding the proper method of doing the work, all conditions affecting the work to be done, the labor, equipment and materials needed and the quantity of the work to be performed. The Vendor is satisfied with its own investigation and research regarding all of these conditions and the Vendor's decision to enter into the contract is based upon such investigation and research. The Vendor further assumes full responsibility for any estimates, statements, or interpretations made by any officer or agent of the City whether or not all or part of any of those estimates, statements, or interpretations may prove to be in any respect erroneous.
- 4.3 **Use of City Name or Logo.** The Vendor shall not use a firm name containing the words "City", "Des Moines", or any words implying Municipal ownership. The Vendor shall not place the City logo upon its equipment.

- 4.4 **Water Acquisition.** It will be the Vendor's sole responsibility to obtain and pay for any water used in the sweeping operation. Vendor shall obtain an up-to-date hydrant permit from Water District #54 (206) 878-7210, and a copy of this permit shall be carried on sweepers at all times while working within the city limits of Des Moines. Care must be taken in order to protect the water system from damage or contamination. Water District #54 will need to inspect and approve **ALL** sweepers that will obtain water from them, to ensure their water system is duly protected.
- 4.5 **Protection of Utilities.** The Vendor shall protect all public and private utilities from damages by its operation. If these utilities are damaged by reason of the Vendor's operations, Vendor shall, at its own expense, promptly repair or replace same to the original and/or better conditions. In the event Vendor fails to promptly make the repairs, the City shall make the repair or replacement, and the cost of doing so shall be billed to Vendor, or alternately, the City may deduct that cost from any payments due the Vendor. The Vendor shall be responsible for all consequences and hold the City harmless caused by the damage or interruption of such Utilities services.
- 4.6 **Handling of Sweeping Material.** The Vendor agrees to the following process for handling the material generated from the sweeping operation:
- 4.6.1 **Hazardous Substances.** Vendor recognizes that the debris or material collected by its street sweepers may contain dangerous or hazardous wastes. Vendor agrees to collect, handle, transport and properly dispose of the debris or material and perform the services specifically in accordance with all applicable Local, State and Federal laws, standards, rules and regulations now in effect or hereafter amended or enacted including without limitation, all regulations by the Washington State Department of Ecology and the United States Environmental Protection Agency. Vendor shall be responsible to obtain and pay for any and all permits or licenses required by the City or any other local, state or federal government authority that are necessary to perform the services, and provide copies of such to the City. Vendor shall require that all operators of its street sweeping equipment maintain current, valid Washington State Driver's Licenses.
- 4.6.2 **Street Sweeping Material Disposal.** Extra care shall be taken in the loading and transportation of street sweeping spoils and other waste so that none of the material to be collected is left either on private property or on the City streets or alleys. Any waste left on private property or on City streets or alleys by the Vendor shall immediately be removed upon notice from the Public Works Director or his designee at no additional cost to the City.

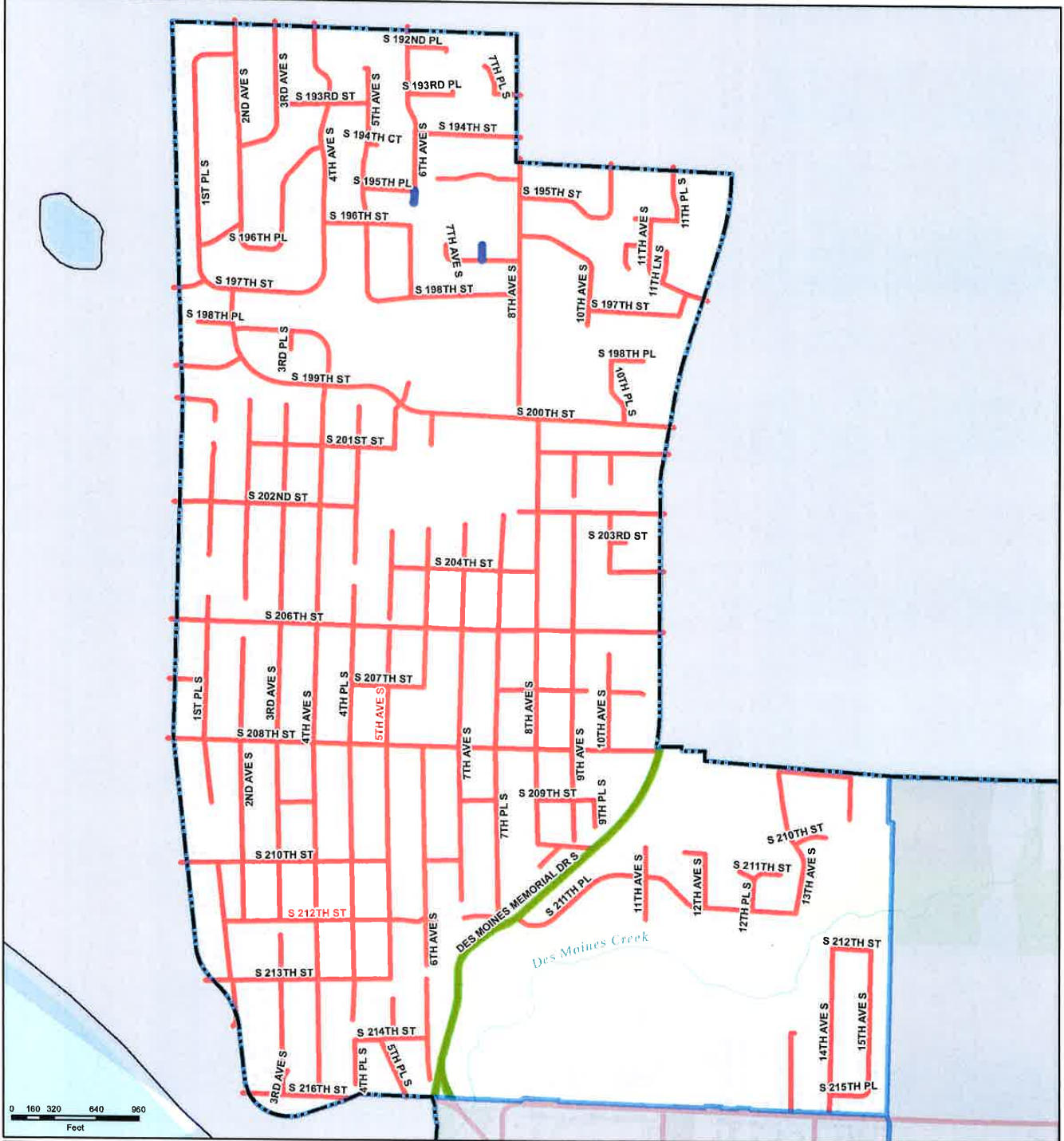
The Vendor shall deliver, at its cost, all street sweeping debris to a legally zoned and operated disposal site approved by and in compliance with the disposal requirements of the Washington State Department of Ecology and any other Federal, State or Local Agency or Department with Jurisdiction; provided that the Vendor shall not use any dump or solid waste disposal site that the City would be prohibited from using were the City to collect and dispose of street sweeping spoils or waste on its own. The Vendor

shall at all times advise the City of the disposal site or disposal sites being used by the Vendor; and provide copies of all disposal tickets to the City, documenting the City of Des Moines as the waste generator, every **Tuesday** for the previous week's sweeping activities. ***Vendor shall not temporarily store any street sweeping spoils or waste at any site other than a disposal site that has been approved by the Washington State Department of Ecology for that specific purpose.***



- 4.7 **Progress Monitoring.** Responsible management or supervisory personnel shall be accessible at or through the office during regular business hours to assure the required contractual performance. Vendor shall maintain a telephone message system to receive messages when the office is closed. Vendor shall further provide the City a valid 24/7 Emergency Callout telephone number.
- 4.8 **Contact Person.** The parties agree that they will establish acceptable procedures for communication of necessary information. Each party agrees to designate a key employee who will be the responsible contact person for that party with respect to implementation of the contract and communication of information necessary for the performance of the contract. Each party agrees to follow the procedures established between the parties for regular, effective communication of information between the parties.



**EXHIBIT "B" – STREET SWEEPING ROUTE
MAPS**

Street Sweeping Routes



Peak (October through January) - Street swept every 2 weeks
Off Peak (February through September) - Street swept every other month, except High Priority Streets, which are swept once per month
High Debris Areas - Swept every week during peak period

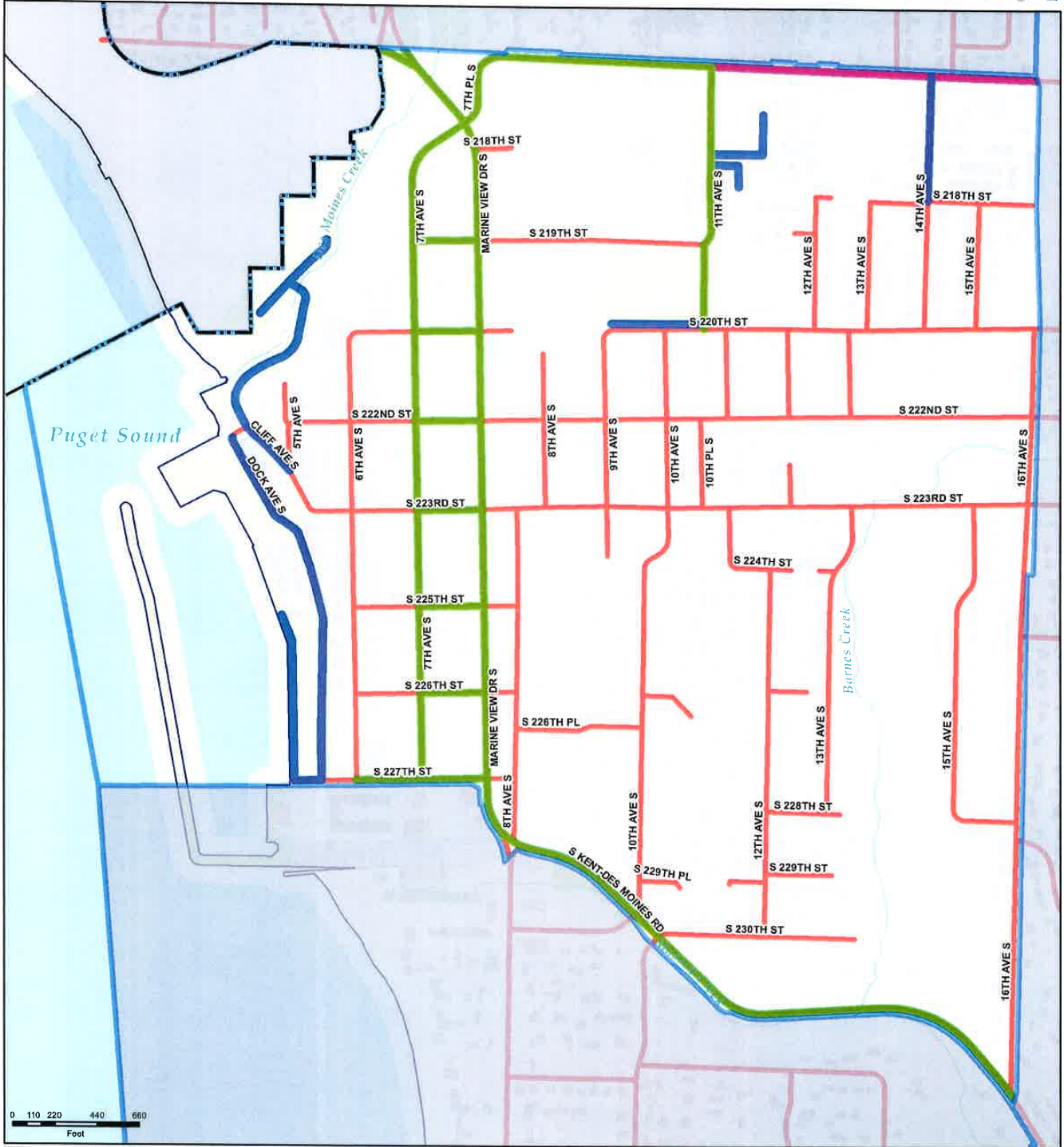
-  High Priority Street
-  High Debris Area

-  Des Moines City Limits
-  Maintenance Zone Boundary



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Street Sweeping Routes



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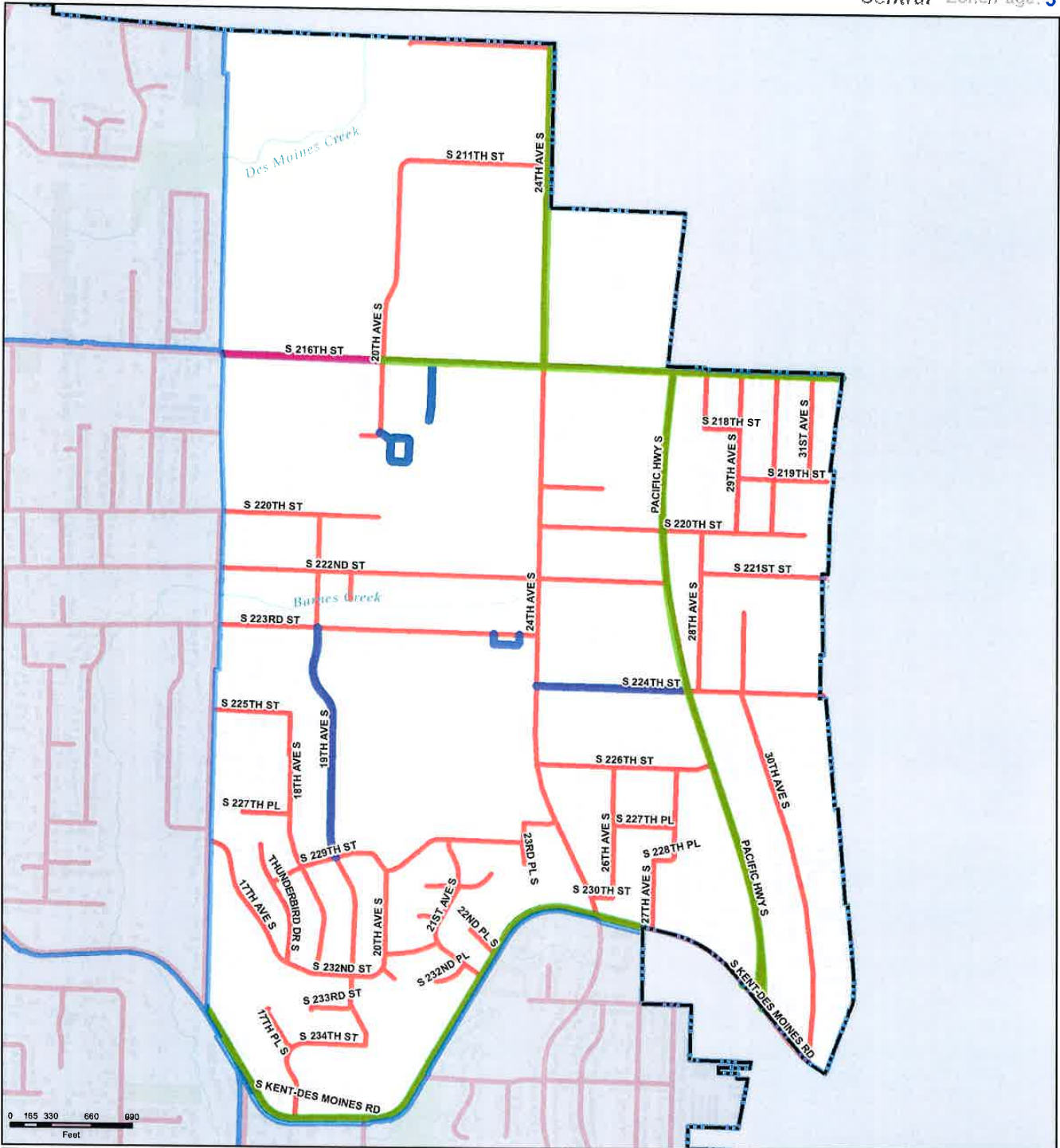
- High Priority Street
- High Debris Area
- Both High Priority and High Debris Area

- Des Moines City Limits
- Maintenance Zone Boundary








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Street Sweeping Routes



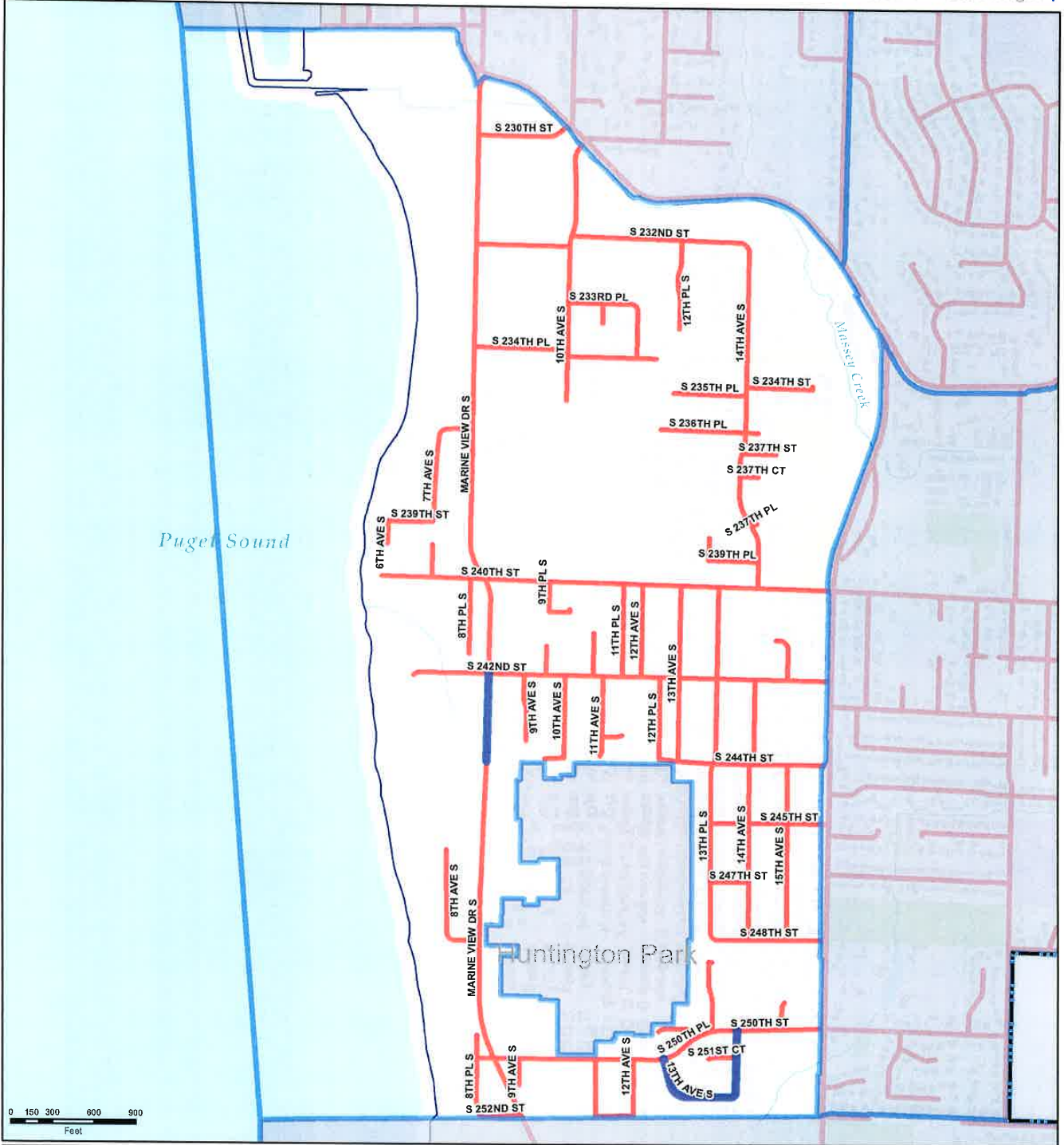
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-  High Priority Street
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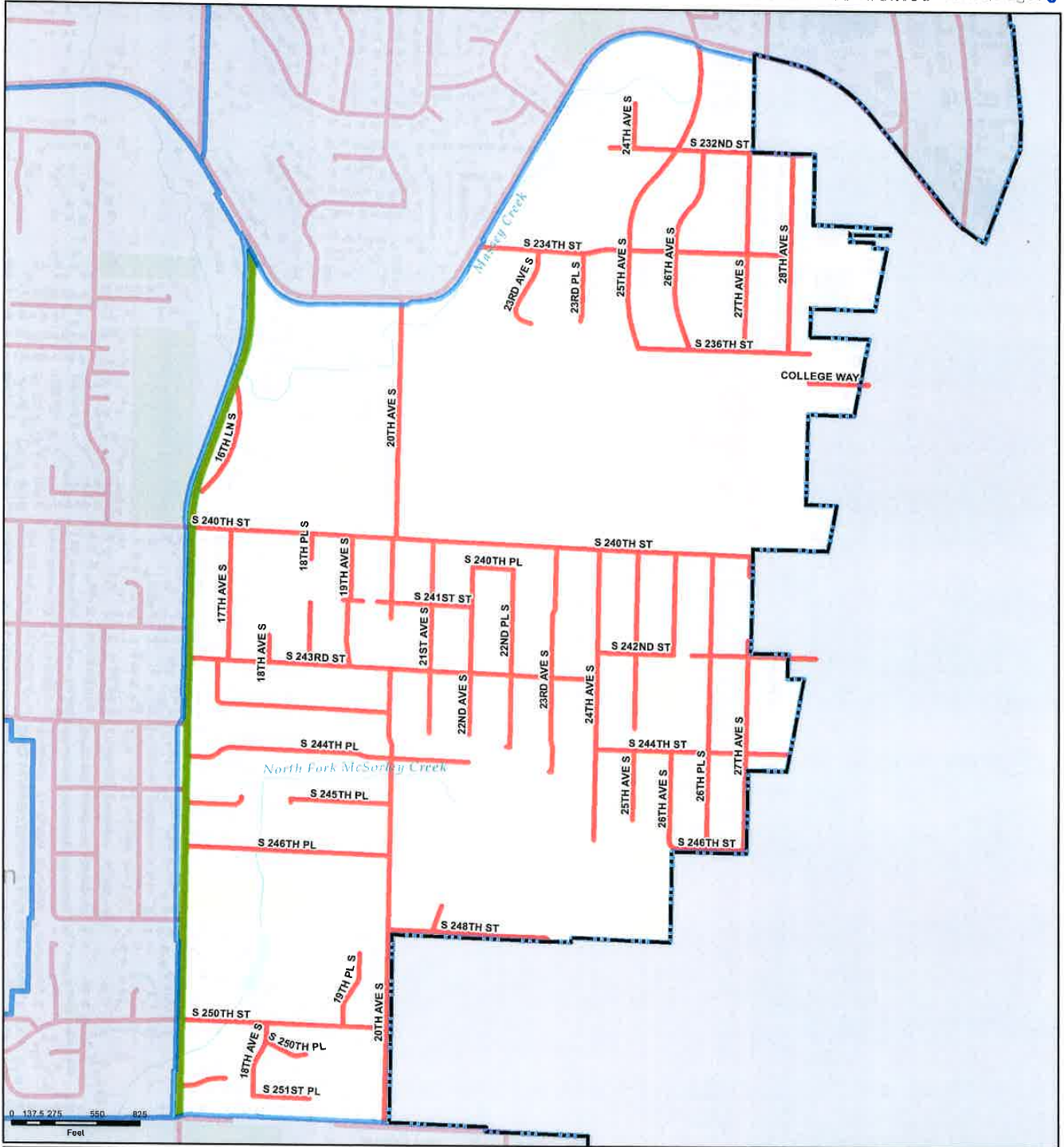
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Street Sweeping Routes



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 High Priority Street

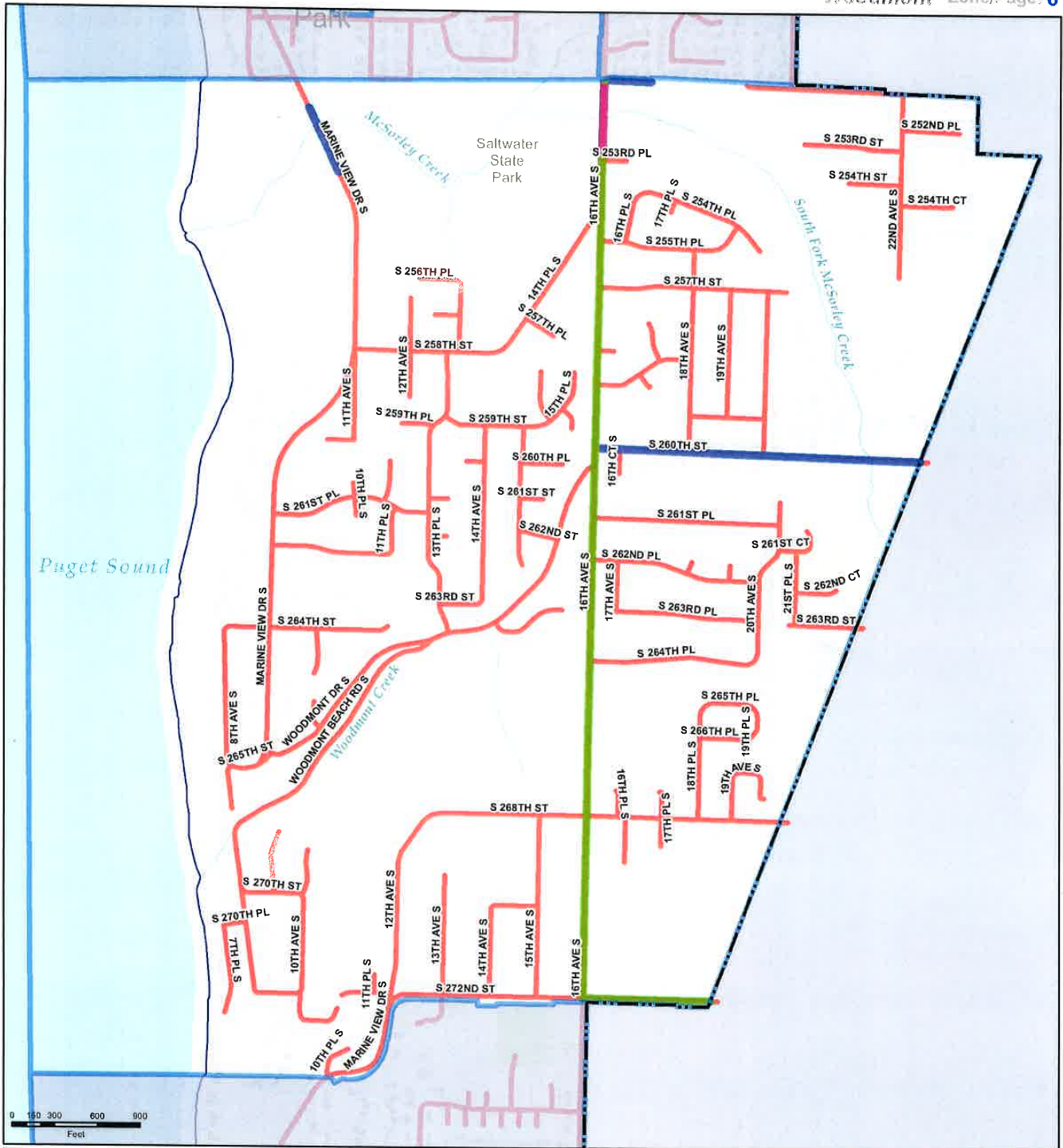
 Des Moines City Limits

 Maintenance Zone Boundary








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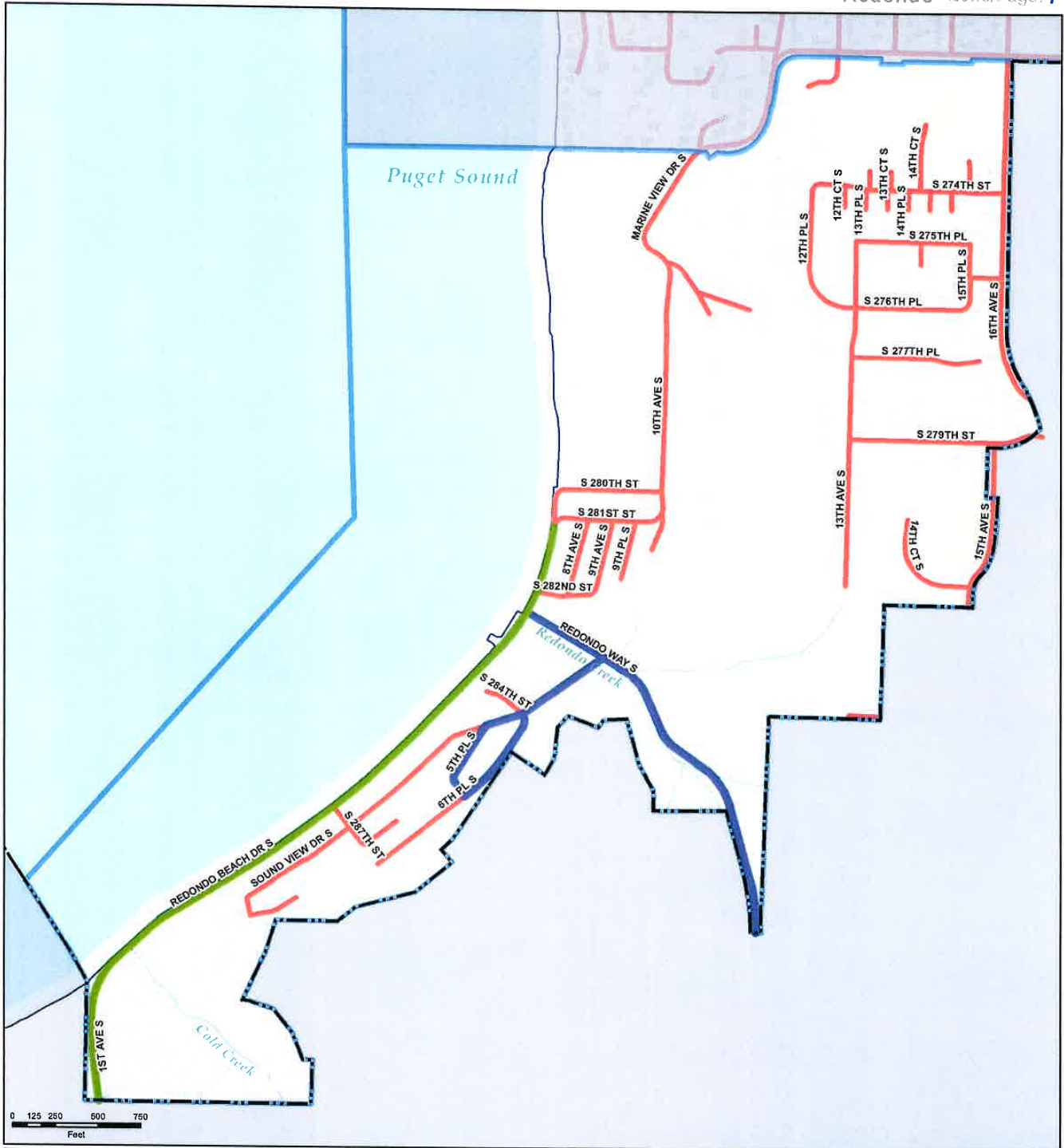
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-  Both High Priority and High Debris Area

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-  Maintenance Zone Boundary



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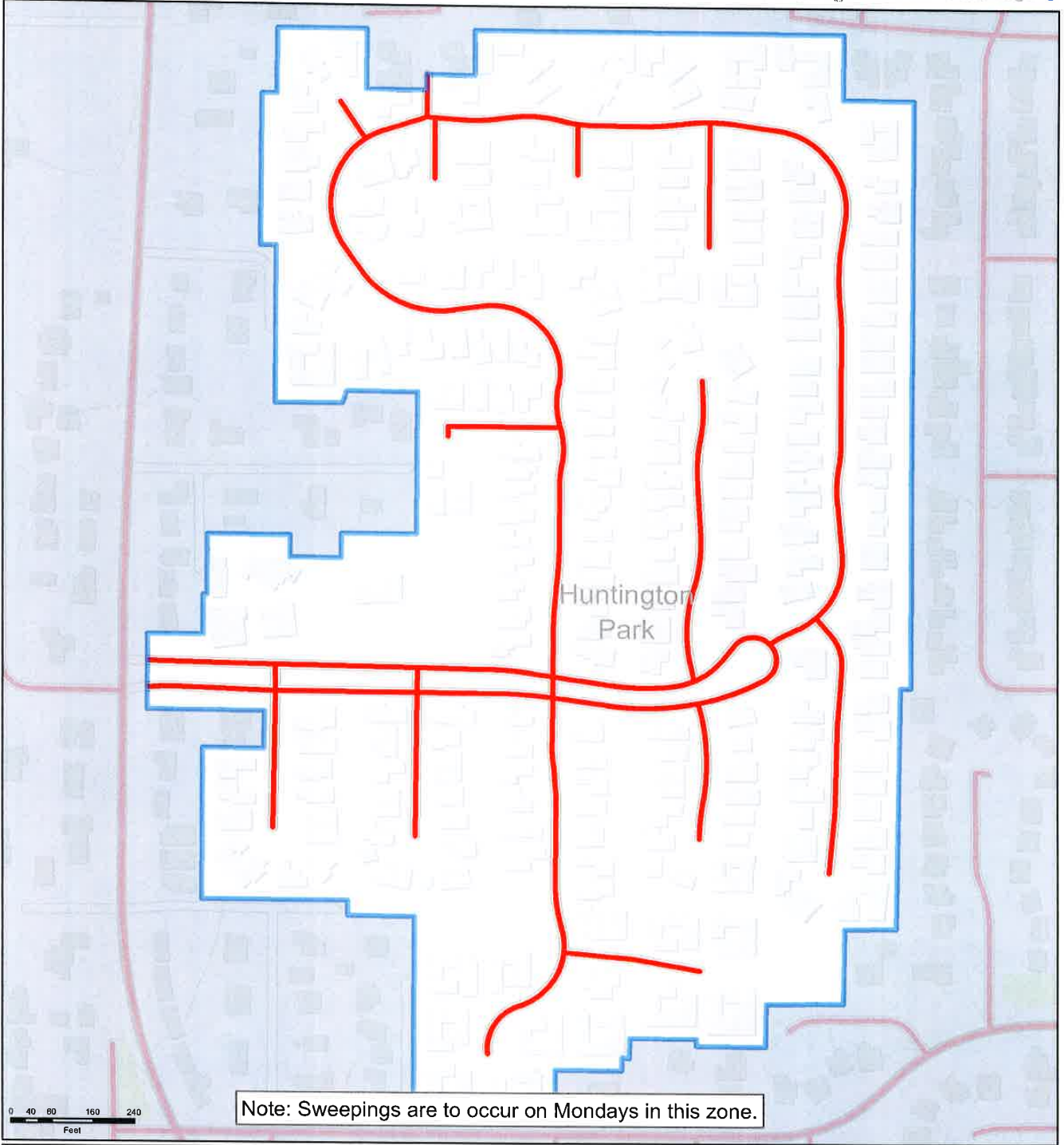
- High Priority Street
- High Debris Area

- Des Moines City Limits
- Maintenance Zone Boundary




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Street Sweeping Routes



Peak (October through January) - Street swept every 2 weeks
Off Peak (February through September) - Street swept every other month, except High Priority Streets, which are swept once per month
High Debris Areas - Swept every week during peak period

 Approved Private Street To Be Swept

 Des Moines City Limits

 Maintenance Zone Boundary



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**CITY OF DES MOINES
PUBLIC WORKS DEPARTMENT
2023-2028 Street Sweeping Services
Bid Tabulation**

November 16, 2022 Bid Opening @ 11:00 AM
2022 Annual Budget \$71,000
23-'28 Estimated Annual Budget \$125,000

No.	Item	Quantity (Centerline Miles)	Sweepings Per Year	McDonough and Sons, Inc	
				Unit Price	Annual Subtotal
1	Zones 1-7 -- Public Streets	75.92	12	\$ 78.00	\$ 71,061.12
2	Zones 1-7 -- High Priority Streets	10.54	16	\$ 78.00	\$ 13,153.92
3	Zones 1-7 -- High Debris Area	4.00	20	\$ 78.00	\$ 6,240.00
4	Zones 1-7 -- Both High Priority & High Debris Area	0.68	24	\$ 78.00	\$ 1,272.96
5	Zone 8 -- Huntington Park	1.88	12	\$ 78.00	\$ 1,759.68
6	Extra Sweeping	200.00	N/A	\$ 75.00	\$ 15,000.00
7	Emergency Callout	100.00	N/A	\$ 75.00	\$ 7,500.00
Zones 1-8 Sweeping Annual Bid					\$ 115,987.68
Total Contract Bid 2023 -- 2028					\$ 695,926.08

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Consultant Contract Amendment #4
for services between The City of Des Moines and
Joseph Dusenbury.

FOR AGENDA OF: 12/08/2022

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: 11/29/2022

ATTACHMENTS:

- 1. Amendment #4
- 2. 2019 Consultant Contract

CLEARANCES:

- City Clerk *SK*
- Community Development _____
- Courts _____
- Director of Marina Redevelopment _____
- Emergency Management _____
- Finance *Barbara Wake*
- Human Resources _____
- Legal */s/ TG*
- Marina *(Su)*
- Police _____
- Parks, Recreation & Senior Services _____
- Public Works _____

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

Purpose and Recommendation

The purpose of this agenda item is to seek council approval to extend the Consultant Contract through 2023 between the City of Des Moines and Joseph Dusenbury to continue the projects and consulting services set forth in the 2019 contract.

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Suggested Motion

Motion 1: "I move to approve Contract Amendment #4 with Joseph Dusenbury to continue to provide consulting services to the City through 2023 in an amount not to exceed \$30,000, and authorize the City Manager to sign the Amendment substantially in the form as attached."

Background

Joe Dusenbury has been providing Management Consulting services under contract for the City and Marina since 2019 following his retirement.

Discussion

Mr. Dusenbury has currently been working 4-16 hours per week depending on project demands. His institutional knowledge and years of experience in the Marine industry along with working with State and Federal agencies continues to provide a benefit to the City. As we continue to finalize projects such as dredging (Mitigation), Redondo Docks, Guest Moorage Electrical upgrades, and Tenant Restroom replacement, Joe’s knowledge with new mitigation and permitting requirements will continue to be valuable. Because of the effects of Covid 19, design changes, new State and Federal requirements, some projects have been delayed.

Alternatives

Council may choose not to approve the contract amendment in which case Mr. Dusenbury contract will expire in early February 2023, at which time other staff will be required to back fill to finalize current projects.

Financial Impact

The 2023 Marina budget has capacity to accommodate the Amended contract in the amount not to exceed \$30,000.

Recommendation

Staff recommends that council approve the proposed contract Amendment.

**PROFESSIONAL SERVICES CONTRACT AMENDMENT #4
BETWEEN
THE CITY OF DES MOINES AND JOSEPH DUSENBURY**

THIS AMENDMENT #4 is entered into on this 8th day of December 2022, pursuant to that certain Contract entered into on the 1st day of February 2019 and subsequent amendments between the **CITY OF DES MOINES, WASHINGTON** (hereinafter “City) and **JOSEPH DUSENBURY** (hereinafter “Mr. Dusenbury” or “Consultant”).

The parties herein agree that the contract dated the 1st of February, 2019 and subsequent amendments shall remain in full force and effect, except for the amendments set forth as follows:

1. Section 4 of the contract dated the 1st of February 2019 and subsequent amendments are hereby amended to read as follows:

4. Compensation. In consideration for the complete and faithful performance of the Contract, Mr. Dusenbury shall be paid as follows: accepting written changes and modifications agreed upon, the Contractor shall be paid sixty-five dollars (\$65.00) per hour for consulting services. The Contractor shall be reimbursed at actual cost for expenses such as parking fees, mileage to and from meetings required for the continuation or completion of projects and other miscellaneous expenses. Reimbursements are subject to the approval of the Harbormaster and the Chief Operation Officer. The consultant is expected to work on average 4 to 16 hours per week, Depending on the requirements of the projects underway. The total compensation paid under this contract for the period from January 1st, 2023 to December 31st 2023 shall not exceed \$30,000 without prior written approval.

2. Section 5 of the contract dated the 1st of February 2019 and subsequent amendments are hereby amended to read as follows:

5. Term. The term of this Contract shall be from January 1, 2019 to December 31, 2023. This Contract may be extended upon written agreement of both parties.

Except as modified hereby, all other terms and conditions of the contract dated February 1, 2019 and subsequent amendments, remain in full force and effect.

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

<p align="center">JOSEPH H. DUESNBURY:</p> <p>By: _____ <i>(signature)</i></p> <p>Print Name: <u>Joseph H. Dusenbury</u> Vendor</p> <p>DATE: _____</p>	<p align="center">CITY OF DES MOINES:</p> <p>By: _____ <i>(signature)</i></p> <p>Print Name: <u>Michael Matthias</u> Its <u>City Manager</u></p> <p>DATE: _____</p> <p>Approved as to form:</p> <p>_____ City Attorney DATE: _____</p>
<p>NOTICES TO BE SENT TO:</p> <p>Joseph H. Dusenbury: dba Consulting P.O. Box 98646 Des Moines, WA 98198 206-870-6554 (cellphone) mypeggysue@me.com</p>	<p>NOTICES TO BE SENT TO:</p> <p>CITY OF DES MOINES: Daniel J. Brewer, PE, PTOE Chief Operations Officer City of Des Moines 21630 11th AVE S, Suite A Des Moines, WA 98198 206-870-6554 (telephone) 206-870-6540 (facsimile)</p>

CONTRACT
For
PROFESSIONAL CONSULTANT SERVICES
Between
THE CITY OF DES MOINES
And
JOSEPH DUSENBURY

THIS CONTRACT is made and entered into between the CITY OF DES MOINES, a Washington Municipal Corporation (“the City”) and Joseph Dusenbury (“Mr. Dusenbury”).

WHEREAS, the City desires to contract with Mr. Dusenbury for professional consulting services that pertain to projects involved within the City of Des Moines Marina; and

WHEREAS, it is necessary for the City to secure project consulting services to assist the City in managing certain projects with the City of Des Moines Marina; and

WHEREAS, Mr. Dusenbury, has adequately demonstrated the ability to provide such services functioning in the recent past as the Harbormaster of the City of Des Moines Marina. He has considerable experience in managing Marina projects; and

WHEREAS, Mr. Dusenbury successfully assisted the City of Des Moines Marina in similar past projects; and

WHEREAS, Mr. Dusenbury is an independent contractor; and

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, to be kept, performed, and fulfilled by the parties, and other good and valuable consideration, it is mutually agreed as follows:

1. Scope of Service.

Mr. Dusenbury shall serve as a Professional consultant for implementation of agreements/contracts associated with projects involving the City of Des Moines Marina. Projects may include, but not limited to, Redondo boarding floats, Marina Maintenance Dredging, Marina Tenant Restrooms, Marina Fuel system upgrades, work related to the DNR lease(s), various permitting, etc.

2. Contractor’s Obligations. All labor, and all other things necessary or required in the satisfactory performance of the work shall be furnished by Mr. Dusenbury. The Contract will be performed and completed under the supervision of and subject to the approval of the City or its authorized representatives. It is anticipated that he will meet biweekly with the City’s COO and Harbormaster to discuss implementation progress. The City shall provide Mr. Dusenbury with access to the City’s computer systems, and support staff including, but not limited to, Marina staff, engineering technicians, & the City Attorney’s Office, and “access to a work space in the Marina Office building, all of which will be available until the end of the Contract term noted in Section 5, unless extended by mutual written agreement.

3. *Records and Documents.* All data, documents, and files created by Contractor under this Agreement may be stored at City facilities or at Mr. Dusenbury's residence until such time as this contract expires or is terminated, at which time they will be turned over to the City. Mr. Dusenbury shall make such data, documents, and files available to the City upon its request at all reasonable times for the purpose of editing, modifying, and updating as necessary. Duplicate copies of this information shall be provided to the City upon its request, and at reasonable cost.

4. *Compensation.* In consideration for the complete and faithful performance of the Contract, Mr. Dusenbury shall be paid as follows: accepting written changes and modifications agreed upon, the Contractor shall be paid fifty dollars (\$50.00) per hour for consulting services. The Contractor shall be reimbursed at actual cost for expenses such as parking fees, mileage to and from meetings required for the continuation or completion of projects and other miscellaneous expenses. Reimbursements are subject to the approval of the Harbormaster and the Chief Operation Officer. The consultant is expected to work on average 4 to 16 hours per week, depending on the requirements of the projects underway. The total compensation paid under this contract shall not exceed \$35,000.00 without prior written approval. Mr. Dusenbury shall submit monthly detailed invoices in a timely manner, in a form acceptable to the City's authorized representative(s), describing dates of service, services performed, and time expended. Invoices shall be paid within thirty (30) days of receipt.

5. *Term.* The term of this Contract shall be from Feb 1, 2019 to December 31, 2019. This Contract may be extended upon written agreement of both parties. Performance of the consulting services under this contract may be terminated for any cause deemed sufficient by either the City or Mr. Dusenbury, in whole or in part, at any time, by either party giving the other written notice of such termination, specifying the extent and effective date thereof, but not sooner than fourteen (14) days from date of such notice, providing that the Mr. Dusenbury shall complete and be compensated for any projects or duties previously assigned and accepted, and shall be compensated for all expenses incurred or committed to, that cannot be canceled.

6. *Performance Standards.* The services, and all duties incidental or necessary thereto, shall be conducted and performed diligently and competently and in accordance with professional standards of conduct and performance.

7. *Record Keeping.* All records or papers of any sort relating to the City and the project will at all times be the property of the City and shall be surrendered to the City upon request. All information concerning the City and said services, which is not otherwise a matter of public record or required by law to be made public, is confidential, and Mr. Dusenbury will not, in whole or in part, now or at any time, disclose that information without the express written consent of the City Attorney.

8. *Assignment.* Mr. Dusenbury shall not assign this contract or any interest herein, nor any money due or to become due hereunder without first obtaining the written consent of the City, nor shall Mr. Dusenbury subcontract any part of the consulting services to be performed hereunder, without first obtaining the consent of the City.

9. Modification. No change, alteration, modification, or addition to this Contract will be effective unless it is in writing and properly signed by both parties.

10. Independent Contractor. The services provided by Mr. Dusenbury under this Contract are provided as an independent Contractor. Nothing in this Contract shall be considered to create the relationship of employer and employee between the parties. Neither Mr. Dusenbury nor any employee of Mr. Dusenbury shall be entitled to any benefits accorded City employees by virtue of the services provided under this Contract. The City will not be responsible for withholding or otherwise deducting federal income tax or social security payments, or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Contractor. Either party may terminate this contract with 2 weeks prior written notice.

11. Indemnification. The City releases and agrees to indemnify, defend, and hold harmless Mr. Dusenbury from any and all actions, errors or omissions, claims, damages, or injuries to persons or property, penalties, obligations or liabilities arising out of or related to services performed by Mr. Dusenbury that are within the course and scope of work performed for the City under this contract. Mr. Dusenbury releases and agrees to indemnify, defend, and hold harmless the City, its officers, employees, and consultants, from any and all actions, claims damages or injuries arising out of or related to the acts or omissions of Mr. Dusenbury, up to \$1,000,000, that are not under control of the City and are not within the scope of this contract.

12. Dispute Resolution Procedures.

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

b) **Venue, Applicable Law and Personal Jurisdiction.** All questions related to this Contract shall be resolved under the laws of the State of Washington. In the event that either party deems it necessary to institute legal action arising from this Contract, such action shall be instituted in the King County Superior Court. The parties each consent to the personal jurisdiction of such court. Except as otherwise provided by law, it is expressly understood that neither party can institute any legal action against the other based on this Contract until the parties have exhausted the mediation procedures required by the previous paragraph.

13. Severability. If any term, provision, covenant, or condition of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the

provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision.

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

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

16. Time of Essence. Time is of the essence for each and all of the terms, covenants, and conditions of this Contract.


17. Concurrent Originals. This Contract may be signed in four counterpart originals.

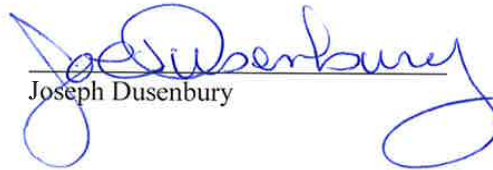
18. Ratification and Confirmation. Any acts consistent with the authority and prior to the effective date of this Contract are hereby ratified and confirmed.

IN WITNESS THEREOF, four (4) identical counterparts of this Contract, each of which shall be deemed an original thereof, have been duly executed by the parties herein named, on the day and year first above written.

CITY OF DES MOINES

CONSULTANT

By 
Michael Matthias
Its City Manager


Joseph Dusenbury

Dated 2.5.19

Dated FEB 1, 2019

APPROVED AS TO FORM:


City Attorney

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Commerce GMA Update Grant Agreement for the City of Des Moines

FOR AGENDA OF: December 8, 2022

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: November 29, 2022

ATTACHMENTS:

- 1. Interagency Agreement with City, Contract No. 23-63210-010

CLEARANCES:

- City Clerk _____
- Community Development **DEL**
- Courts _____
- Director of Marina Redevelopment _____
- Emergency Management _____
- Finance *Colleen W...*
- Human Resources _____
- Legal /s/ TG
- Marina _____
- Police _____
- Parks, Recreation & Senior Services _____
- Public Works _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is to provide information enabling the Council to take action on the acceptance of the Washington State Department of Commerce Growth Management Act (GMA) Update Grant Agreement for the City of Des Moines, and to authorize the City Manager to sign, substantially in the form as attached.

Suggested Motion

Motion 1: "I move to authorize the City Manager to sign the GMA Update Grant Agreement (Contract No. 23-63210-010) between the City of Des Moines and the Washington State Department of Commerce, substantially in the form as attached, and to sign subsequent contract amendments for the remaining grant funds."

Background

Staff is requesting that the City Council authorize acceptance of the Washington State Department of Commerce (Commerce) grant in the amount of \$62,500 (Attachment 1) that would provide funding for the City's periodic review and update to the Des Moines Comprehensive Plan and development regulations. Council was previously informed about the intent to apply for the grant funds and the Mayor provided a letter of support with the grant application. There is no requirement for the City to provide matching funds in order to accept this grant.

Discussion

The Des Moines Comprehensive Plan serves as a roadmap that expresses our community's goals and aspirations for how we want to grow and prosper into the future. The City is required to complete a periodic review and update to the Comprehensive Plan and development regulations in accordance with the Washington State Growth Management Act (GMA) governed by RCW 36.70A. The next periodic review and update needs to be complete by December 31, 2024.

The bulk of the City's effort will be tied to the public participation, regulatory review and update tasks. To facilitate this work, the Department of Commerce is providing the City of Des Moines a \$125,000 non-competitive grant to help fund the 2024 update, including staff time and consultant support. The grant is split between two funding cycles. The first year of funding (\$62,500) reflected in Contract No. 23-63210-010 will be available to reimburse work from July 1, 2022 through June 30, 2023. The remaining 50% of funding will be available July 1, 2023 and an amendment to the contract will be made at that time.

Alternatives

1. The City Council may decline the GMA Update Grant Agreement (Contract No. 23-63210-010) between the City of Des Moines and the Washington State Department of Commerce and forego the grant funds.
2. The City Council may continue this Agenda Item and request that staff provides additional information on the Commerce Grant.

Financial Impact

If the City Council accepts the grant, there will be no fiscal impact to the City. However, if the City Council does not accept the grant, then the City will need to use additional General Fund monies to complete the GMA required periodic review and update to the comprehensive plan and development regulations.

Recommendation

Staff recommends that the City Council accept the GMA Update Grant Agreement (Contract No. 23-63210-010).



Interagency Agreement with

City of Des Moines

through

Growth Management Services

**Contract Number:
23-63210-010**

For

GMA Periodic Update Grant – FY2023

Dated: Date of Execution

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Face Sheet

Contract Number: 23-63210-010

Local Government Division Growth Management Services

1. Contractor City of Des Moines 21630 11th Avenue S, Suite D Des Moines, WA 98198		2. Contractor Doing Business As (as applicable) N/A	
3. Contractor Representative Denise Lathrop, AICP Community Development Director 206-870-6563 dlathrop@desmoineswa.gov		4. COMMERCE Representative Keri Sallee Senior Planner (564) 200-2338 keri.sallee@commerce.wa.gov	
5. Contract Amount \$62,500		6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	
7. Start Date Date of Execution		8. End Date June 30, 2023	
9. Federal Funds (as applicable) N/A		Federal Agency: N/A	
ALN N/A			
10. Tax ID # N/A	11. SWV # SWV0000307	12. UBI # 600-016-906	13. UEI # N/A
14. Contract Purpose Grant funding to assist the city with planning work for the completion the Growth Management Act (GMA) requirement to review and revise the comprehensive plan and development regulations under RCW 36.70A.130(5).			
COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work and Attachment B - Budget			
FOR CONTRACTOR _____ Michael Matthias, City Manager City of Des Moines _____ Date		FOR COMMERCE _____ Mark K. Barkley, Assistant Director Local Government Division _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE	

Special Terms and Conditions

1. AUTHORITY

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by Chapter 39.34 RCW.

2. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

3. COMPENSATION

COMMERCE shall pay an amount not to exceed sixty-two thousand five hundred dollars (\$62,500) for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work.

4. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Contractor upon acceptance of services and deliverables provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly nor less than quarterly.

The parties agree this is a performance-based contract intended to produce the deliverables identified in Scope of Work (Attachment A). Payment of any invoice shall be dependent upon COMMERCE'S acceptance of Contractor's performance and/or deliverable. The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number 23-63210-010. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Grant Start Date

COMMERCE will pay the Contractor for costs incurred beginning July 1, 2022, for services and deliverables described under this Agreement.

Duplication of Billed Costs

The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.



Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

COMMERCE may, in its sole discretion, withhold ten percent (10%) from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).

Line Item Transfers

The total amount of transfers of funds between line item budget categories shall not exceed ten percent (10%) of the total budget. If the cumulative amount of these transfers exceeds or is expected to exceed ten percent, the total budget shall be subject to justification and negotiation of a contracts amendment by the Contractor and COMMERCE.

Ineligible Costs

Only eligible project-related costs will be reimbursed. Ineligible costs include, but are not necessarily limited to: capital expenses, such as land acquisition or construction costs; purchase of machinery; hosting expenses, such as meals, lodging, or transportation incurred by persons other than staff and volunteers working directly on the project; lobbying or political influencing; and other costs which are not directly related to the project.

5. SUBCONTRACTOR DATA COLLECTION

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Contract performed by subcontractors and the portion of Contract funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

6. INSURANCE

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

7. FRAUD AND OTHER LOSS REPORTING

Contractor shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Contract immediately or as soon as practicable to the Commerce Representative identified on the Face Sheet.

8. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget

General Terms and Conditions

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Washington Department of Commerce.
- C. "Contract" or "Agreement" or "Grant" means the entire written agreement between COMMERCE and the Contractor, including any Attachments, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" or "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ALL WRITINGS CONTAINED HEREIN

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

3. AMENDMENTS

This Contract 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.

4. ASSIGNMENT

Neither this Contract, work thereunder, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
 - i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
 - ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and

iii. All Personal Information in the possession of the Contractor that may not be disclosed under state or federal law.

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

6. COPYRIGHT

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

7. DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority



prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

8. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents

10. LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

11. RECAPTURE

In the event that the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

12. RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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.

13. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

14. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

15. SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

16. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

17. TERMINATION FOR CAUSE

In the event COMMERCE determines the Contractor has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

18. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

19. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

20. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.
- B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management



practices.

- C. If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract.
- E. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

21. **WAIVER**

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 Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

Attachment A: Scope of Work

Tasks / Actions / Deliverables	Description	End Date
Task 1	Comprehensive Plan and Development Regulations Review and Gap Analysis	February 28, 2023
Data Collection and Review of Plans, Policies and Development Regulations	Consultant will work with City staff to: <ul style="list-style-type: none"> • Review requirements in WA Department of Commerce Periodic Update Checklist. • Review GMA amendments passed since last update. • Review King County Countywide Planning Policies and Vision 2050 Multicounty Planning Policies. • Identify data gaps and determine approach and extent of update. 	February 28, 2023
<i>Deliverable 1</i>	<ul style="list-style-type: none"> • Completed Checklist • Gap Analysis Matrix and Summary • Refined Work Program 	February 28, 2023
Task 2	Public Engagement	June 30, 2023
Public Participation Plan	The consultant will work with City staff to prepare a Public Engagement Plan that: <ul style="list-style-type: none"> • Outlines the specific public engagement methods proposed for the update process. • Provides a schedule of proposed activities. • Describes the kind of outreach materials that will be provided. 	February 28, 2023
<i>Deliverable 2a</i>	Des Moines Public Participation Plan	February 28, 2023
Public Workshop	The consultant will work with City staff to introduce the update effort in a public setting. The scope of the update process and the underlying regulatory requirements will be identified. An anticipated schedule of update tasks will be provided to facilitate public involvement throughout the	March 31, 2023

	process. The public will be encouraged to provide high-level feedback that can be used to guide the update process, with more detailed and content-specific feedback to be provided in the subsequent community conversations.	
<i>Deliverable 2b</i>	Memorandum summarizing the purpose and results of the workshop, as well as the materials prepared for and created by the workshop.	March 31, 2023
Community Conversations	The consultant will work with City staff to host a Comprehensive Plan Update information booth at community events in Des Moines. These information booths will provide an opportunity to engage with the public in discussions about the Comprehensive Plan Update.	June 30, 2023
<i>Deliverable 2c</i>	Memorandum summarizing the purpose and results of the community conversation events, as well as the materials prepared for and created by the workshop.	June 30, 2023
Task 3	Draft Comprehensive Plan Updates (Completed to date)	June 30, 2023 NOTE: Will be in progress, but not completed by the end of SFY 2022 (Est. March 2024)
Prepare Draft Amendments	Within the framework of the completed Commerce review checklist and updated vision statement, Consultant/City staff will update any goals, policies, and strategies that need to be strengthened, re-written, or re-tooled for GMA compliance in all elements. Update tables, maps, and graphics in order to maintain compliance with GMA. Key influencers relate to growth targets, changing demographics, and demand for housing, capital facilities, utilities, public services, parks/recreation/open space, and transportation need/demand/improvements.	June 30, 2023 NOTE: Will be in progress, but not completed by the end of SFY 2022 (Est. March 2024)
<i>Deliverable 3</i>	Draft updates to the Comprehensive Plan: (Drafts of the updated work for the plan completed to date)	June 30, 2023 NOTE: Will be in progress, but not

	<ul style="list-style-type: none"> • Introduction • Land Use Element • Transportation Element • Conservation and Environment Element • Capital Facilities, Utilities and Public Services Element • Parks, Recreation and Open Space Element • Housing Element • Economic Development Element • North Central Neighborhood Element • Marina District Element • Pacific Ridge Element • Healthy Des Moines Element • Relevant Technical Appendices 	<p>completed by the end of SFY 2022</p> <p>(Est. March 2024)</p>
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Attachment B: Budget

SFY 2023 Task/Deliverable	SFY 2023 Amount
Deliverable 1 – Commerce Checklist and Gap Analysis	\$10,830
Deliverable 2a, 2b, and 2c – Public Participation Plan and Outreach Events, including memoranda summarizing the workshops and community conversations.	\$21,845
Deliverable 3 – Draft Comprehensive Plan Update (partial)	\$28,825
Expenses	\$ 1,000
Total Grant (SFY 2023 only)	\$62,500

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT:
S 223rd Street Green Street Planning Project

FOR AGENDA OF: December 8th, 2022

DEPT. OF ORIGIN: Public Works

ATTACHMENTS:

DATE SUBMITTED: November 29th, 2022

1. 2022-2023 On-Call General Civil Engineering Services, KPG PSOMAS Task Order W5
2. Washington State Department of Commerce Local Government Division General Grant Contract 22-96515-036
3. 2023-2028 Adopted City Capital Improvement Plan Project Worksheet

CLEARANCES:

- City Clerk _____
- Community Development _____
- Courts _____
- Director of Marina Redevelopment _____
- Emergency Management _____
- Finance *Richard W. W...*
- Human Resources _____
- Legal */s/ TG*
- Marina _____
- Police _____
- Parks, Recreation & Senior Services _____
- Public Works *Richard W. W...*

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

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval of the 2022-2023 On-Call General Civil Engineering Task Assignment W5 with KPG PSOMAS that will provide design services associated with the S 223rd Street Green Street Planning Project (Attachment 1). Additionally, this Agenda Item seeks City Council acceptance of the Washington State Department of Commerce 2022 Supplemental State Capital Budget Appropriation grant for the S 223rd Street Green Street Planning Project (Attachment 2).

The following motion(s) will appear on the Consent Calendar:

Suggested Motion(s)

Motion 1: “I move to approve the 2022-2023 On-Call General Civil Engineering Task Assignment W5 with KPG PSOMAS that will provide design services for the S 223rd Street Green Street Planning Project in the amount of \$299,812.00 and authorize the City Manager to sign said Formal Task Assignment substantially in the form as submitted.”

Motion 2: “I move to authorize the acceptance of the Washington State Department of Commerce 2022 Supplemental State Capital Budget Appropriation in the amount of \$299,730.00, and further authorize the City Manager to sign the Washington State Department of Commerce Local Government Division General Grant Contract 22-96515-036 substantially in the form as submitted.

Background

Motion 1

The City of Des Moines 2023-2028 Capital Improvement Plan (CIP) S 223rd Street Complete Street Improvement Project (TRCIP0026) focuses on corridor redevelopment as part of the overall Marina Redevelopment priority. This project targets non-motorized users, connectivity between downtown and the Marina, as well as the analysis of strategic storm water quality improvements. The limits are between Marine View Drive and Cliff Ave S to include the entrance to the North Marina.

Motion 2

On May 17th, 2022, the City was informed that the adopted Washington State 2022 Supplemental State Capital Budget included an appropriation of \$309,000 for the 223rd Green Street Planning project with a retention of 3% by the Washington State Department of Commerce for administrative purposes. Grant funds available to the City total \$299,730 and will be used for project planning, 10 percent phase of preliminary design, and environmental permit identification. Information gathered from this planning phase will assist the City in securing design and construction funding for ‘complete streets’ corridor improvements along South 223rd Street to improve pedestrian experience and vehicular access in the downtown area while improving water quality of Puget Sound.

Discussion

Motion 1

In order to fulfill the project grant terms and conditions, consultant support will be needed. City staff utilized the 2022-2023 On-Call Engineering Services roster for consultant review and KPG PSOMAS was selected. Specific elements of work included within the Task Assignment include:

- Street layout alternatives for South 223rd Street with an emphasis on storm water features, and the corridor’s role for a pedestrian friendly promenade to the future Marina Steps at Overlook 1 Park.
- Storm water analysis of South 223rd Street corridor and associated drainage basin to confirm the feasibility of potential strategic storm water features benefiting Puget Sound.
- Stakeholder, community, and City Council presentations.

- Coordination with the strategic Marina Redevelopment efforts, including collaboration with the associated architectural consultants currently retained by the City.

Motion 2

The Washington State Department of Commerce 2022 Supplemental State Capital Budget Appropriation is for expenditures made during the current State biennium (July 1, 2021 thru June 30, 2023). The funds awarded will be utilized to cover the Task Assignment described above.

Alternatives

Motion 1

Alternative: No On-Call Task Assignment Authorization

The City Council could elect not to approve the 2022-2023 On-Call General Civil Engineering Services Formal Task Assignment with KPG PSOMAS. The City would then need to review other on-call consultant qualifications or issue a Request for Proposal (RFP). This process would add significant time to the consultant selection process and place the 2022 Supplemental State Capital Budget Appropriation grant at significant risk in meeting the June 30th, 2023 expenditure timeline.

Motion 2

Alternative: No Grant Acceptance and Authorization

The City Council could elect to not accept the 2022 Supplemental State Capital Budget Appropriation. This would require new City resource appropriations to complete the CIP project or a reprioritization of current CIP projects. Not completing this would also place future legislative direct appropriation requests at risk.

Financial Impact

Motion 1

The City's 2023-2028 CIP Budget Worksheet include revenues to achieve full funding for this Formal Task Assignment (Attachment 3).

Motion 2

The grant award will be utilized for CIP project TRCIP0026 as shown in (Attachment 3).

Recommendation

Staff recommends approval of the proposed motions.

Council Committee Review

May 12th, 2022 – The S 223rd St Green Street Planning Project was included in the draft Transportation Improvement Plan (TIP) presentation to the Transportation Committee.

July 14th, 2022 - The S 223rd St Green Street Planning Project was discussed in the CIP Project Updates Memorandum to the Transportation Committee.

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Formal Task Assignment Document

Task Number W5

The general provisions and clauses of Agreement 2022-2023 On-Call General Civil Engineering Services shall be in full force and effect for this Task Assignment.

Location of Project: S 223rd Street 8th Ave S to Cliff Avenue

Project Title: S 223rd Street Green Street Planning 8th Ave S to Cliff Avenue

Maximum Amount Payable Per Task Assignment: \$299,812.00

Completion Date: December 31, 2023

Description of Work: Assist the City with the design of the marina sign. See attached Scope of Work (Exhibit A) and Fee (Exhibit B)

Agency Project Manager Signature: _____ Date: _____

Oral Authorization Date: _____ Date: _____

Consultant Signature: _____ Date: _____

Agency Approving Authority: _____ Date: _____

EXHIBIT A

City of Des Moines S 223rd Street Green Street Planning 8th Ave S to Cliff Avenue

KPG
Scope of Work
August 23, 2022

INTRODUCTION

The following scope of work outlines the effort required for preliminary design and design of S 223rd St and Cliff Ave South between the Marne View Drive S and the entrance to the marina/Des Moines Creek Park. As one component of the Marina Redevelopment initiative, this project will provide a regional demonstration of how an improved pedestrian experience and vehicular access into downtown can be accomplished while improving the water quality in Puget Sound. This scope of work focuses on preliminary design, stormwater analysis, and stakeholder outreach. This includes the following major project components:

1. Street layout alternatives for S 223rd St with an emphasis on stormwater features, and its role for a pedestrian friendly promenade to the future Marina Steps at Overlook 1 Park.
2. Stormwater analysis of S 223rd corridor and associated basin to confirm the feasibility of potential stormwater features.
3. Stakeholder outreach and City Council presentations.
4. Coordination with the Marina Redevelopment efforts, including architectural consultants and developers

The following image highlights the S 223rd St project in relation to other Des Moines Marina District Projects.



Source: <https://marinasteps.com/the-vision>
City of Des Moines
S 223rd Street Green Street Planning

KPG Psomas Project No. 22040
10/17/2022

EXHIBIT A

The following assumptions were made when preparing the scope and budget:

- The Preliminary Design Study will be completed within 6 months.
- Federal funding not included in this task. Assumes no permitting support will be needed at this phase.
- Assumes no ROW acquisition services will be needed at this phase.

SCOPE OF WORK

The following scope of work includes the effort to complete the above-described improvements:

Task 1 – Management/Coordination/Administration

This task covers the effort required to manage the contract and to ensure that the project meets the client's expectations for schedule, budget, and quality of product:

- 1.1 Provide project administrative services including:
 - Project set-up and agreement execution
 - Execution of subconsultant agreements
 - Preparation of monthly progress reports and invoices
 - Maintaining project files
 - Record keeping and project closeout
- 1.2 Provide project management services including:
 - Project staff management and coordination
 - Subconsultant management and coordination
 - Prepare and update project schedule
 - Schedule and budget monitoring
- 1.3 Design coordination meetings with City staff:
 - Attend review & coordination meetings with City staff. Assumes 3 meetings – project kickoff, concept layout review, and alternatives layout review. Budget assumes that Consultant project manager and lead project engineer will attend all meetings.
 - Bi-monthly PM coordination meetings. Check in meeting every other week between City and Consultant project managers. Team meeting or phone calls. (Assumes 15 – 30 min meetings)

Products:

- Monthly progress report and invoice
- Meeting minutes for Consultant/City meeting
- QA/QC

EXHIBIT A

Task 2 Survey

This task covers project survey. Project limits are of S 223rd St from MVD to Cliff Ave S; 100 ft wide, 50 ft of each side of the S 223rd St centerline and Cliff Ave from 223rd to and including the entrance to the marina/park

2.1 Survey Control

Establish horizontal and vertical control points within the project limits. Basis of control will be NAD 83/2011 and NAVD88 for horizontal and vertical respectively. Approximately 8 control points will be established at the site for continued use.

2.2 Survey Mapping

Field Survey. Field mapping within the project limits will include topography, man-made surface features, limits of vegetation, trees (6" DBH or larger), overhead utilities, building corners that lie within the limits and painted underground utilities. Irrigation systems will not be included. Perform measure-downs of existing storm drain and sanitary sewer structures, indicating rim and pipe invert elevations. Document the approximate size, type, material, and general condition of the structures. These observations will be made from the surface. Any required pipe video inspection, potholing or smoke testing needed to verify the condition or connectivity of drainage features is outside the scope of this task.

2.3 Underground Utility Locate

An underground conductible utility locate within the project limits to be performed by a private utility locating firm. KPG will survey the location of the locate paint marks. While every reasonable effort will be made by KPG to depict the location of underground utilities based on utility locates, KPG is not liable for errors or omissions by utility locators, or erroneous or insufficient information shown on utility record drawings.

2.4 Base Map Preparation

Prepare 1"=20' topographic base map and digital terrain model (DTM) in AutoCAD format of the project to KPG cad standards. The base map will include information collected in Tasks 2 and 3 above. One-foot contours will be generated from the DTM.

Existing survey base map and survey data of the hill side will be provided by the by the city and incorporated into the KPG base map.

2.5 ROW and Property Lines

Road rights of way within the project limits will be determined from available public records (i.e. records of survey, plats, state right-of-way plans, etc.) and found survey monuments. Parcel lines will be determined from GIS information. Right-of-way and parcel information will be added to the base map. Adjacent owners' names and assessor's parcel numbers will be added to the base map. Existing easements will be added to the base map according to title reports.

Products:

- AutoCAD Civil3D base map drawing file in version 2018 or 2022.

City of Des Moines

S 223rd Street Green Street Planning

KPG Psomas Project No. 22040

10/17/2022

EXHIBIT A

Task 3 Geotechnical

(see Attached scope from HWA GeoSciences Inc.)

Task 4 Cultural Resource Compliance

A Cultural Resource Consultants will assist the City with complying with various state and federal legal requirements by identifying the presence of historic resources within the Area of Potential Impact (API) through the completion of the following tasks-

4.1 Background Research

Consultants will conduct background research at appropriate repositories, such as Department of Archaeology and Historic Preservation (DAHP), affected tribal cultural resource departments, university libraries, and local history museums; will consult informants; and will use sources relevant to the task, such as public records, private manuscript collections, online General Land Office records, published (secondary) sources, Sanborn fire insurance maps, and other relevant repositories. The research objective will be to develop a complete understanding of the historical context, land use patterns, and previously identified sites within the API. The client will provide the Consultant with a detailed written description of the project area, including relevant documentation (maps, plan sheets, photos, etc.). Based on the field survey and/or background research, Consultant will provide the client with justification for revising/amending the API.

Consultant will coordinate with the client to receive project materials, prepare invoicing and transmit correspondence. Consultant will maintain project files to include necessary supporting materials as required. The Project Manager will monitor project task performance, schedule, budget, and approve project expenses. In addition, the Project Manager will ensure that systems are in place to conduct quality assurance and quality control on deliverables and correspondence.

Assumptions:

- Assume no Inadvertent Discovery Plan (IDP), per DAHP findings letter (to be provided by City)
- The API will be defined as the right of way 223rd St and each adjacent parcel.
- If the project's horizontal/vertical limits are changed during periods of work performance, the API will be revised and resubmitted to the client. A contract amendment will cover these modifications and hours associated with revisions.
- The Consultant Project Manager will be available for regular phone calls and emails with the client to facilitate the completion of the assignment, as necessary.
- Consultant will not be completing the Section 4f requirements for the project.

The client will supply or facilitate Subconsultant acquisition of the following items needed for this project-

- Preliminary and revised plan maps showing the location and extent of the project;
- Any additional descriptive information and design drawings that show the extent/depth of trenching, grading, excavation, or other ground disturbance associated with the project; and
- The results of any geotechnical boring or subsurface testing may assist in developing a land use/land formation history.
- Contact information or documented permission from property owners to access the survey area.

4.2 Cultural Resource Monitoring Plan

City of Des Moines
S 223rd Street Green Street Planning

KPG Psomas Project No. 22040
10/17/2022

EXHIBIT A

A Monitoring and Inadvertent Discovery Plan will be drafted detailing the types of cultural resource material that could be encountered during construction as required by the DAHP. They will outline the process to be followed if cultural resource material is encountered during the monitoring activity. In addition, this plan will include the contact information of all concerned parties to ensure all parties/stakeholders in the project receive immediate notification. This procedure will also detail the process to be followed in discovering human skeletal material to assist the client with complying with various state and federal requirements protecting non-forensic human skeletal remains.

Assumptions:

- The Tribes will be contacted about the project to solicit technical information about heritage resources and to inform them when construction monitoring and excavation will take place,
- If the project's horizontal/vertical limits are changed during periods of work performance, the API will be revised, and hours associated with revisions or additional surveys will be covered under a contract amendment.

4.3 Cultural Resources Monitoring and Survey

The cultural resources survey will be completed by archaeologists using standard, industry-accepted methods appropriate to the project area and landform. All survey activities will comply with the DAHP Survey and Inventory Standards (www.dahp.wa.gov). Any recovered artifacts will be documented and photographed in the field and returned to the survey location unless negotiated under another agreement.

Any newly identified cultural resources identified within the project area must be fully documented on a Washington State Archaeological Site, Isolate, or Historic Property Inventory (HPI) Form and include a written description of the site and its setting, sketch maps, United States Geological Survey (USGS) quadrant maps, and photographs. In addition, any structures older than 50 years must be recorded on HPI forms.

Assumptions:

- The entire project API will be pedestrian surveyed to record the existing conditions and identify potential locations for archaeological deposits.
- Up to four (4) geotechnical bore excavations and one infiltration test pit will be monitored.
- No additional subsurface investigations will be completed.
- Up to three (3) HPI forms will be prepared for the structures located on parcels: 200900-4160, 200900-4244, and 200900-4665.
- No HPI form updates will be required.
- A separate cost estimate will be prepared for the client if a Site Protection Plan or additional work (e.g., construction monitoring, recording of site boundaries outside the approved API, archaeological excavation permit preparation) is required due to the discovery of historical/archaeological resource materials.
- Cost Estimate does not include hours for recording any additional archaeological/historical resources. If a historical/archaeological site/isolate is encountered, the resource's subsequent

EXHIBIT A

evaluation, documentation, and curation agreements will be negotiated under a separate agreement or amendment to the existing contract.

- Cost Estimate includes up to three (3) days of geotechnical monitoring and one (1) day of survey for the completion of the pedestrian survey.

4.4 Draft/Final Assessment

Consultant will prepare a cultural resource survey assessment report that will detail the survey findings, include relevant supporting evidence for findings, and adhere to the DAHP's Survey and Inventory Standards. In addition, the report will reference the previously completed Baseline scan that provides context on pertinent land use customs and beliefs, identify any sites encountered within the project area, identify and justify locations recommended for monitoring if necessary, and an inadvertent discovery plan.

The draft report will be provided to the client for review. Upon receipt of comment from the client, Subconsultant will revise and finalize the report to address specific concerns or suggested modifications. The final report will be suitable for submission to the lead Agency, DAHP, and other consulting parties as a cultural resource assessment.

Products:

- The draft report deliverable PDFs will be submitted to the client via email for review and comment. SubConsultant will incorporate any comments received from the review and finalize the report before final submission to the client. Finally, SubConsultants will provide a final report deliverable PDF to the client via email.

Task 5 Stormwater Analysis

The Consultant shall perform preliminary stormwater analysis of the S 223rd corridor and basin to determine the feasibility of potential stormwater features for the corridor.

5.1 Data Collection

The Consultant will assemble existing City and County GIS data from recent stormwater design projects, SWM Comprehensive Plan data, Stormwater Basin Planning data, if available, to collect data on existing stormwater systems and surface contours to determine the contributory basin area for the S 223rd St project and determine where stormwater is currently flowing and being collected.

5.2 Corridor and Basin Analysis

The Consultant shall use the collected data to evaluate the existing average stormwater flows along the S 223rd St corridor as well as flows in the adjacent corridors that could reasonably be directed to S 223rd St without altering designated drainage basins. The Consultant shall determine the approximate existing flow rates for collected stormwater along the corridor and the potential stormwater flows from adjacent corridors. The Consultant shall use existing monthly rain flow data to determine potential monthly stormwater contributory flows for the proposed corridor stormwater features.

EXHIBIT A

The Consultant will review adjacent roadway drainage systems to determine if there is a water base-flow due to groundwater/infiltration or seepage and determine if it is feasible to route these flows to 223rd. If a baseflow is identified the Consultant will work with the city to quantify these flows.

5.3 Establish Project Water Quality and Detention Needs

The Consultant shall conduct a preliminary analysis of the stormwater treatment and detention requirements for the proposed corridor improvements between 8th Avenue S and Cliff Avenue, and identify if the project may be exempt due to direct discharge to the sound. The analysis will be based on the preferred alternative selected in Task 3. The preliminary analysis will be performed based on the requirements of the 2021 KCSWDM.

In addition to determining the surface water project requirements, up to three opportunities for regional surface water quality treatment options will be provided based on applicable 2021 KCSWDM and Department of Ecology requirements.

5.4 Design Options and Documentation

The Consultant shall prepare a preliminary design report documenting the analysis and design requirements and presenting options for stormwater detention or direct discharge and water quality treatment options. In particular options for LID such as Urban Creek, Green Roof, Trans-evaporation, and open water flows will be reviewed for feasibility. This information will be used to provide a preliminary recommendation on the feasibility and potential sizing of stormwater detention and treatment features.

Assumptions:

- The city will provide GIS files and relevant recent stormwater analysis projects.

Products:

- Preliminary Surface Water Technical Information Report (TIR)
- Feasibility of Low Impact Development (LID) feature options based on project conditions.

Task 6 Preliminary 10% Design

The Consultant shall complete 10%, preliminary plan and prepare associated submittal documents. The design will incorporate information from the Stormwater Analysis and goals for the Marina District Redevelopment initiative, including creating an inviting promenade to the Marina, actively connecting the street grid, ultimately providing an inviting streetscape that leads to the Marina Steps.

6.1 Preliminary Design Alternatives

Based upon the Stormwater Analysis and goals for the Marina District, the Consultant shall prepare 3 alternative layouts within in the existing ROW showing sidewalk/promenades, curb and gutter, street and channelization, street lighting, ADA facilities, cross street control, curb bulbs, street trees, street furniture and stormwater expression.

EXHIBIT A

6.2 10% Design of Selected Alternative

Based upon City and stakeholder review and input of the alternative layouts, a preferred alternative will be selected and refined. A 10% layout will be developed including supporting graphics and illustrations for the roadway and urban design components. This 10% layout will show: location of paving, channelization, sidewalks, driveways, storm drainage, retaining walls and landscape. The Plans will contain sufficient information for City verification of the overall project scope and for use in providing cost estimates. No vertical design information or specific details will be provided.

6.3 Landscape/Urban Design Schematic Conceptual Design

For each alternative identified in 3.1, the Consultant prepare an illustrative plan. For the selected alternative chosen in 3.2, the Consultant shall develop a schematic conceptual design with theme/character development including an illustrative plan, sketch-up perspective and thematic urban design elements, street cross sections, and conceptual planting palette.

The Consultant shall review existing background material including the Marina Master Plan as well as complete a site inventory and identify potential opportunities for thematic elements to include in the urban design.

6.4 Utilities:

For the preferred alternative, existing utilities within the project will be identified and major relocations will be identified for future utility coordination. Coordinate with PSE, Lumen, and Comcast to develop preliminary undergrounding of overhead utilities? (Incorporate anticipated undergrounding costs into CE). Plans to be incorporated into the 10% design only if provided by utility owners.

6.5 Cost Estimating

An Engineering Opinion of Probable Construction Cost will be developed for the preferred alternative. The cost estimate will be to a sufficient level to support funding and grant application requirements.

Products:

- Project Design Report with all deliverables included within
- 10% Scroll Plot (PDF & CAD Files)
- 10% Cost Estimate (PDF & Excel Format)
- Urban Design illustrative plan for each alternative. Illustrative perspective and street cross sections for selected alternative.
- Graphics to illustrate potential or limitations regarding stormwater GSI facilities or "urban stream".

Task 7 Stakeholder Outreach

The Consultant shall lead stakeholder outreach efforts to gain targeted input and consensus from select community group and business owner representatives on the desired corridor improvements.

7.1 Stakeholder Charettes

The Consultant will lead 2 design charets for up to 20 team members to discuss the corridor vision, needs and constraints. The charets discussions will be used to generate and vet the 3 proposed layout

EXHIBIT A

options. Charet members may include local business owners and representatives, community members, staff members and other stakeholders that the city would like to receive feedback from.

7.2 Council Updates and Concurrence

The Consultant shall attend up to 2 City Council Meetings to present to the design options, conclusions of the design charets and stormwater analysis results.

7.3 Stakeholder Outreach

City Council outreach using online Surveys, open house, project website (narratives/graphics) as directed.

7.4 Marina Development Coordination

The Consultant will reach out to and coordinate with the lead design of the marina redevelopment team to ensure that the visions of both projects are blended to have a cohesive theme.

EXHIBIT B

Consultant Fee Estimate
 Client: City of Des Moines
 Project: South 223rd Street Study - Preliminary 10% Design
 KPG# 22040
 DATE: .23-Aug-22

Task No.	Task Description	Labor Hour Estimate														Total Hours and Labor Fee Estimate by Task					
		Principal	Senior Project	Engineer	Project II	Project I	Design	Engineer	Engineering	Technician	Survey Manager	Survey Crew II (W/Equip)	Survey Crew I (W/Equip)	Project Surveyor	Senior Survey Technician	Project Landscape Architect	Landscape Technician	Business Manager	Senior Admin	Hours	Fee
		\$285.00	\$197.00	\$172.00	\$146.00	\$132.00	\$114.00	\$251.00	\$249.00	\$196.00	\$164.00	\$137.00	\$151.00	\$102.00	\$178.00	\$130.00					
Task 1 - Management/Coordination/Administration																					
1.1	Provide project administrative services		6															4	8	18	\$ 2,934.00
1.2	Provide project management services (6 months)		18																12	30	\$ 5,106.00
1.3	Design coordination meetings with City staff (Monthly)	6	6		6							6								30	\$ 5,202.00
	Task Total	6	30	0	0	6	0	0	0	0	0	0	0	0	0	6	6	4	20	78	\$ 13,242.00
Task 2 - Survey																					
2.1	Survey Control										6			1	2					9	\$ 1,932.00
2.2	Survey Topographic Mapping							2			24			1						27	\$ 6,642.00
2.3	Underground Utility Locate										6									6	\$ 1,494.00
2.4	Base Map Preparation							1						3	30					34	\$ 4,853.00
2.5	ROW and Property Lines							2						6						8	\$ 1,486.00
	Task Total	0	0	0	0	0	0	5	30	0	0	0	0	10	30	0	0	0	0	84	\$ 16,407.00
Task 3 - Geotechnical																					
(see attachment: HWA GeoSciences, Inc)																					
	Task Total																				\$ 20,001.00
Task 4 - Cultural Resources Compliance																					
(see attachment: Exhibit B.1)																					
	Task Total																				\$ 24,534.00
Task 5 - Stormwater Analysis																					
5.1	Data Collection	2	12		36		12													62	\$ 9,558.00
5.2	Corridor and Basin Analysis	8	16		64		16													104	\$ 16,600.00
5.3	Determine and quantify possible stormwater base-flows	2	8		24		16													50	\$ 7,474.00
5.4	Establish Project Water Quality and Detention Needs	2	8		24															34	\$ 5,650.00
5.5	Design Options and Documentation	4	24		40		20													88	\$ 13,988.00
5.6	Basin Treatment Options	4	8	8	34		34													88	\$ 12,932.00
	Task Total	22	76	8	222	0	98	0	0	0	0	0	0	0	0	0	0	0	0	426	\$ 66,202.00

Task 6 - Preliminary 10% Design																
6.1	Preliminary design alternatives (3 total)	24	40							85	50			349	\$	50,468.00
6.2	10% Design of Selected Alternative	12	20							50	20			194	\$	27,192.00
6.3	Landscape/Urban Design Schematic Concept. Design	2	2							20	32			97	\$	12,708.00
6.4	Utilities	2	2							28	36			73	\$	9,568.00
6.5	Cost estimating	1	1							4	32			59	\$	7,094.00
	Task Total	41	65	0	0	0	0	0	0	187	170	0	0	772	\$	107,030.00
Task 7 - Stakeholder Outreach																
7.1	Stakeholder Charettes	14	12							24				106	\$	17,194.00
7.2	Council Updates and Concurrence	4	8							8				42	\$	6,408.00
7.3	Stakeholder Outreach	12	8							8				84	\$	13,724.00
7.4	Marina Development Coordination	24												62	\$	12,970.00
	Task Total	54	28	0	0	0	0	0	0	40	0	0	0	294	\$	50,296.00
	Total Labor Hours and Fee	123	199	8	8	222	5	30	10	233	268	30	4	1,570	\$	297,712.00
Reimbursable Direct Non-Salary Costs																
															Mileage at current IRS rate	\$ 100.00
															Utility Locates	\$ 2,000.00
															Total Reimbursable Expense	\$ 2,100.00
															Total Estimated Budget	\$ 299,812.00

HWA Ref: 2022-127
Date: 8-Jul-22
Prepared By: BKH



Project Cost Estimate
S 223rd Street Green Street Planning
Geotechnical Services
Des Moines, Washington

Scope of Work
Coordinate location of drilled boreholes with Client. Prepare Traffic Control Plans and submit to City of Des Moines for approval. This estimate assumes 1-day of drilling (3 or 4 boreholes). Mark location of boreholes and arrange utility locates. Log drilling of 3-4 drilled boreholes to depths of about 20 feet each. Results of the borings to be used for signal pole foundation design, infiltration feasibility, subsurface conditions, depth to groundwater, etc. Create logs of boreholes and assign laboratory testing. Perform engineering analyses related to signal pole foundation design, infiltration feasibility (based on grain size), earthwork considerations, etc. Prepare a draft report presenting the results of the subsurface investigation and our design recommendations. Finalize the report upon receipt of review comments.

ESTIMATED HWA LABOR:

WORK TASK DESCRIPTION	PERSONNEL & 2022 HOURLY RATES						TOTAL HOURS	TOTAL AMOUNT
	Geol. VIII	Engr. VIII	Geol. IV	Engr. IV	Contracts	CAD		
Project Setup/Coordination	\$76.00	\$78.00	\$41.00	\$48.50	\$41.00	\$31.00	\$30.00	\$197
Prepare TCP for Drilled Boreholes & Submit to City		2	4		1			\$164
Mark Exploration Locations & Arrange Utility Locates			4					\$164
Revisit Site to Verify Locates			4					\$164
Log Drilled Borings			10					\$410
Prepare Exploration Logs & Assign Lab Testing		2	4					\$320
Perform Engineering Analyses		2		8				\$544
Prepare Draft Report	2	4		8		2		\$914
Prepare Final Report		2					1	\$186
Consultation / Project Management / QA/QC		2	14	26	16	2	1	\$156
DIRECT SALARY COST:								\$3,219

GEOTECHNICAL LABORATORY TEST SUMMARY:

Test	Est. No. Tests	Unit Cost	Total Cost
Grain Size Distribution	8	\$115	\$920
Grain Size with Hydrometer	4	\$250	\$1,000
Atterberg Limits (plasticity index)	2	\$235	\$470
LABORATORY TOTAL:			\$2,390

ESTIMATED DIRECT EXPENSES:

Mileage	\$150
Drilling Subcontractor	\$5,000
Traffic Control Plans	\$1,000
Traffic Control	\$2,000
Laboratory Testing	\$2,390
TOTAL DIRECT EXPENSES:	\$10,540

PROJECT TOTALS AND SUMMARY:

Direct Salary Cost (DSC)	\$3,219
OH @ 163.00% * DSC	\$5,276
Fee @ 30% * DSC	\$966
Total Labor Costs	\$9,461
Direct Expenses	\$10,540
GRAND TOTAL:	\$20,001

Assumed Conditions:
1. All hours and items are estimated, and may be shifted between tasks within the limits of the total budget at the discretion of HWA's project manager.



Grant to

City of Des Moines

through

The Infrastructure Projects Programs

For

223rd Green Street Planning (Des Moines)

Start date:

July 1, 2021

DRAFT

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FACE SHEET

Grant Number: **22-96515-036**

Project Name: **223rd Green Street Planning (Des Moines)**

**Washington State Department of Commerce
Local Government Division**

1. GRANTEE City of Des Moines 21650 11th Avenue South Des Moines, WA 98198		2. GRANTEE Doing Business As (optional) N/A	
3. GRANTEE Representative Andrew Merges, Public Works Director 21650 11th Avenue South, Des Moines, WA 98198 (206) 870-6523 bstryker@desmoineswa.gov		4. COMMERCE Representative Lena Moore, Grant Manager PO Box 42525, Olympia, WA 98504 (360) 764-0632 lana.moore@commerce.wa.gov	
5. Grant Amount \$299,730.00	6. Funding Source Federal: State: X Other: N/A:	7. Start Date July 1, 2021	8. End Date June 30, 2025, contingent on reappropriation; June 30, 2023 if funds are not reappropriated.
9. Federal Funds (as applicable) N/A		Federal Agency N/A	CFDA Number N/A
10. Tax ID # XXXXXXXXXXXXXX	11. SWV # SWV0000307-00	12. UBI # 601161113	13. DUNS # 079270443
14. Grant Purpose The purpose of this performance-based Grant Agreement is to provide funding for a legislatively approved project that furthers the goals and objectives of the Infrastructure Projects Program as described in Attachment A – Scope of Work (the “Project”).			
COMMERCE, defined as the Washington State Department of Commerce, and the GRANTEE, as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grant Terms and Conditions including Attachment “A” – Scope of Work, Attachment “B” – Certification of Availability of Funds to Complete the Project, Attachment “C” – Certification of the Payment and Reporting of Prevailing Wages, Attachment “D” – Certification of Intent to Enter LEED Process.			
FOR GRANTEE		FOR COMMERCE	
_____ Signature		_____ Mark K. Barkley, Assistant Director Local Government Division	
_____ Print Name		_____ Date	
_____ Title		APPROVED AS TO FORM	
_____ Date		Steve Scheele, Assistant Attorney General	

6/15/2022
Date

Community Assistance and Research Unit

DECLARATIONS

GRANTEE INFORMATION

GRANTEE Name: **City of Des Moines**
Grant Number: 22-96515-036
State Wide Vendor Number: SWV0000307-00

PROJECT INFORMATION

Project Name: **223rd Green Street Planning (Des Moines)**
Project City: Des Moines
Project State: Washington
Project Zip Code: 98198

GRANT AGREEMENT INFORMATION

Grant Amount: **\$299,730.00**
Appropriation Number: SSB 5651 SL Section 1033 (2022 Regular Session)
Re-appropriation Number (if applicable): N/A
Grant End Date: **June 30, 2025, contingent on reappropriation;**
June 30, 2023, if funds are not reappropriated.
Biennium: 2021-2023
Biennium Close Date: June 30, 2023

PROJECT PURPOSE

Project planning, 10 percent phase of preliminary design, and environmental permit identification.

ADDITIONAL SPECIAL TERMS AND CONDITIONS GOVERNING THIS AGREEMENT

Grant End Date: In the event funds for the project are reappropriated, the contract end date will be extended pursuant to the reappropriation and consistent with Special Term and Condition 19. Depending on the reappropriation, a contract amendment may be required.

ADDITIONAL RECITALS

N/A

**SPECIAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS**

THIS GRANT AGREEMENT, entered into by and between the GRANTEE and COMMERCE, as defined on the Face Sheet of this Grant Agreement, WITNESSES THAT:

WHEREAS, COMMERCE has the statutory authority under RCW 43.330.050 (5) to cooperate with and provide assistance to local governments, businesses, and community-based organizations; and

WHEREAS, COMMERCE is also given the responsibility to administer state funds and programs which are assigned to COMMERCE by the Governor or the Washington State Legislature; and

WHEREAS, the Washington State Legislature has made an appropriation to support the Infrastructure Projects Program, and directed COMMERCE to administer those funds; and

WHEREAS, the enabling legislation also stipulates that the GRANTEE is eligible to receive funding for design, acquisition, construction, or rehabilitation.

NOW, THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained, the parties hereto agree as follows:

1. GRANT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Grant.

The Representative for the GRANTEE and their contact information are identified on the Face Sheet of this Grant.

2. COMPENSATION

COMMERCE shall pay an amount not to exceed the awarded Grant Amount as shown on the Face Sheet of this Grant Agreement, for the capital costs necessary for or incidental to the performance of work as set forth in the Scope of Work.

3. CERTIFICATION OF FUNDS PERFORMANCE MEASURES

A. The release of state funds under this Grant Agreement is contingent upon the GRANTEE certifying that it has expended or has access to funds from non-state sources as set forth in ATTACHMENT B (CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT), hereof. Such non-state sources may consist of a combination of any of the following:

- i) Eligible Project expenditures prior to the execution of this Grant Agreement.
- ii) Cash dedicated to the Project.
- iii) Funds available through a letter of credit or other binding loan commitment(s).
- iv) Pledges from foundations or corporations.
- v) Pledges from individual donors.
- vi) The value of real property when acquired solely for the purposes of this Project, as established and evidenced by a current market value appraisal performed by a licensed, professional real estate appraiser, or a current property tax statement. COMMERCE will not consider appraisals for prospective values of such property for the purposes of calculating the amount of non-state matching fund credit.
- vii) In-kind contributions, subject to COMMERCE'S approval.

- B. The GRANTEE shall maintain records sufficient to evidence that it has access to or has expended funds from such non-state sources, and shall make such records available for COMMERCE's review upon reasonable request.

4. PREVAILING WAGE LAW

The Project funded under this Grant may be subject to state prevailing wage law (Chapter 39.12 RCW). The GRANTEE is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine whether prevailing wages must be paid. COMMERCE is not responsible for determining whether prevailing wage applies to this Project or for any prevailing wage payments that may be required by law.

5. DOCUMENTATION AND SECURITY

The provisions of this section shall apply to capital projects performed by nonprofit organizations and public benefit corporations that involve the expenditure of over \$250,000.00 in state funds. Additionally, Commerce reserves the right to review all state-funded projects and to require that projects performed by other entity types comply with this section. Projects for which the grant award or legislative intent documents specify that the state funding is to be used for design only are exempt from this section.

- A. Deed of Trust. This Grant shall be evidenced by a promissory note and secured by a deed of trust or other appropriate security instrument in favor of COMMERCE (the "Deed of Trust"). The Deed of Trust shall be recorded in the County where the Project is located, and the original returned to COMMERCE after recordation within ninety (90) days of Grant Agreement execution. The Deed of Trust must be recorded before COMMERCE will reimburse the GRANTEE for any Project costs. The amount secured by the Deed of Trust shall be the amount of the Grant as set forth on the Face Sheet, hereof.
- B. Term of Deed of Trust. The Deed of Trust shall remain in full force and effect for a minimum period of ten (10) years following the later of: (1) final payment of state funds to the GRANTEE under this grant; or (2) the date when the facility improved or acquired with grant funds, or a distinct phase of the project, is made useable to the public for the purpose intended by the Legislature. Upon satisfaction of the ten-year term requirement and all other grant terms and conditions, COMMERCE shall, upon written request of the GRANTEE, take appropriate action to reconvey the Deed of Trust.
- C. Title Insurance. The GRANTEE shall purchase an extended coverage lender's policy of title insurance insuring the lien position of the Deed of Trust in an amount not less than the amount of the grant.
- D. Covenant. If the project will be partially funded by a loan and the term of said loan is less than the commitment period under this grant contract, COMMERCE may require that GRANTEE record or cause to be recorded a covenant in a superior lien position ahead of the lender's security instrument that restricts use of the facility or property for the purpose(s) stated elsewhere in this contract for at least the term of the commitment period
- E. Subordination. COMMERCE may agree to subordinate its deed of trust upon request from a private or public lender. Any such request shall be submitted to COMMERCE in writing, and COMMERCE shall respond to the request in writing within thirty (30) days of receiving the request.

6. BASIS FOR ESTABLISHING REAL PROPERTY VALUES FOR ACQUISITIONS OF REAL PROPERTY PERFORMANCE MEASURES

When all or part of the grant is used to fund the acquisition of real property, before funds are disbursed, the GRANTEE shall procure and provide to COMMERCE evidence establishing the value of the real property eligible for reimbursement:

- A. GRANTEE purchases of real property from an independent third-party seller shall be evidenced by a current appraisal prepared by a licensed Washington State commercial real estate appraiser, or a current property tax statement.
- B. GRANTEE purchases of real property from a subsidiary organization, such as an affiliated LLC, shall be evidenced by a current appraisal prepared by a licensed Washington State

commercial real estate appraiser or the prior purchase price of the property plus holding costs, whichever is less.

7. EXPENDITURES ELIGIBLE FOR REIMBURSEMENT

Payments to the Grantee shall be made on a reimbursement basis only. The GRANTEE may be reimbursed for the following eligible costs related to the activities identified in the SCOPE OF WORK shown on Attachment A.

- A. Real property, and costs directly associated with such purchase, when purchased or acquired solely for the purposes of the Project;
- B. Design, engineering, architectural, and planning;
- C. Construction management and observation (from external sources only);
- D. Construction costs including, but not limited to, the following:
 - Site preparation and improvements;
 - Permits and fees;
 - Labor and materials;
 - Taxes on Project goods and services;
 - Capitalized equipment;
 - Information technology infrastructure; and
 - Landscaping.
- F. Other costs authorized through the legislation.

8. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the GRANTEE for eligible Project expenditures, up to the maximum payable under this Grant Agreement. When requesting reimbursement for expenditures made, the GRANTEE shall submit to COMMERCE a signed and completed Invoice Voucher (Form A-19), that documents capitalized Project activity performed for the billing period. The GRANTEE can submit all Invoice Vouchers and any required documentation electronically through COMMERCE's Contracts Management System (CMS), which is available through the Secure Access Washington (SAW) portal.

The GRANTEE shall evidence the costs claimed on each voucher by including copies of each invoice received from vendors providing Project goods or services covered by the Grant Agreement. The GRANTEE shall also provide COMMERCE with a copy of the cancelled check or electronic funds transfer, as applicable, that confirms that they have paid each expenditure being claimed. The cancelled checks or electronic funds transfers may be submitted to COMMERCE at the time the voucher is initially submitted, or within thirty (30) days thereafter.

The voucher must be certified (signed) by an official of the GRANTEE with authority to bind the GRANTEE. The final voucher shall be submitted to COMMERCE within sixty (60) days following the completion of work or other termination of this Grant Agreement, or within fifteen (15) days following the end of the state biennium unless Grant Agreement funds are reappropriated by the Legislature in accordance with Section 19, hereof.

If GRANTEE has or will be submitting any of the invoices attached to a request for payment for partial reimbursement under another grant contract, GRANTEE must clearly identify such grant contracts in the transmittal letter and request for payment.

Each request for payment must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the Project since the last invoice was submitted, as well as a report of Project status to date. COMMERCE will not release payment for any reimbursement request received unless and until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, COMMERCE shall promptly remit a warrant to the GRANTEE.

COMMERCE will pay GRANTEE upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE **not more often than monthly**.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the GRANTEE.

COMMERCE may, in its sole discretion, terminate the Grant or withhold payments claimed by the GRANTEE for services rendered if the GRANTEE fails to satisfactorily comply with any term or condition of this Grant.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Duplication of Billed Costs

The GRANTEE shall not bill COMMERCE for services performed under this Grant Agreement, and COMMERCE shall not pay the GRANTEE, if the GRANTEE is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The GRANTEE is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subgrantees.

9. SUBCONTRACTOR DATA COLLECTION

GRANTEE will submit reports, in a form and format to be provided by COMMERCE and at intervals as agreed by the parties, regarding work under this Grant performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

10. CERTIFIED PROJECT COMPLETION REPORT AND FINAL PAYMENT

The GRANTEE shall complete a Certified Project Completion Report when activities identified in the SCOPE OF WORK shown on Attachment A are complete.

The GRANTEE shall provide the following information to COMMERCE:

- A. A certified statement that the Project, as described in the SCOPE OF WORK shown on Attachment A, is complete and, if applicable, meets required standards.
- B. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the project as described in the SCOPE OF WORK shown on Attachment A.
- C. Certification that all costs associated with the Project have been incurred and accounted for. Costs are incurred when goods and services are received and/or Grant work is performed.
- D. A final voucher for the remaining eligible funds, including any required documentation.

The GRANTEE will submit the Certified Project Completion Report together with the last Invoice Voucher for a sum not to exceed the balance of the Grant Amount.

11. INSURANCE

A. Insurance Requirements for Reimbursable Activities

The GRANTEE will maintain appropriate insurance coverage throughout any period in which reimbursable activities are conducted. The intent of the required insurance is to protect the state of Washington should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the GRANTEE, or Subgrantee, or agents of either, while performing under the terms of this Grant.

B. Additional Insurance Requirements During the Term of the Grant

The GRANTEE shall provide proof to COMMERCE of the following insurance coverage as applicable:

Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability related to this Grant but no less than \$1,000,000 per occurrence. Additionally, the GRANTEE is responsible for ensuring that any Subgrantee/subcontractor provide adequate insurance coverage for the activities arising out of subgrants/subcontracts. Commercial General Liability Insurance coverage shall be maintained in full force and effect during the term of this Grant and throughout the commitment period described in Special Terms and Conditions Section 5, 15, and 16.

Property Insurance. The GRANTEE shall keep the property insured in an amount sufficient to permit such insurance to be written at all times on a replacement cost basis. Such insurance shall cover the following hazards, as applicable:

- Loss or damage by fire and such other risks;
- Loss or damage from leakage or sprinkler systems now or hereafter installed in any building on the premises;
- Loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed in a building or building on the premises.

Property Insurance coverage shall be maintained in full force and effect during the term of this Grant and throughout the commitment period described in Special Terms and Conditions Section 5, 15, and 16.

Professional Liability, Errors and Omissions Insurance. If GRANTEE will be providing any professional services to be reimbursed under this Grant, the GRANTEE shall maintain Professional Liability or Errors and Omissions Insurance with minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the GRANTEE and licensed staff employed or under contract to the GRANTEE. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the GRANTEE for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Grant shall be \$2,000,000 or the highest of planned reimbursement for the Grant period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.
- B. Subgrantees/subcontractors that receive \$10,000 or more per year in funding through this Grant shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantees/subcontractors pursuant to this paragraph shall name the GRANTEE and the GRANTEE's fiscal agent as beneficiary.
- C. Fidelity Insurance coverage shall be maintained in full force and effect during the term of this Grant.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. The insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The GRANTEE shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation or modification.

The GRANTEE shall provide to COMMERCE copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

During the term of the Grant, the GRANTEE shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

Professional Liability, Errors and Omissions Insurance. The GRANTEE shall require that any contractors providing professional services that are reimbursable under this Grant maintain Professional Liability or Errors and Omissions Insurance. The GRANTEE shall require such contractors to maintain minimum limits of no less than \$1,000,000 per occurrence. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under these policies.

GRANTEES and Local Governments that Participate in a Self-Insurance Program.

Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from COMMERCE, the GRANTEE may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the GRANTEE shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. GRANTEE's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The state of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

GRANTEE shall provide annually to COMMERCE a summary of coverages and a letter of self insurance, evidencing continued coverage under GRANTEE's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self insurance will be provided on the anniversary of the start date of this Agreement.

12. ORDER OF PRECEDENCE

In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Declarations page of this Grant Agreement
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Certification of the Availability of Funds to Complete the Project
- Attachment C – Certification of the Payment and Reporting of Prevailing Wages
- Attachment D – Certification of Intent to Enter the Leadership in Energy and Environmental Design (LEED) Certification Process

13. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this Grant Agreement are withdrawn, reduced, or limited in any way by the Governor or the Washington State Legislature during the Grant Agreement period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of COMMERCE, and shall meet and renegotiate the Grant Agreement accordingly.

14. OWNERSHIP OF PROJECT/CAPITAL FACILITIES

COMMERCE makes no claim to any real property improved or constructed with funds awarded under this Grant Agreement and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this Grant Agreement; provided, however, that COMMERCE may be granted a security interest in real property, to secure funds awarded under this Grant Agreement. This provision does not extend to claims that COMMERCE may bring against the GRANTEE in recapturing funds expended in violation of this Grant Agreement.

15. CHANGE OF OWNERSHIP OR USE FOR GRANTEE-OWNED PROPERTY

- A.** The GRANTEE understands and agrees that any and all real property or facilities owned by the GRANTEE that are acquired, constructed, or otherwise improved by the GRANTEE using state funds under this Grant Agreement, shall be held and used by the GRANTEE for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least ten (10) years from the later of: (1) the date the final payment is made hereunder; or (2) the date when the facility improved or acquired with grant funds, or a distinct phase of the project, is made useable to the public for the purpose intended by the Legislature.
- B.** This provision shall not be construed to prohibit the GRANTEE from selling any property or properties described in this section; Provided, that any such sale shall be subject to prior review and approval by COMMERCE, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this Grant Agreement.
- C.** In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 50 (Recapture provision).

16. CHANGE OF USE FOR LEASED PROPERTY PERFORMANCE MEASURE

- A.** The GRANTEE understands and agrees that any facility leased by the GRANTEE that is constructed, renovated, or otherwise improved using state funds under this Grant Agreement shall be used by the GRANTEE for the purpose or purposes stated elsewhere in this Grant Agreement for a period of at least ten (10) years from the later of: (1) the date the final payment is made hereunder; or (2) the date when the facility improved or acquired with grant funds, or a distinct phase of the project, is made useable to the public for the purpose intended by the Legislature.
- B.** In the event the GRANTEE is found to be out of compliance with this section, the GRANTEE shall repay to the state general fund the principal amount of the grant as stated on the Face Sheet, hereof, plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 50 (Recapture Provision).

17. SIGNAGE, MARKERS AND PUBLICATIONS

If, during the period covered by this Grant Agreement, the GRANTEE displays or circulates any communication, publication, or donor recognition identifying the financial participants in the Project, any such communication or publication must identify "The Taxpayers of Washington State" as a participant.

18. HISTORICAL AND CULTURAL ARTIFACTS

Prior to approval and disbursement of any funds awarded under this Contract, GRANTEE shall cooperate with COMMERCE to complete the requirements of Governor's Executive Order 21-02 or GRANTEE shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. GRANTEE agrees that the GRANTEE is legally and financially responsible for compliance

with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, GRANTEE shall, in accordance with Governor's Executive Order 21-02 as applicable, coordinate with Commerce and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by Project. GRANTEE agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The GRANTEE agrees that, unless the GRANTEE is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the GRANTEE shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the Commerce Representative identified on the Face Sheet. If human remains are uncovered, the GRANTEE shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The GRANTEE shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in this Contract, GRANTEE agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 21-02.

In the event that the GRANTEE finds it necessary to amend the Scope of Work the GRANTEE may be required to re-comply with Governor's Executive Order 21-02, or Section 106 of the National Historic Preservation Act.

19. REAPPROPRIATION

- A. The parties hereto understand and agree that any state funds not expended by the BIENNIUM CLOSE DATE listed on the Declarations page will lapse on that date unless specifically reappropriated by the Washington State Legislature. If funds are so reappropriated, the state's obligation under the terms of this Grant Agreement shall be contingent upon the terms of such reappropriation.
- B. In the event any funds awarded under this Grant Agreement are reappropriated for use in a future biennium, COMMERCE reserves the right to assign a reasonable share of any such reappropriation for administrative costs.

20. TERMINATION FOR FRAUD OR MISREPRESENTATION

In the event the GRANTEE commits fraud or makes any misrepresentation in connection with the Grant application or during the performance of this Grant Agreement, COMMERCE reserves the right to terminate or amend this Grant Agreement accordingly, including the right to recapture all funds disbursed to the GRANTEE under the Grant.

21. APPLICABILITY OF COPYRIGHT PROVISIONS TO ARCHITECTURAL/ENGINEERING DESIGN WORK

The "Copyright Provisions", Section 36 of the General Terms and Conditions, are not intended to apply to any architectural and engineering design work funded by this grant.

22. FRAUD AND OTHER LOSS REPORTING

Contractor/Grantee shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Contract immediately or as soon as practicable to the Commerce Representative identified on the Face Sheet.

23. PUBLIC RECORDS ACT

Notwithstanding General Terms and Conditions Section 34, COMMERCE is a public agency subject to the Public Records Act, Chapter 42.56 RCW (the "PRA"). Under the PRA, all materials relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by COMMERCE or its functional equivalents are considered public records. The PRA requires that public records responsive to a public records request be promptly produced unless the PRA or an "other statute" exempts such records from production. This Agreement is not intended to alter COMMERCE's obligations under the PRA. The parties agree that if COMMERCE receives a public records request for files that may include confidential information under General Terms and Conditions Section 34, COMMERCE will notify the other party of the request and of the date that the records will be released to the requester unless GRANTEE obtains a court order enjoining disclosure. If the GRANTEE fails to obtain the court order enjoining disclosure, COMMERCE may release the requested information on the date specified. If the GRANTEE obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to the PRA, COMMERCE shall maintain the confidentiality of the information per the court order.

GENERAL TERMS AND CONDITIONS
GENERAL GRANT
STATE FUNDS

24. DEFINITIONS

As used throughout this Grant, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "GRANTEE" shall mean the entity identified on the Face Sheet performing service(s) under this Grant, and shall include all employees and agents of the GRANTEE.
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subgrantee/subcontractor" shall mean one not in the employment of the GRANTEE, who is performing all or part of those services under this Grant under a separate Grant with the GRANTEE. The terms "subgrantee/subcontractor" refers to any tier.
- G. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
- H. "Vendor" is an entity that agrees to provide the amount and kind of services requested by COMMERCE; provides services under the grant only to those beneficiaries individually determined to be eligible by COMMERCE and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.
- I. "Grant" and "Agreement" and "Contract" shall mean the entire written agreement between COMMERCE and the GRANTEE, including any attachments, exhibits, documents, or materials incorporated by reference, and any amendments executed by the parties.

25. ACCESS TO DATA

In compliance with RCW 39.26.180, the GRANTEE shall provide access to data generated under this Grant to COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the GRANTEE's reports, including computer models and the methodology for those models.

26. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Grant shall be made by COMMERCE.

27. ALL WRITINGS CONTAINED HEREIN

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

28. AMENDMENTS

This Grant 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.

29. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE “ADA” 28 CFR PART 35

The GRANTEE must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

30. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the GRANTEE without prior written consent of COMMERCE.

31. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorney's fees and costs.

32. AUDIT

A. General Requirements

COMMERCE reserves the right to require an audit. If required, GRANTEEs are to procure audit services based on the following guidelines.

The GRANTEE shall maintain its records and accounts so as to facilitate audits and shall ensure that subgrantees also maintain auditable records.

The GRANTEE is responsible for any audit exceptions incurred by its own organization or that of its subgrantees.

COMMERCE reserves the right to recover from the GRANTEE all disallowed costs resulting from the audit.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The GRANTEE must respond to COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds Requirements

In the event an audit is required, if the GRANTEE is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the GRANTEE.

The GRANTEE shall include the above audit requirements in any subcontracts.

In any case, the GRANTEE's records must be available for review by COMMERCE.

C. Documentation Requirements

The GRANTEE must send a copy of the audit report described above no later than nine (9) months after the end of the GRANTEE's fiscal year(s) by sending a scanned copy to comacctoffice@commerce.wa.gov or a hard copy to:

Department of Commerce
ATTN: Audit Review and Resolution Office
1011 Plum Street SE
PO Box 42525
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the GRANTEE must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.

If the GRANTEE is required to obtain a Single Audit consistent with Circular A-133 requirements, a copy must be provided to COMMERCE; no other report is required.

33. BREACHES OF OTHER STATE CONTRACTS

GRANTEE is expected to comply with all other contracts executed between GRANTEE and the State of Washington. A breach of any other agreement entered into between GRANTEE and the State of Washington may, in COMMERCE's discretion, be deemed a breach of this Agreement.

34. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A.** "Confidential Information" as used in this section includes:
1. All material provided to the GRANTEE by COMMERCE that is designated as "confidential" by COMMERCE;
 2. All material produced by the GRANTEE that is designated as "confidential" by COMMERCE; and
 3. All personal information in the possession of the GRANTEE that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B.** The GRANTEE shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The GRANTEE shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The GRANTEE shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the GRANTEE shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The GRANTEE shall make the changes within the time period specified by COMMERCE. Upon request, the GRANTEE shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the GRANTEE against unauthorized disclosure.
- C.** Unauthorized Use or Disclosure. The GRANTEE shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

35. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, COMMERCE may, in its sole discretion, by written notice to the GRANTEE terminate this Grant Agreement if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the GRANTEE in the procurement of, or performance under this Grant Agreement.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The GRANTEE and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on this Grant, or any matter related to the project funded under this Grant or any other state funded project, including but not limited to formulating or drafting legislation, participating in grant procurement, planning and

execution, awarding grants, or monitoring grants, during the 24 month period preceding the start date of this Grant. Any person identified by the GRANTEE and their subcontractors(s) must be identified individually by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the GRANTEE may be disqualified from further consideration for the award of a Grant.

In the event this Grant Agreement is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the GRANTEE as it could pursue in the event of a breach of the Grant Agreement by the GRANTEE. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Grant Agreement.

36. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the GRANTEE hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the GRANTEE hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The GRANTEE warrants and represents that the GRANTEE has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The GRANTEE shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The GRANTEE shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the GRANTEE with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the GRANTEE.

37. DISPUTES

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the GRANTEE's name, address, and Grant number; and
- be mailed to the Director and the other party's (respondent's) Grant Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Grant shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

38. DUPLICATE PAYMENT

COMMERCE shall not pay the GRANTEE, if the GRANTEE has charged or will charge the State of Washington or any other party under any other Grant, subgrant/subcontract, or agreement, for the same services or expenses. The GRANTEE certifies that work to be performed under this contract does not duplicate any work to be charged against any other grant, subgrant/subcontract, or agreement.

39. GOVERNING LAW AND VENUE

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

40. INDEMNIFICATION

To the fullest extent permitted by law, the GRANTEE shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The GRANTEE's obligation to indemnify, defend, and hold harmless includes any claim by GRANTEE's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

GRANTEE expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to GRANTEE'S or any subgrantee's/subcontractor's performance or failure to perform the Grant. GRANTEE'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The GRANTEE waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

41. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent contractor relationship will be created by this Grant. The GRANTEE and its employees or agents performing under this Grant Agreement are not employees or agents of the state of Washington or COMMERCE. The GRANTEE will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the GRANTEE make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the GRANTEE.

42. INDUSTRIAL INSURANCE COVERAGE

The GRANTEE shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the GRANTEE fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the GRANTEE the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the GRANTEE to the accident fund from the amount payable to the GRANTEE by COMMERCE under this Grant Agreement, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the GRANTEE.

43. LAWS

The GRANTEE shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended.

44. LICENSING, ACCREDITATION AND REGISTRATION

The GRANTEE shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Grant Agreement.

45. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant Agreement. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Grant Agreement is not effective or binding unless made in writing and signed by the Authorized Representative.

46. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the GRANTEE shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the GRANTEE's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the GRANTEE may be declared ineligible for further Grants with COMMERCE. The GRANTEE shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein. The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

47. PAY EQUITY

The GRANTEE agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- a. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- b. GRANTEE may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
 - (ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
 - (iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Grant Agreement may be terminated by COMMERCE, if COMMERCE or the Department of Enterprise services determines that the GRANTEE is not in compliance with this provision.

48. POLITICAL ACTIVITIES

Political activity of GRANTEE employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17a RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

49. PUBLICITY

The GRANTEE agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

50. RECAPTURE

In the event that the GRANTEE fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the GRANTEE of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Grant.

51. RECORDS MAINTENANCE

The GRANTEE shall maintain books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Grant.

GRANTEE shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Grant, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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.

52. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the GRANTEE shall complete registration with the Washington State Department of Revenue.

53. RIGHT OF INSPECTION

At no additional cost, the GRANTEE shall provide right of access to its facilities to COMMERCE, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Grant.

54. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, COMMERCE may terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day notice

requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

55. SEVERABILITY

The provisions of this Grant are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Grant.

56. SITE SECURITY

While on COMMERCE premises, GRANTEE, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

57. SUBGRANTING/SUBCONTRACTING

Neither the GRANTEE nor any subgrantee/subcontractor shall enter into subgrants/subcontracts for any of the work contemplated under this Grant Agreement without obtaining prior written approval of COMMERCE. In no event shall the existence of the subgrant/subcontract operate to release or reduce the liability of the GRANTEE to COMMERCE for any breach in the performance of the GRANTEE's duties. This clause does not include Grants of employment between the GRANTEE and personnel assigned to work under this Grant.

Additionally, the GRANTEE is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subgrants/subcontracts. Every subgrant/subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a subgrantee's/subcontractor's performance of the subgrant/subcontract. GRANTEE and its subgrantees/subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of COMMERCE or as provided by law.

58. SURVIVAL

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

59. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the GRANTEE's income or gross receipts, any other taxes, insurance or expenses for the GRANTEE or its staff shall be the sole responsibility of the GRANTEE.

60. TERMINATION FOR CAUSE

In the event COMMERCE determines the GRANTEE has failed to comply with the conditions of this Grant in a timely manner, COMMERCE has the right to suspend or terminate this Grant. Before suspending or terminating the Grant, COMMERCE shall notify the GRANTEE in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Grant may be terminated or suspended.

In the event of termination or suspension, the GRANTEE shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Grant and the replacement or cover Grant and all administrative costs directly related to the replacement Grant, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the Grant, withhold further payments, or prohibit the GRANTEE from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the GRANTEE or a decision by COMMERCE to terminate the Grant. A termination shall be deemed a "Termination for Convenience"

if it is determined that the GRANTEE: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this Grant are not exclusive and are, in addition to any other rights and remedies, provided by law.

61. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Grant, COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Grant, in whole or in part. If this Grant is so terminated, COMMERCE shall be liable only for payment required under the terms of this Grant for services rendered or goods delivered prior to the effective date of termination.

62. TERMINATION PROCEDURES

Upon termination of this Grant, COMMERCE, in addition to any other rights provided in this Grant, may require the GRANTEE to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this Grant as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the GRANTEE the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the GRANTEE and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AUTHORIZED REPRESENTATIVE shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Grant. COMMERCE may withhold from any amounts due the GRANTEE such sum as the AUTHORIZED REPRESENTATIVE determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Grant Agreement.

After receipt of a notice of termination, and except as otherwise directed by the AUTHORIZED REPRESENTATIVE, the GRANTEE shall:

1. Stop work under the Grant on the date, and to the extent specified, in the notice;
2. Place no further orders or subgrants/subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Grant that is not terminated;
3. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the AUTHORIZED REPRESENTATIVE, all of the rights, title, and interest of the GRANTEE under the orders and subgrants/subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants/subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AUTHORIZED REPRESENTATIVE to the extent AUTHORIZED REPRESENTATIVE may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the AUTHORIZED REPRESENTATIVE any property which, if the Grant had been completed, would have been required to be furnished to COMMERCE;
6. Complete performance of such part of the work as shall not have been terminated by the AUTHORIZED REPRESENTATIVE; and
7. Take such action as may be necessary, or as the AUTHORIZED REPRESENTATIVE may direct, for the protection and preservation of the property related to this Grant, which is in the possession of the GRANTEE and in which COMMERCE has or may acquire an interest.

63. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the GRANTEE, for the cost of which the GRANTEE is entitled to be reimbursed as a direct item of cost under this Grant, shall pass to and vest in COMMERCE upon delivery of such property by the GRANTEE. Title to other property, the cost of which is reimbursable to the GRANTEE under this Grant, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the GRANTEE shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this Grant.
- B. The GRANTEE shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the GRANTEE or which results from the failure on the part of the GRANTEE to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the GRANTEE shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The GRANTEE shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant

All reference to the GRANTEE under this clause shall also include GRANTEE'S employees, agents or subgrantees/subcontractors.

64. WAIVER

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 Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

ATTACHMENT A - SCOPE OF WORK

Funds awarded under this grant will be used for capital expenditures for the 223rd Green Street Planning project. Funds will be used for project planning, 10 percent phase of preliminary design, and environmental permit identification. Information gathered from the planning phase will assist the city in securing design and construction funding for “complete streets” corridor improvements along South 223rd Street to improve pedestrian experience and vehicular access in the downtown area while improving water quality of Puget Sound.

The location of the project is: 618 S 223rd Street between Cliff Ave S and Marine View Dr. S, Des Moines, WA 98198.

Project activities will include and not be limited to: • Planning and Preliminary Design

This project will begin November 2022 and is expected to be complete by June 2023.

Costs related to the work will only be reimbursed to the extent the work is determined by Commerce to be within the scope of the legislative appropriation.

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE’s governing body as of the date and year written below.

GRANTEE

TITLE

DATE

ATTACHMENT B - CERTIFICATION OF THE AVAILABILITY OF FUNDS TO COMPLETE THE PROJECT

Type of Funding	Source Description	Amount
Grant	Washington State Department of Commerce	\$299,730.00
Other Grants		
Grant #1		\$
Grant #2		\$
Total Other Grants		\$0.00
Other Loans		
Loan #1		\$
Loan #2		\$
Total Loans		\$0.00
Other Local Revenue		
Source #1		\$
Total Local Revenue		\$0.00
Other Funds		
Source #1		\$
Source #2		\$
Total Other Funds	REET	\$12,270.00
Total Project Funding		\$312,000.00

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that project funding from sources other than those provided by this Grant Agreement and identified above has been reviewed and approved by the GRANTEE's governing body or board of directors, as applicable, and has either been expended for eligible Project expenses, or is committed in writing and available and will remain committed and available solely and specifically for carrying out the purposes of this Project as described in elsewhere in this Grant Agreement, as of the date and year written below. The GRANTEE shall maintain records sufficient to evidence that it has expended or has access to the funds needed to complete the Project, and shall make such records available for COMMERCE's review upon reasonable request.

GRANTEE

TITLE

DATE

ATTACHMENT C- CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that all contractors and subcontractors performing work on the Project shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable on the date the appropriation becomes effective, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The GRANTEE shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

If any state funds are used by the GRANTEE for the purpose of construction, applicable State Prevailing Wages must be paid.

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body as of the date and year written below.

GRANTEE

TITLE

DATE

ATTACHMENT D - CERTIFICATION OF INTENT TO ENTER THE LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) CERTIFICATION PROCESS

CERTIFICATION PERFORMANCE MEASURE

The GRANTEE, by its signature, certifies that it will enter into the Leadership in Energy and Environmental Design certification process, as stipulated in RCW 39.35D, as applicable to the Project funded by this Grant Agreement. The GRANTEE shall, upon receipt of LEED certification by the United States Green Building Council, provide documentation of such certification to COMMERCE.

The GRANTEE, by its signature, certifies that the declaration set forth above has been reviewed and approved by the GRANTEE's governing body or board of directors, as applicable, as of the date and year written below.

IF EXEMPT: DO NOT SIGN

GRANTEE

TITLE

DATE

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CITY OF DES MOINES
2023-2028 CAPITAL IMPROVEMENT PLAN
(Amount in Thousands)

S 223rd St Complete Street Impr

Project #
Previous Project #

TRCIPM26

CIP Category: Transportation - Capital Projects

Managing Department: Plan, Build & PW Admin

Justification/Benefits: 0

Summary Project Description:
A portion of S 223rd St will be re-developed to include water quality and pedestrian improvements that increase connectivity between downtown and the Marina while improving the water quality of stormwater as it runs into Puget Sound.

PROJECT SCOPE				ANNUAL ALLOCATION							
Expenditures	Current Budget	Requested Change	Total Budget	Project to Date 12/31/21	Scheduled Year 2022	Plan Year 2023	Plan Year 2024	Plan Year 2025	Plan Year 2026	Plan Year 2027	Plan Year 2028
Design	-	312	312	-	150	162	-	-	-	-	-
Land & Right of Way	-	-	-	-	-	-	-	-	-	-	-
Construction	-	-	-	-	-	-	-	-	-	-	-
Contingency	-	-	-	-	-	-	-	-	-	-	-
Total Expenditures	-	312	312	-	150	162	-	-	-	-	-
Funding Sources				Project to Date 12/31/21	Scheduled Year 2022	Plan Year 2023	Plan Year 2024	Plan Year 2025	Plan Year 2026	Plan Year 2027	Plan Year 2028
REET 1	-	12	12	-	-	12	-	-	-	-	-
WA Dept of Commerce	-	300	300	-	150	150	-	-	-	-	-
Total Funding	-	312	312	-	150	162	-	-	-	-	-
Funding Shortfall/Excess	-	-	-	-	-	-	-	-	-	-	-
OPERATING IMPACT				12/31/21	2022	2023	2024	2025	2026	2027	2028
Revenue	-	-	-	-	-	-	-	-	-	-	-
Expenses	-	-	-	-	-	-	-	-	-	-	-
Net Impact	-	-	-	-	-	-	-	-	-	-	-

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Massey Creek Pocket Estuary Project:
Engineering Services Agreement

AGENDA OF: December 8th, 2022

DEPT. OF ORIGIN: Public Works

ATTACHMENTS:

DATE SUBMITTED: November 30th, 2022

1. Parametrix Inc., 2022-2023 On-Call
General Civil Engineering Services Task
Assignment 2022-06
2. 2022 – 2027 SWM CIP Project Worksheet

CLEARANCES:

- City Clerk _____
- Community Development _____
- Courts _____
- Director of Marina Redevelopment _____
- Emergency Management _____
- Finance *Bethanne W. Price*
- Human Resources _____
- Legal */s/ TG*
- Marina _____
- Police _____
- Parks, Recreation & Senior Services _____
- Public Works *Richard Hayes*

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

Purpose and Recommendation

The purpose of this agenda item seeks City Council approval of the 2022-2023 On-Call General Civil Engineering Services Task Assignment 2022-06 with Parametrix Inc. (Attachment 1), to provide preliminary engineering and permitting services on the Massey Creek Pocket Estuary Project. The following motion will appear on the Consent Agenda:

Suggested Motion

Motion 1: "I move to approve the 2022-2023 On-Call General Civil Engineering Task Assignment 2022-06 with Parametrix Inc., to provide preliminary engineering and permitting services for the Massey Creek Pocket Estuary Project in the amount of \$201,816.84, and further authorize the City Manager to sign said Task Assignment substantially in the form as submitted."

Background

The Massey Creek Estuary Project is the next project following a host of drainage basin-wide improvements that have been completed over the last 20 years. The City has improved the Massey Creek/Barnes Creek drainage basin by installing new habitat and detention facilities to reduce flooding in the lower reaches of Massey Creek, and improving fish passage culverts throughout the drainage basin. Currently scheduled for construction in 2023, is the replacement of the Barnes Creek Culvert below State Route 516, in partnership with the Washington State Department of Transportation (WSDOT).

The Green/Duwamish and Central Puget Sound Watershed's (WRIA 9) Salmon Habitat Plan identifies the Massey Creek Pocket Estuary Project as a salmon-recovery capital project that is in alignment with regional Chinook salmon recovery goals. Project goals within the estuary include restoring and securing access to the stream, creating safe fish passage, removing the jetty and rock from the south bank, and creating a pocket estuary.

City staff applied for a King County Flood Reduction Grant in the summer of 2021 and the Massey Creek Pocket Estuary Project was awarded grant funding in the amount of \$365,000. The Agreement for Award of Flood Reduction Grant Funds was approved by the City Council at its October 21, 2021 meeting.

Discussion

The Massey Creek Pocket Estuary Project initial scoping considerations removing 300 feet of rock lined stream bank and a small jetty, addressing two box culverts identified as fish barriers, and creating a pocket estuary at the mouth of the creek. These actions are consistent with the salmon recovery goals set by WRIA 9.

The proposed task assignment with Parametrix includes the development and evaluation of three alternative conceptual layouts for re-establishing a pocket estuary for Massey Creek, providing a preliminary 10% design of the preferred alternative, topographic survey mapping, and an Engineer's Opinion of Probable Cost. Parametrix will also work with a host of sub-consultants to provide preliminary cultural resources support, coastal engineering support, and environmental permit identification.

Alternatives

The City Council could elect not to approve the 2022-2023 On-Call General Civil Engineering Services Task Assignment 2022-06 with Parametrix Inc. for preliminary engineering and permitting services. The City does not have adequate resources to complete the preliminary project engineering and permitting internally. This will cause project delay as well as jeopardize current and future King County Flood Reduction Grant funding opportunities.

Financial Impact

The City's CIP Budget includes revenues to achieve full project funding for this Consultant Services Contract (Attachment 2). Specifically, the awarded Flood Reduction Grant will fully fund this phase of the project. Remaining grant funds will be utilized to support future project phases of work.

Recommendation

Staff recommends adoption of the motion.

Council Committee Review

Not applicable.



FORMAL TASK ASSIGNMENT DOCUMENT

Task Number TA 2022-06

The general provisions and clauses of Agreement Consultant Services Contract between the City of Des Moines and Parametrix, Inc. for 2022-2023 On-Call General Civil Engineering Svcs.

Shall be in full force and effect for this Task Assignment.

Location of Project: Massey Creek, Des Moines, WA 98198

Project Title: Massey Creek Pocket Estuary

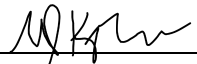
Maximum Amount Payable Per Task Assignment: \$201,816.84

Completion Date: November 30, 2023

Description of Work: See attached Scope of Work and Budget Estimate.

Agency Project Manager Signature: _____ Date: _____

Oral Authorization Date: _____ See Attachment Dated: _____

Consultant Signature:  Date: 11/9/2022

Agency Approving Authority: _____ Date: _____

SCOPE OF WORK

City of Des Moines Massey Creek Pocket Estuary

INTRODUCTION

The City of Des Moines (City) has requested that Parametrix assist the City with the development and evaluation of three (3) alternative concepts for re-establishing a pocket estuary for Massey Creek. This initial scope of services will include a preliminary (10%) design for the selected alternative, topographic survey mapping, and an Opinion of Cost. Parametrix will also work with our teaming partners to begin preliminary supporting documentation that will be needed for future phases of work including cultural resources support, coastal engineering support, and environmental permit identification.

Future phases of work may include grant support, final design, permitting, and construction support.

TASK 01 – TASK MANAGEMENT

Subtask 0101 – Task Management

Objectives

The objective of this task is to provide overall task management of the consultant contract with the City.

This task includes general management functions that include the following:

- Project Planning – Document and communicate the scope of work, budget, and schedule as a road map for the project team. Coordinate project team and issues throughout the project.
- Budget and Schedule Tracking – Track the project budget using Parametrix in-house tools to verify that progress is keeping pace with spending.
- Bi-weekly design team meetings with an issues list to document project design decisions.
- Monthly Progress Reports – Prepare a monthly invoice for services performed by Parametrix.
- Correspondence – Prepare written correspondence as needed to document project management issues and/or concerns.

Deliverables

Deliverables for this task include:

- Miscellaneous correspondence to document project management issues.
- Monthly progress reports enclosed with invoices.
- Coordination with subconsultants.

SCOPE OF WORK (continued)

Assumptions

Assumptions for this task include the following:

- Project duration is 12 months.
- Budget assumes 24 informal, online, bi-weekly meetings with the City's project manager and key team members.

TASK 02 – PRELIMINARY (10%) DESIGN

Measurable Task Objective

The preliminary design will evaluate up to three (3) alternative conceptual layouts and will include 10% design-level documents for the selected "preferred" alternative. The work will also include a landscape schematic of the preferred alternative and an Opinion of Construction Cost.

Subtask 0201 – Alternative Layouts

Objective/Goal

The purpose of this subtask is to prepare project alternatives and alternate features for up to three (3) stream strategies.

Approach

- Establish the project extents and constraints.
- Prepare the hydrologic parameters for the site, including the base flow, 2-year flow (for bank-full section), 10-year flow, and 100-year flow. Determine range of tidal conditions.
- Prepare a typical section for the proposed reach.
- Establish channel profile(s) and alignment for up to three (3) project options. Provide sketches of design alignment and key features.
- Conduct a workshop with key City staff to discuss a preferred alternative.
- Prepare a brief Basis-of-Design technical memorandum (6-8 pages).

Deliverables

- Draft Basis-of-Design technical memorandum (6-8 pages).

Assumptions

- Project limits will not extend beyond current site plan.
- Project workshop will be virtual with up to four (4) Parametrix staff for up to two (2) hours. The City will arrange the time and coordinate with City staff.
- Future sea-level rise is not included in the proposed alternatives.
- Comment resolution will be provided in Subtask 0202 (below).

SCOPE OF WORK (continued)

Subtask 0202 – 10% Design of Preferred Alternative

Objective/Goal

Prepare 10% design-level drawings for the preferred alternative.

Approach

- Prepare design drawing set for the preferred alternative. Set will include type-size-location for the preferred alignment and profile. Three (3) sheets will be prepared—plan view, profile, and section details. A fourth sheet (landscape schematic) will be prepared in Subtask 0203 (below).
- Conduct review meeting with City.
- Submit plan sheets for review.
- Prepare updated Basis-of-Design technical memorandum, including comment resolution of draft technical memorandum.
- Prepare second draft of 10% plans, including comment resolution of draft plans.
- Prepare a 10% level opinion of probable cost.

Deliverables

- Updated basis of design technical memorandum.
- First and second draft 10% plans.
- 10% level opinion of probable cost.

Assumptions

- The City will provide consolidated plan and technical memorandum comments.
- Landscape design is not included at this design level.

Subtask 0203 – Landscape Schematic

Objective/Goal

The purpose of this subtask is to prepare a landscape design schematic for the preferred alternative.

Approach

- Using the selected alternative plan, prepare a design schematic for landscaping in the disturbed project area.
- Prepare a plant palette and preferred zones for each.
- Prepare a landscape schematic plan sheet to be included in the Subtask 0202 set.
- Update the sheet in response to comments and prepare a second draft.
- A brief description of landscape considerations will be included in the Subtask 0202 Basis-of-Design technical memorandum.

SCOPE OF WORK (continued)

Deliverables

- Draft landscape schematic plan sheet (to be included in the Subtask 0202 set deliverable).
- Second draft updated sheet in response to comments.

Assumptions

- Landscape limits will be in the stream project area and not include the entire site restoration.
- Landscape designer will be included in the Subtask 0202 design workshop. A brief description of landscape considerations will be included in the Basis-of-Design technical memorandum.

TASK 03 – SURVEY

Measurable Task Objective

To provide a topographic base map with a surveyed boundary for use in preparing the design plans.

Approach

Subtask 03.01 Mapping

Parametrix will perform topographic mapping. Mapping limits will include surface features within portions of King County Tax Parcel Numbers 1722049005, 1722049091, and 9334200000. The limits of the survey will extend west into the tideland to the approximate edge of water, will extend east to the projection of the east property lines of parcels 1722049005 and 1722049091 and will include portions of 1722049105 (north bank of current creek alignment) and 1722049132/9334200000 (where the creek enters the first fish barrier culvert).

Mapping will consist of locating existing improvements and ground conditions within the above-described properties. Parcel lines, easements, and right-of-way limits will be based upon the applicable public records. Ground features, including tops and toes, breaks, edge of pavement, and ditches, will be mapped at sufficient detail to create 1-foot contours. Structures such as fences, driveways, overhead utilities, and other physical visible improvements will be mapped.

An underground utility locate firm will be hired to mark buried utilities such as gas, water, power, telephone, and TV cable, if such utilities have a conductible source or tracer lines attached. Sanitary and storm structures will be opened and measurements will be made identifying size, type, and invert elevation of incoming and outgoing pipes. Once the field work has been completed, a survey technician will process the data and prepare a base map using AutoCAD Civil 3D, Release 2018.

Subtask 03.02 AutoCAD Base Map Preparation

Parametrix will process survey field data and generate an AutoCAD drawing showing the existing conditions.

Parametrix will show the existing parcel lines for the project subject properties and to the adjacent ROW.

As described above, an underground utility locate firm will be hired to mark buried utilities that provide a conductible signal. For those utilities constructed without a tracing wire or made from non-conductible material, record drawings may be used to help identify locations and type of utility, if provided by the City.

SCOPE OF WORK (continued)

Deliverables

- AutoCAD drawing in 2018 format (or later) at 1 inch = 20 feet with 1-foot contours, topographic information, and easements along the mapping corridor.
- Triangular Integrated Network (TIN) surface for use in design.

Assumptions

- If necessary, Parametrix will be provided a current title report including all referenced documents for subject property prior to commencement of work.
- Property corners will not be set, nor will a Record of Survey be prepared.
- Unless otherwise specified by the City, Horizontal Datum shall be NAD 83/11 Washington Coordinate System, North Zone, and Vertical datum shall be NAVD88.
- Parametrix will be provided reasonable access to all areas requiring surveys.

TASK 04 – ENVIRONMENTAL PERMITTING

Subtask 0401 – Environmental Permitting

Measurable Task Objective

To conduct a review of existing critical areas and other natural resources within the project limits to inform the alternative evaluation and identify potential information needs and requirements to be evaluated during the final design and permitting phase for the selected alternative.

Objective/Goal

The propose of this task is to prepare a preliminary permit matrix identifying anticipated environmental permit requirements, permit triggers, submittal requirements, and associated review timelines for each of identified alternatives. The preliminary permit matrix will be updated and revised during preliminary design for the selected preferred alternative.

Approach

- Review publicly accessible natural resource databases to identify critical areas, priority habitat and species occurrence, and federally designated critical habitat within the project area.
- Conduct a brief site visit to assess current conditions and identify the presence and general location of regulated critical areas.
- Develop a matrix of anticipated environmental permits for each alternative evaluated under Task 2 (above).
- Update the preliminary permit matrix per the preferred alternative during preliminary design.

Deliverables

- Preliminary Permit Matrix
- Updated Permit Matrix

TASK 05 – SUPPORT SERVICES

Measurable Task Objective

Provide subconsultant support services to support Parametrix and the City during the alternatives evaluation and preliminary design phase of the project.

Subtask 0501MN – Coastal Engineering (Moffatt & Nichol)

Objective/Goal

Provide coastal engineering services in support of Tasks 2 and 4.

Approach

- Conduct a review to identify and compile existing data including historical survey and aerial photography related to existing and historical conditions.
- Conduct a reconnaissance level on-site investigation during a daylight low tide to observe existing conditions and document key observations.
- Review and comment on typical plan and profiles prepared under Task 2.
- Prepare a coastal processes assessment that will include a qualitative coastal engineering analysis based on existing information and data gathered as part of this scope of work.
- Develop design criteria to assist with the screening of alternative concepts.
- Support Parametrix and the City during the alternatives screening and evaluation process.
- Participate in up to two (2) meetings with Parametrix and the City during the screening and alternatives evaluation process.
- Coastal Engineering Analysis to support the 10% design of the preferred alternative including the following:
 - Wave modeling of the nearshore and estuary at high tide for wind-wave events at specified intervals (e.g., 10 years, 25 years, and 50 years) so that appropriate bank stabilization and advance maintenance features may be analyzed.
 - Beach Morphologic Analysis.
 - Prototype Analysis based on reference estuary and beach conditions to assist with sediment mobility analysis to determine the slopes and substrate sizes.
- Conceptual design support
- Constructability assessment
- Cost estimating support

Deliverables

- Coastal Engineering section for inclusion in the Basis-of-Design memorandum.
- Coastal Process Assessment technical memorandum.
- Conceptual design plans and cost estimate.

SCOPE OF WORK (continued)

Assumptions

- No new numerical modeling or detailed hydrodynamic analysis will be conducted for the coastal engineering work completed during the alternative evaluation process. The preliminary work to support alternatives evaluation will focus on qualitative assessment utilizing existing information and prior similar experience.
- No geotechnical assessment is included in this phase.

Subtask 05WCR – Cultural Resources Support (Willamette Cultural Resource Associates)

Objective/Goal

To conduct a desk-top evaluation to identify potential archeological and/or historic resources within the project limits to inform the alternative evaluation and identify potential information needs and requirements to be evaluated during the final design and permitting phase for the selected alternative.

Approach

- Conduct background research of existing databases to identify known historic and archaeological resources within the or adjacent to the project area.
- Review existing archaeological sensitivities models to identify the likelihood of undocumented resources occurring in the project vicinity.
- Review King County Assessor's records for structures within and adjacent to the project area to determine eligibility criteria as an historic structure.
- Summarize findings in a technical memorandum.

Deliverables

- Cultural Resources technical memorandum
- Inadvertent Discover Plan

Assumptions

- No field investigations are included in this phase.
- No Historic Property Inventory (HPI) forms will be completed in this phase. If necessary, this would be completed during final design.
- No Tribal consultations or agency outreach will occur in this phase.

End Scope of Work

Client: City of Des Moines
 Project: TA2022-06 Massey Creek Pocket Estuary
 Project No: 214-1792-037

TA2022-06 Massey Creek Pocket Estuary
 Budget Estimate

Task	SubTask	Description	Labor Dollars	Lbr Hrs
01		Task Management	\$27,590.84	104
	0101	Task Management	\$27,590.84	104
02		Preliminary (10%) Design	\$54,161.76	318
	0201	Alternative Layouts	\$22,568.88	132
	0202	10% Design of Preferred Alternative	\$18,777.20	112
	0203	Landscape Schematic	\$12,815.68	74
03		Survey	\$20,771.04	180
	0301	Mapping	\$13,896.56	132
	0302	AutoCAD Base Map Preparation	\$6,874.48	48
04		Environmental Permitting	\$5,473.20	20
	0401	Environmental Permitting	\$5,473.20	20
Labor Totals:				622
Totals:				\$107,996.84

Subconsultants

Applied Professional Services Inc	\$660.00
Moffatt & Nichol Engineers	\$65,000.00
Willamette Cultural Resource	\$6,800.00
Subconsultants Total:	\$72,460.00

Other Direct Expenses

Management Reserve	\$20,000.00
Other Direct Costs	\$400.00
Survey Equipment (\$160/Use)	\$960.00
Other Direct Expenses Total:	\$21,360.00

Project Total \$201,816.84

Surveyor I	Survey Supervisor	Engineer IV	Engineer III	Publications Supervisor	Engineer IV	Kathleen J. Bell	Justin S. Emery	Jordan W. Ford
16	8	20	148	8	20			
4	4	28	80	4	4			
4	4	8	60	4	20			
4	4	8	8	4	4			
4	4	28	148	8	20			
12	12	\$4,616.92	\$1,067.80	\$1,242.64	\$3,618.40	\$2,985.76	\$4,803.00	
\$1,421.76	\$1,421.76	\$16,324.80	\$3,209.52	\$1,242.64	\$553.68	\$2,985.76	\$4,803.00	

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**CITY OF DES MOINES
2022-2027 CAPITAL IMPROVEMENT PLAN
(Amount in Thousands)**

Massey Creek Pocket Estuary and Fish Passage Project # 451.853

Summary Project Description:

This project will improve riparian vegetation, remove armoring and fill, increase nearshore habitat and enhance pocket estuaries and the stream mouth of Massey Creek. This will be accomplished by removing 300 feet of rock line stream bank and small jetty, replacing two long box culverts that are identified as fish barriers, and creating a pocket estuary at the new mouth of the creek.

CIP Category: Surface Water Management
Managing Department: Plan, Build & PW Admin

Justification/Benefits: Over the last 20 years, the City of Des Moines has heavily invested funds in the Massey/Barnes Creek drainage basin by installing habitat, installing detention facilities and removing culverts. Removal of the two significant barriers at the mouth of Massey Creek would further the City's efforts to remove fish barriers throughout the drainage basin and reduce flooding impacts. Several grant applicants for barrier removal upstream of this project have not scored well due to this significant barrier issue at the mouth, so this is a high priority project that will cascade into other barrier and flooding projects in the basin.

PROJECT SCOPE			
Expenditures	Current Budget	Requested Change	Total Budget
Design	-	440	440
Land & Right of Way	-	-	-
Construction	-	1,500	1,500
Contingency	-	1,060	1,060
Total Expenditures	-	3,000	3,000

Funding Sources	Current Budget	Requested Change	Total Budget
Surface Water Utility	-	300	300
Local Grants (Unsecured)	-	365	365
State of Washington Grants (Unsecured)	-	2,335	2,335
Total Funding	-	3,000	3,000

Project to Date 12/31/20	ANNUAL ALLOCATION							
	Scheduled Year	Plan Year 2021	Plan Year 2022	Plan Year 2023	Plan Year 2024	Plan Year 2025	Plan Year 2026	Plan Year 2027
-	-	-	40	400	-	-	-	-
-	-	-	-	-	-	-	-	-
-	-	-	-	-	1,500	-	-	-
-	-	-	10	50	1,000	-	-	-
-	-	-	50	450	2,500	-	-	-

Project to Date 12/31/20	ANNUAL ALLOCATION							
	Scheduled Year	Plan Year 2021	Plan Year 2022	Plan Year 2023	Plan Year 2024	Plan Year 2025	Plan Year 2026	Plan Year 2027
-	-	-	50	85	165	-	-	-
-	-	-	-	365	-	-	-	-
-	-	-	-	-	2,335	-	-	-
-	-	-	50	450	2,500	-	-	-

OPERATING IMPACT		ANNUAL OPERATING IMPACT						
Operating Impact	6 Year Total	2021	2022	2023	2024	2025	2026	2027
Revenue	-	-	-	-	-	-	-	-
Expenses	-	-	-	-	-	-	-	-
Net Impact	-	-	-	-	-	-	-	-

OPERATING IMPACT		ANNUAL OPERATING IMPACT						
Operating Impact	6 Year Total	2021	2022	2023	2024	2025	2026	2027
Revenue	-	-	-	-	-	-	-	-
Expenses	-	-	-	-	-	-	-	-
Net Impact	-	-	-	-	-	-	-	-

Attachment #1

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AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Contract with Jaymarc AV for Court Room Audio System

FOR AGENDA OF: December 8, 2022

DEPT. OF ORIGIN: Court

ATTACHMENTS:

DATE SUBMITTED: December 1, 2022

- 1. Proposal and Contract for Courtroom Audio System

CLEARANCES:

- City Clerk _____
- Community Development _____
- Courts *M. Patrick*
- Director of Marina Redevelopment _____
- Emergency Management _____
- Finance *Corinne W...*
- Human Resources _____
- Legal /s/ TG
- Marina _____
- Police _____
- Parks, Recreation & Senior Services _____
- Public Works _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this Agenda Item is to request the Council’s authorization to enter into a contract for product and services with Jaymarc AV for audio/visual technology upgrades to the courtroom. This agreement will cover upgrades to the existing audio equipment including but not limited to hardware; interface equipment; audio/video cables, wiring, and connectors; and new microphones.

Suggested Motion

Motion: “I move to approve the contract with Jaymarc AV in the amount of \$67,070.26 for the purposes of improving the audio system within the courtroom of the City of Des Moines Municipal Court and authorize the City Manager to sign the contract substantially in the form as attached.”

Background

In July 2022, Des Moines Municipal Court applied for an Audio/Visual Technology Reimbursement Grant through the Washington State Administrative Office of the Courts. The Court was awarded the grant in early August 2022. In November 2022, Des Moines City Council approved an audio/visual reimbursement grant for \$76,611. Working with the City IT department, the Court was able to determine the needs within the courtroom to bring our audio and video components up-to-date for a technologically modern hybrid courtroom.

Discussion

As we transition out of the pandemic the Court is committed to providing a hybrid courtroom model that will require updated audio technology. The current equipment utilized by the Court does not allow for clear communication between in-person and remote participants. Those appearing in a remote setting find the audio faint and distorted when communicating with participants appearing in-person. Furthermore, due to the age of the speaker system we frequently experience audio feedback that is both disruptive and compromises the quality of Court recordings. The new audio/video equipment would have no impact on current City Council operations, but would be available if the Council needed to conduct hybrid operations (Zoom/ In-person) in the future.

Reimbursement Funding to be used for the following:

- Replace analog microphones with digital.
- Replace analog mixer with digital mixer that also allows for integration with virtual platforms.
- Labor expenses related to upgrades and set up.

Alternatives

City Council could choose to not approve contract with Jaymarc AV. (Not recommended)

Financial Impact

The total costs of the project are estimated at \$67,070.26 including set up. The costs fall completely in line with the reimbursement contract previously submitted and approved.

Recommendation

Staff recommends that the Council approve the contract with Jaymarc AV for audio/video equipment and set up.

Council Committee Review

Proposal: Court Room Audio System - Rev# 1
Prepared On: 11/30/2022
For: Dale Southwick

Presented By: Tyson Scherb
Jaymarc AV
14600 Interurban AVE S
Seattle, WA 98168
Main: 206.682.6111
www.jaymarc-av.com






Des Moines WA
The Waterland City




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01. RACK & RELATED HARDWARE

Quantity	Description	Price Each	Amount	
 1 EA	Middle Atlantic ERK2120LRD-Black 21SP,19.5"D RACK,LESS REAR-DR	\$632.49	\$632.49	
 1 EA	SurgeX SX-DS-158-Black SurgeX Comprehensive Protection Defender Series 15A/120V 8 Out horizontal rack mount power strip	\$228.25	\$228.25	
 1 Lot	Blanks, Vents, Shelves, and Ventilation-Black Blanks, Vents, Shelves, and Associated Rack Hardware.	\$248.75	\$248.75	
01. RACK & RELATED HARDWARE		Parts: \$1,109.49	Labor: \$1,625.00	Total: \$2,734.49



02. CONTROL SYSTEM & USER INTERFACE RELATED EQUIPMENT


Quantity	Description	Price Each	Amount	
 1 EA	Netgear M4250-26G4F-POE+ Managed 26 Port Network Switch, 24x1G PoE+ 300W 2x1G and 4xSFP Managed Switch, 1g SFP uplinks	\$1,181.50	\$1,181.50	
 1 EA	QSC TSC-70-G3-Black Q-SYS 7 PoE Touch Screen Controller for In-Wall Mounting. Color - Black only	\$1,428.75	\$1,428.75	
 1 EA	QSC TSC-710t-G3-Black Table top mounting accessory for TSC-70W-G3 and TSC-101W-G3.	\$341.25	\$341.25	
02. CONTROL SYSTEM & USER INTERFACE RELATED EQUIPMENT		Parts: \$2,951.50	Labor: \$375.00	Total: \$3,326.50

03. VIDEO SOURCE RELATED EQUIPMENT

Quantity	Description	Price Each	Amount	
 1 EA	Crestron AM-3200-Black AirMedia Series 3 Receiver 200	\$1,512.50	\$1,512.50	
03. VIDEO SOURCE RELATED EQUIPMENT		Parts: \$1,512.50	Labor: \$125.00	Total: \$1,637.50





04. VIDEO SWITCH AND TX/RX RELATED EQUIPMENT

Quantity	Description	Price Each	Amount
 3 EA	Visionary Solutions E4100-Black AV ENCODER 4K UHDOIP POE (NO DANTE or AES67)	\$669.38	\$2,008.14
 1 EA	Visionary Solutions D4100-Black AV DECODER 4K UHDOIP POE (NO DANTE or AES67)	\$702.85	\$702.85

	1 EA	QSC I/O-USB Bridge-Black Q-SYS PoE bridging endpoint for AV-to-USB Bridging. Delivers driverless usb 2.0 connection. Includes dual LAN connections and HDMI output.	\$1,562.50	\$1,562.50
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04. VIDEO SWITCH AND TX/RX RELATED EQUIPMENT Parts: \$4,273.49 Labor: \$437.50 Total: \$4,710.99

06. AUDIO SOURCE / MICROPHONE RELATED EQUIPMENT

	Quantity	Description	Price Each	Amount
	1 EA	Shure MXCWAPT-A-White Access Point Transceiver, Includes 10 Dante inputs/outputs, with XLR in and out.	\$3,546.25	\$3,546.25
	6 EA	Shure MXCW640-Black Wireless Conference Unit With Loudspeaker And Touchscreen	\$1,417.50	\$8,505.00
	6 EA	Shure MXC416DF/C-Black Shure MXC416DF/C 16 Inch Dualflex Cardioid Gooseneck Microphone for MXC MXCW Conference Units	\$196.25	\$1,177.50
	1 EA	Shure MXCWNC5-US-Black BATTERY CHARGER	\$965.63	\$965.63



06. AUDIO SOURCE / MICROPHONE RELATED EQUIPMENT Parts: \$14,194.38 Labor: \$1,187.50 Total: \$15,381.88

07. AUDIO PROCESSING RELATED EQUIPMENT

	Quantity	Description	Price Each	Amount
	1 EA	QSC CORE110F V2-Black Q-SYS Core 110f with 24 local I/O channels, POTs, SIP, AES-67 Q-LAN, Dante, USB and 1x RS-232	\$3,125.00	\$3,125.00
	1 EA	QSC Q-SYS SCRIPTER (SL-QSE-110-P) Q-SYS Core 110f Scripting Engine Software License, Perpetual	\$337.50	\$337.50
	1 EA	QSC Q-SYS UCI LICENSE (SL-QUd-110-P) Q-SYS Core 110f UCI Deployment Software License, Perpetual	\$168.13	\$168.13
	1 EA	QSC Q-SYS Dante 16x16 (SL-DAN-16-P) Software-based Dante 16x16 Channel License, 8x8 Flows, Perpetual. Applicable to Core 110f, Core 8 FLEX, Core NANO, Core 510i, Core 5200, NV-32-H (Core Capable)	\$407.50	\$407.50

07. AUDIO PROCESSING RELATED EQUIPMENT Parts: \$4,038.13 Labor: \$218.75 Total: \$4,256.88

08. LOUDSPEAKERS AND AMPLIFICATION EQUIPMENT

	Quantity	Description	Price Each	Amount
	1 EA	QSC MP-A40V-Black 800W FlexAmp technology Hi-Z / Lo-Z amplifier, 4 x 200W into 4Ω, 8Ω, 70V and 100V, Highpass filter per channel, GPIO for Remote Standby and Amp Status	\$1,360.00	\$1,360.00
	2 EA	QSC AD-S802T-BK-Black 2.75" Full-range (x8) element column surface speaker, 70/100V transformer with 8Ω bypass, 150° horizontal x 20° vertical coverage, includes pan/tilt wall mount and input weather input cover. Available in white	\$495.00	\$990.00



4 EA	QSC AC-S6T-BK-Black 6.5" Two-way surface speaker, 70/100V transformer with 8Ω bypass, 130° conical coverage, includes Yoke Mount. in black,	\$130.63	\$522.52
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08. LOUDSPEAKERS AND AMPLIFICATION EQUIPMENT	Parts:	\$2,872.52	Labor:	\$687.50	Total: \$3,560.02
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09. PATCH CABLES, BULK WIRING & CONNECTORS

	Quantity	Description	Price Each	Amount
 	1 Lot	JAYMARC Bulk Cabling Package Assembly Integration cabling package.		
	2 1,000'	Windy City Wire Cat6 Data Cable (CAT6P-BLK)-Black 23-4P UNS SOL CMP Cat6 for 1Ghz LAN, Plenum	\$331.25	\$662.50
	1.5 1,000'	Windy City Wire S70 Speaker Cable (18-02P-BLK)-Black 18-02 UNS STR CMP for 70v Speaker Systems and DC power, Plenum	\$187.50	\$281.25
	.5 1,000'	Windy City Wire Mic/Line Cable (22-1PREZP-BLK)-Black 22-1P OAS STR CMP TC for Analog Audio, Mic, Line and Control, Plenum	\$268.75	\$134.38
 	1 Lot	JAYMARC HDMI Cabling Package Assembly HDMI Cabling Package		
	6 EA	JAYMARC HDMI Cable 6' Certified 4K60 18G High Speed HDMI Cable, 6'	\$27.50	\$165.00

09. PATCH CABLES, BULK WIRING & CONNECTORS	Parts:	\$1,243.13	Labor:	\$8,075.00	Total: \$9,318.13
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11. FINALS

	Quantity	Description	Price Each	Amount
 	1 Lot	JAYMARC Labor Package Assembly Professional AV System Design, Documentation and Deployment Services		
	1 Lot	JAYMARC SUBMITTALS Technical Services to generate initial Product Submittals for review and acceptance.		
	1 Lot	JAYMARC SHOP DRAWING Drafting Services to generate Shop Drawings for construction, installation and coordination.		
	1 Lot	JAYMARC TECHNICAL DESIGN Technical Design Services to ensure interoperability of components and satisfaction of design criteria.		
	1 Lot	JAYMARC O&M'S Technical Services to compile Operation and Maintenance Manuals at project completion.		
	1 Lot	JAYMARC AS-BUILTS Drafting services to update Shop Drawings upon completion to reflect final components and conditions.		
	1 Lot	JAYMARC RACK FABRICATION Assembly of equipment racks and technical enclosures including installation of components, termination and management of head end cabling, and fabrication of internal wiring harnesses.		

- 1 Lot JAYMARC DSP PROGRAMMING
Off-Site Programming to generate application specific audio routing and processing configurations.
- 1 Lot JAYMARC CONTROL PROGRAMMING
Off-Site Programming to generate application specific system user interfaces and control automation.
- 1 Lot JAYMARC COMMISSIONING
On-Site Deployment and Testing of system devices and associated programming by manufacturer trained technicians.
- 1 Lot JAYMARC TRAINING
Training Services for End-User or "Train the Trainer" including system orientation and basic operation.
- 1 Lot JAYMARC TRAVEL & MOBILIZATION
Mobilization Services for delivery of products and services to the customer site.

	11. FINALS	Parts:	\$0.00	Labor:	\$10,845.00	Total:	\$10,845.00
		Parts:	\$32,195.14	Labor:	\$23,576.25	Total:	\$55,771.39

Miscellaneous Parts:	\$321.95
Project Management:	\$3,536.44
Freight and Shipping:	\$1,287.81
Parts:	\$32,195.14
Labor:	\$23,576.25

Parts No Sales Tax:	\$.00
Labor No Sales Tax:	\$.00

Subtotal:	\$60,917.58
Sales Tax:	\$6,152.68

Total: \$67,070.26

TYSON SCHERB | SALES & MARKETING MANAGER



1400 INTERURBAN AVES SOUTH | SEATTLE, WA 98148
P: 206.492.6111 | x 104 | C: 206.383.6903 | F: 206.763.8299
www.jaymarc-av.com | tyson@jaymarc-av.com

City of des Moines, C03171

Date: _____

Tyson Scherb

Date: _____

COVID 19 / SUPPLY CHAIN STATEMENT

As the President of Jaymarc AV, I want to thank you for considering us as your AV systems integrator and contractor. We look forward to providing you the best system possible. If you ever have any issues, you are welcome to call me directly at 206-602-3466.

Before you sign this contract with us, I want to make sure you are adequately informed about the current supply chain issues and how they may affect your project. Please read this document completely, and only if you feel comfortable in agreeing to these terms, I ask that you sign and agree to these unfortunate conditions.

Prior to Covid 19, our contracts have all been "FIXED PRICE" contracts, which means any increase in costs, after signature, have been absorbed by Jaymarc AV. We would like to maintain that with you; however, in the last 24 months, the marketplace has changed drastically.

Up until recently, when a vendor notified us of a cost increase, we were able to place our order for product at the current cost and lock in that cost. The vendors would hold that cost for all product, regardless of the cost when the order was placed. Today our vendors are demanding that we pay their current costs at the date of shipment, regardless of when the order was placed.

You have worked with your designer, and they have provided a competitive quote based on current costs. They have been instructed to NOT PROJECT THE FUTURE. This way, we do not charge for "best guess" expenses. Instead, we are being 100% up front with our clients and asking that you agree to the following:

Jaymarc AV is committed to honoring a fixed price contract as presented, except as outlined and allowed in the terms below:

- If a vendor provides a written notice of cost increase, Jaymarc AV is allowed to increase the sale price to the client by the same percentage as the material costs have increased to Jaymarc AV from the vendor. The conditions of this alteration will only be administered as follows:
 - The vendor notifies Jaymarc AV of the pricing increase AFTER the date of signature.
 - The vendor will not hold pricing for back ordered items.
 - ONLY the items affected shall be adjusted in your contract.
 - A Change Order will be issued and approved by you, prior to the contract value being modified.
 - NO LABOR COSTS shall be adjusted.

I, as signatory to the contract, understand this unusual situation in the industry and will accept this modification. I understand that this agreement is in ADDITION to the terms and conditions of the main contract, and only items identified here shall take precedence.

NAME: _____

DATE: _____

Agreement Contract

GENERAL CONDITIONS

- CREDIT VERIFICATION:** This Contract is subject to Jaymarc Investments Inc., d/b/a Jaymarc AV verifications of the Customer's credit and determination that such credit is adequate or satisfactory to JAYMARC AV.
- SCHEDULING:** JAYMARC AV will expeditiously complete the work, subject to availability of materials and site. It is the responsibility of the Customer to make timely design and materials selections, and make the site available so that the work of JAYMARC AV can be performed as initially planned and bid. Work will be performed during the normal business hours (Monday through Friday, 7:00 a.m. to 4:30 p.m.). JAYMARC AV shall not be liable for failure to deliver occasioned by any cause beyond the control of JAYMARC AV including, but not limited to, inability to obtain material or shipping space, machinery breakdowns, carrier delay of supplies and governmental regulation. Expedited shipping and installation requests are subject to an additional charge. Projects will be put on stop work "Hold" status if down payment or progress payments are not received according to JAYMARC AV terms (Section 11). Additional labor incurred as a result of construction delays for non-receipt of down payment or progress payments will be added to contract.
- CORRECTION OR COMPLETION OF WORK:** At the completion of the work, JAYMARC AV shall remove all waste materials from the site, together with JAYMARC AV's tools, construction equipment, and surplus materials. Prior to making final payment, the Customer may review the work and make a list of items, if any, which the Customer believes should be corrected or completed. There shall only be one such list, and it shall be signed by the Customer. This list will be the Customer's statement of work, if any, to be corrected or completed for the Customer to be reasonably satisfied with JAYMARC AV's work and make final payment. There will be only one such punch list. JAYMARC AV shall have the right to perform all corrective work identified on the Customer's punch list, unless JAYMARC AV declines to do so following receipt from the Customer of the punch list together with a reasonable period within which to perform the work. The Customer shall not offset the cost of completing any work stated on the punch list against any balance owed to JAYMARC AV, nor shall the Customer contract with any alternative contractor for the performance or completion of work within the scope of this Contract, nor shall the Customer occupy or use JAYMARC AV's work until and unless JAYMARC AV shall have been first provided the notice and opportunity stated above. If the Customer does contract with an alternate contractor to perform work on the punch list or otherwise complete the project without first affording the above-described opportunity to JAYMARC AV, or if the Customer commences to use or occupy the space in which JAYMARC AV performed work, the Customer accepts all work "as-is" and waives any claim against JAYMARC AV. Upon JAYMARC AV's completion or correction of the work identified on the Customer's single punch list, any hold-back withheld from final payment shall be paid within the next three (3) business days to JAYMARC AV. All further work shall be performed as warranty work as provided for in Paragraph 6 of this Contract. Any accrued balance owing and unpaid to JAYMARC AV, regardless of whether the amount in dispute is liquidated or un-liquidated, shall bear an interest of 18% per annum or the legally maximum rate, whichever is less, from the date of the initial invoice.
- CHANGES IN WORK:** The Customer may request changes or modifications in the scope of work, or the client may request work to be done in a Time and Materials (T&M) Method. These requests may be agreed upon orally or in writing. If agreed upon in writing, such changes or modifications shall be identified and agreed upon in a written change order prepared by JAYMARC AV and signed by both parties. Unless so otherwise agreed and signed by both parties in writing, all extra work and change order performed by JAYMARC AV shall be billed by JAYMARC AV and paid by the Customer at the rate of \$125.00 per hour for all labor plus the cost of all product at a 25% Margin as well as 20% margin on all subcontractors, equipment and permits. Jaymarc AV shall be compensated for Project Management at the rate of 10% of all actual labor hours used. The project management time shall be compensated at the same \$125.00 per hour. In all cases, when a project is changed or cancelled in all or part, Jaymarc AV shall be entitled to the benefits of the bargain in that all unrealized profits of the project are non-refundable. Payment for change orders shall be at the time of the next progress billing.
- DISPUTES AND REMEDIES:** If a dispute arises, the parties shall meet in good faith in a bona fide effort to resolve. Any unsettled disputes between the parties shall be decided by suit filed in either District or Superior Court. Any suit filed in Superior Court shall be decided according to the Mandatory Arbitration Rules (MAR) regardless of the amount in dispute. The MAR Arbitrator shall have the authority to enter a decree of foreclosure in the arbitration proceeding and the MAR Arbitrator's award shall be subject to appeal only pursuant to RCW

Ch. 7.04. In the event a dispute or lawsuit arises and one or both parties seek and receive the assistance of legal counsel, the prevailing party shall be paid his or her actual attorneys' fees and costs by the non-prevailing party. Neither party may request or receive attorneys' fees pursuant to RCW 4.84.250 et seq.

6. **WARRANTY:** Jaymarc AV warrants the integrated system(s) furnished are free of defects in workmanship for a period of one year from the date of acceptance or date of first beneficial use whichever occurs first. Remedy for such defects during the warranty period shall be provided at no additional expense to the client and shall be handled based on our availability of resources. This warranty includes trouble shooting, uninstalling and installing of any equipment within the Jaymarc AV system except for the cost to service and/or repair Owner Furnished Equipment (OFE) or out of manufacture warranty equipment. Jaymarc AV will broker and process the repair of that equipment at the standard Jaymarc AV fee rate.

7. **WORK PERFORMED BY CUSTOMER:** The Customer shall supply his own labor or materials as follows for the following portions of the work, without adjustment of the contract price: All AC Power, Structural Reinforcement, Network, Telephone Lines, Subscription services such as TV, IPStreams or any other NON-AV task identified in the proposal. If JAYMARC AV's work is delayed or otherwise adversely affected by the Customer's work, the additional costs, if any, incurred by JAYMARC AV shall be charged to the Customer pursuant to Section 4 of this Contract.

8. **PREMISES:** In the event that the work involves improvements to an existing structure, JAYMARC AV is not responsible for unknown or unobserved structural, electrical, plumbing or mechanical conditions in an existing building or on the Customer's premises. JAYMARC AV has familiarized itself with the Customer's project and premises but has not disturbed any of the existing construction in order to further inspect. JAYMARC AV cannot ascertain unobserved or unknown conditions of the Customer's premises, including structural, electrical, plumbing and mechanical systems for purposes of determining whether all necessary work has been identified in the contract documents. Accordingly, at the time that the existing structure and/or mechanical/electrical/plumbing systems are uncovered following commencement of the work JAYMARC AV may be required by the applicable building authority or by normal or standard construction practices to perform additional work not stated in the contract documents in order to complete all of the work according to the building codes or standard construction practices which are designed to ensure the safety and integrity of the structure. The contract price has not been increased by JAYMARC AV in order to cover these unknown or unobserved conditions. If extra work is required because of these conditions, the contract price will be adjusted according to Section 4 of this Contract.

9. **ALLOWANCES:** An allowance constitutes a dollar value of the contract price, which has been set aside for the purpose of financing a distinct portion of the work, such as electronic equipment. The customer has reviewed the allowance amounts for consistency with the Customer's expectations concerning quality of the project. The allowance is not an estimate. Where an overage occurs on any one allowed item, the Customer shall pay the overage, together with the margin of 20% to JAYMARC AV. The Customer's allowance includes all costs charged to JAYMARC AV's account or incurred directly by the Customer for procurement of the allowed item.

10. **PERMITS:** JAYMARC AV will obtain any licenses, permits or inspections required for the installation of a sound or communications system. Unless specifically stated, the cost of all permits is NOT INCLUDED IN THE QUOTED PRICE and will be added according to section #4 above.

11. **STANDARD PAYMENT TERMS:** 40% down payment due upon receipt of invoice. Progress billings to 90% of job quotation will be due within 30 days of invoice date. The final 10% will be billed upon completion and due within 30 days. The down payment is a non-refundable payment for systems consultation, services associated with site evaluation, system presentation and/or programming documentation of the equipment, benefits of bargain and order processing costs. Washington State sales tax is not included in the price quotation. Necessary electrical permit fees are not included in the price quotation and will be billed separately. Prices are subject to change after 30 days. Pricing assumes sufficient lead time. Rush shipping charges are extra. Rush installation is also subject to additional charges. Payment not received may cause job to be put in stop work or "Hold" status as stated in Section 2. Retention will not exceed 5% and will be paid within 30 days of final billing. All outstanding billings are subject to 18% per anum interest.

12. **WORK BY OTHERS:** 110v and higher power circuits shall be provided and installed by others. Unless otherwise noted, others shall

provide all conduits and cable raceways required and associated fire blocking. Pricing assumes that owner or others shall provide any required shelving or cabinetry, unless otherwise noted.

13. **OWNERSHIP AND REMOVAL OF EQUIPMENT:** Title, ownership and right to possession of the equipment remains with JAYMARC AV until all sums due under this Agreement are paid in full. Should payment in full not be made, subject to the terms of this Contract, for any reason other than default by JAYMARC AV then (a) JAYMARC AV shall have immediate right to enter the Customer's premises where the equipment or materials are located and take possession of said equipment or materials without notice or demand and without legal proceedings, and (b) Customer agrees to pay on demand all expenses which have been reasonably incurred by JAYMARC AV including, but not limited to, training on equipment, installation and reasonable equipment rental fees along with any expenses incurred for protecting or recovering the equipment or materials and in enforcing any of JAYMARC AV's rights arising under this contract. Upon delivery, Customer assumes the risk of loss or damage to equipment and Customer shall be held liable and responsible to JAYMARC AV for the full value of equipment in the event of loss or damage, due to any cause whatsoever, until payment in full is made to JAYMARC AV under the terms of this contract.

14. **PREVAILING WAGE:** Unless specifically stated, this contract does not conform with Washington State or any government agencies prevailing wage laws. All labor is quoted as standard Non-Prevailing wage labor rates.

15. **SITE CONDITIONS – EXEMPTIONS:** Jaymarc AV is an electronics system integrator and specializes in providing complete functional systems dealing with state-of-the-art electronics. During the integration of our system, there may be situations that occur that are no fault of ours and shall be dealt with as a change order. These situations include, but are not limited to:

- *Room Acoustics* - If a room is found to be acoustically reverberant or otherwise in-appropriate for the proposed system design, Jaymarc AV may recommend room acoustic treatment for the room in order for electronic performance to be maximized. If the client elects to not treat the room, they understand that the limitations of performance are directly impacted by the room acoustics. Jaymarc AV will do everything they can to identify these issues prior to final design. Under no circumstances shall Jaymarc AV be liable for poor performance of a system due to existing room acoustic issues.

- *Existing Networks* - If our system design includes system integration with a client provided network. It is the client's responsibility to verify that their network is suitable for the devices being integrated. It is the responsibility of the client to provide all necessary ports, expansions, switches, POE, and peripherals necessary to accommodate the integrated devices. Data and VoIP network segments provided by or supported by others shall not be covered under the Jaymarc AV standard warranty.

- *RF Interference* - RF (Radio Frequency) Interference is everywhere and is not always present at the same level at the same time. i.e. many radio stations increase their power at night. Jaymarc AV utilizes RF shielded components and wireless devices that are conducive to implementation in standard existing RF fields. With this being said, Jaymarc AV shall not be held liable for any interference from existing or introduced RF fields in any location.

16. **SCHEDULE:** Each project contracted with Jaymarc AV has a unique installation schedule and Jaymarc AV will work with the client to provide a reasonable schedule to meet both parties best interest. If no schedule is listed, Jaymarc AV works under the following basis for schedules:

- Engineering / Submittals / Shop Drawings - 3 to 6 weeks from executed contract.
- Procurement - 1 to 2 weeks from Approval of above task.
- Installation Start - 1 to 2 weeks from receipt of all procured equipment.
- Completion - 8 to 12 weeks from executed contract.

17. **SYSTEM PROPOSAL - SCOPE OF WORK:** This General Conditions document is an attachment to the System Proposal, aka Scope of Work. If there are any discrepancies between the Scope of Work and the General Conditions documentation, the General Conditions shall take precedence.

The above GENERAL CONDITIONS constitute a CONTRACTUAL OBLIGATION between Jaymarc Investments Inc., dba Jaymarc AV and the client.

Miscellaneous Parts:	\$321.95
Project Management:	\$3,536.44
Freight and Shipping:	\$1,287.81
Parts:	\$32,195.14
Labor:	\$23,576.25
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Parts No Sales Tax:	\$.00
Labor No Sales Tax:	\$.00
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Subtotal:	\$60,917.58
Sales Tax:	\$6,152.68
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Total:	\$67,070.26

TYSON SCHERB | SALES & MARKETING MANAGER



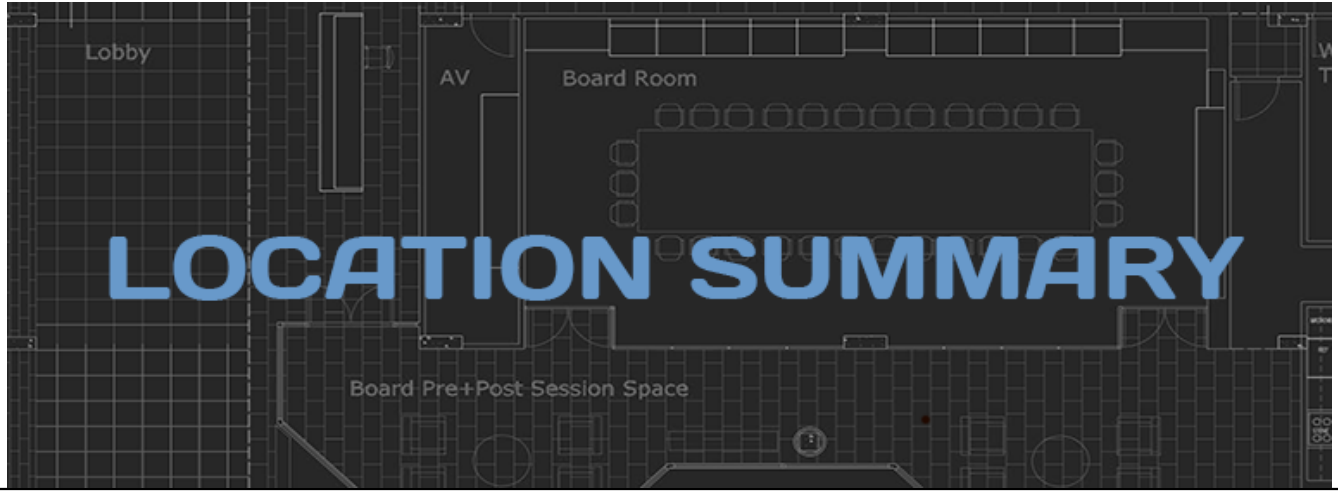
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 City of des Moines, C03171

Date: _____

 Tyson Scherb

Date: 11/30/2022



\$55,771.39

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Total:	\$67,070.26

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Collective Bargaining Agreement -
Des Moines Police Guild

FOR AGENDA OF: December 8, 2022

DEPT. OF ORIGIN: City Manager's Office

DATE SUBMITTED: December 2, 2022

ATTACHMENTS:


1. Collective Bargaining Agreement by and between City of Des Moines, Washington and Des Moines Police Guild

CLEARANCES:

- Community Development ____
- Marina ____
- Parks, Recreation & Senior Services ____
- Public Works ____

CHIEF OPERATIONS OFFICER: _____

- Legal /s/ TG
- Finance *Brianne White*
- Human Resources /s/ AJ
- Courts ____
- Police ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this agenda item is to approve the Collective Bargaining Agreement ("Agreement") between the City of Des Moines and the Des Moines Police Guild for the period January 1, 2022, through December 31, 2024.

Suggested Motion

Motion 1: "I move to approve the attached Collective Bargaining Agreement between the City of Des Moines and the Des Moines Police Guild and to authorize the City Manager to sign the Agreement substantially in the form as attached."

Background

The City and the Guild began negotiations on January 24, 2022 for the Des Moines Police Guild collective bargaining agreement that expired on December 31, 2021. This agreement had been in effect for the periods of January 2019 to December 2021. The City and the Guild agreed to negotiate with legal counsel present during the bargaining process to ensure that there was compliance with the new state laws and legislative statutes. This approach was determined in conjunction with the Guild and for the current climate proved effective in assisting with the resolution of the contract negotiation.

The City and the Guild met over the course of ten (10) months to review the various provision proposals. The strategy employed by the City and the Guild emphasized interest-based bargaining. Through-out the bargaining process, the City and Guild leadership remained fully committed to achieving mutually acceptable outcomes, which allowed us to reach a tentative agreement on November 17, 2022. This tentative agreement is attached as Attachment 1 and voting for the Guild will close on December 7, 2022.

Discussion

The City was able to negotiate with the Guild, an equitable compensation package that aligns with the City's commitment to maintaining a solvent and sustainable budget. In 2022, the Guild would receive a (6.5%) COLA, which is comparable to what staff in the Teamsters Local 763 received for wage increases. In 2023, the Guild would receive (8%) which is the same increase that has been recently approved for the Generals, Exempts and Directors. For 2024, the Guild would receive a base wage increase equal to the June 2022 to June 2023 CPI-U for Seattle-Tacoma-Bellevue, with a guaranteed minimum of three percent (3.0%) and a maximum of four percent (4.0%). Analysis by the Financial Department indicated these increases will be consistent with maintaining a sustainable budget for the City. Additionally, these wage increases support an equitable approach to applying wage increases across the board to City staff.

The City and the Guild were also successful in maintaining the status quo for Guild members and their dependents regarding their existing health plan options. The previously negotiated employee premium splits for medical coverage remain in effect, unless there is an increase of (8%) or above to the total medical premium cost for the LEOFF Health and Welfare Trust Plan F, which would then be equally split and shared by both the City and Guild employees. Additionally, should this scenario occur, the City and the Guild have agreed to meet to discuss alternative health insurance options. The City and Guild also have agreed about revamping the Master Police Officer Program and associated wage scale, establishing an on-call rotation for Detectives and agreement between the City and the Guild to move forward with the body-camera program at the appropriate time. A number of management rights provisions were also negotiated in a manner acceptable to both sides.

Alternatives

The Council could choose not to approve the Agreement and direct the City Manager to move forward with the arbitration process. (Not recommended). This agreement is also contingent on Guild member approval which will be known on December 7, 2022.

Recommendation or Conclusion

Administration recommends approval of the proposed Agreement as it contains those changes and compromises authorized by the Council.

COLLECTIVE BARGAINING AGREEMENT

By and Between

CITY OF DES MOINES, WASHINGTON

and

DES MOINES POLICE GUILD

January 1, 2022 - December 31, 2024

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**COLLECTIVE BARGAINING AGREEMENT
BY AND BETWEEN
CITY OF DES MOINES AND DES MOINES POLICE GUILD**

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:

- A. "Employer" or "City" means the City of Des Moines, Washington.
- B. "Guild" means the Des Moines Police Guild.
- C. "Employee" means regular full time and regular part time commissioned officers (in the Bargaining Unit as defined in subparagraph D). New positions shall be subject to negotiation for inclusion or exclusion in the bargaining unit.
- D. "Bargaining Unit" shall include all full time and regular part time commissioned officers, excepting the Chief of Police, Assistant Chief of Police and Commanders.
- E. "Department" means the Des Moines Police Department.

ARTICLE 3. RECOGNITION

- A. 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.
- B. Within thirty (30) days of hire or transfer into the bargaining unit, each employee has the option to attend a (30) minute orientation session with a 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.
- C. 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.
- D. 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 indicate: 1) all individuals who had dues withheld as part of the transferred amount, and the amount withheld and transmitted on behalf of that individual; 2) a list of all employees who did not have dues withheld as part of the transferred amount; 3) a list of all employees commencing employment since the preceding report; and 4) all employees in the preceding month who requested discontinuance of payroll deduction of dues.
- E. 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.
- F. 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.

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 when 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, except as restricted by Article 15, and provided notice is granted to the Employee.

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 a month or more often if needed, to raise issues that require discussion between and input from both parties. An annual calendar of these meetings will be established before January 15th 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

- A. **Schedule Defined.** For employees working a six-day work week, three days on/three days off, 12-hour shift, the applicable 7(k) work period shall be 24 days.

- A. **Patrol.** Patrol schedule shall consist of a six (6) day work week, consisting of 3 consecutive days of work and 3 consecutive days off. The workday will be 12 hours in duration. Each employee assigned to a 12 hour shift will receive 55 hours of Kelly time on January 1, to be used by June 30, and an additional 55 hours of Kelly time on July 1, to be used by December 31. Unused Kelly time will not carry over from one six month period to another. Kelly time hours used will be considered hours worked. In the event an employee uses all the Kelly time for a six month period and employment with the City is terminated prior to the end of the fifth month of the six month period, the employee will reimburse the City eleven (11) hours of pay per month for each month prior to the fifth month that employment is terminated. Such amounts to be paid to the City out of the employee's final pay check.

- A. **Detectives.** Detective schedule shall consist of a 7 day workweek, consisting of 4 consecutive days of work and 3 consecutive days off. The shift will be 10 hours in duration.

- B. **Traffic Safety Unit.** The schedule for Police Officers assigned to the Traffic Safety Unit 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. If assigned to an 8 day work week, consisting of 4 consecutive days of work and 4 consecutive days off, the workday will be 12 hours in duration. Each employee assigned to a 12 hour shift will receive 55 hours of Kelly time on January 1, to be used by June 30, and an additional 55 hours of Kelly time on July 1, to be used by December 31. Unused Kelly time will not carry over from one six month period to another. Kelly time hours used will be considered hours worked. In the event an employee uses all the Kelly time for a six month period and employment with the City is terminated prior to the end of the fifth month of the six month period, the employee will reimburse the City eleven (11) hours of pay per month for each month prior to the fifth month that employment is terminated. Such amounts to be paid to the City out of the employee's final pay check.

- C. **K9 Unit.** The schedule for Police Officers assigned to the K9 Unit shall consist of a seven (7) day work week, with four (4) consecutive days of work and three (3) consecutive days off at ten (10) hours per day. The K9 Officer will be compensated one (1) hour per ten (10) hour shift for K9 care and maintenance (Kennel Time). The Kennel Time will be compensated at the K9 Officers regular pay rate unless required to forego the Kennel Time for shift coverage then this additional time worked is paid at one and one half (1.5) hours. When a K9 unit is assigned to a patrol team, the K9 Officer

will work the patrol shifts scheduled hours of the team he/ she is assigned. When the K9 Officer is assigned to a patrol team, he/ she will receive one (1) hour of compensatory time for every twelve (12) hour shift worked. The K9 Officer may elect to take the one (1) hour off at the end of the shift in lieu of the compensatory time at the discretion of the on duty supervisor.

- D. **Employer Scheduling Right.** The Employer reserves the right to schedule individual hours of work, shift assignments, days off, and to schedule overtime.
1. **Short-Term Schedule Changes:** To maintain balanced teams and for other operational purposes. 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. The parties recognize that during the probationary period, employees do not necessarily work set schedules and advance notification of such work changes does not apply. Nevertheless, the Employer will make a reasonable effort to notify probationary employees of changes seven (7) days in advance. Short term schedule changes shall be defined as a period of up to one hundred and eighty (180) days.
 2. **Long-Term Schedule Changes:** The Employer may change regular long-term schedules and work weeks listed in A, B, C, and D above, provided the Employer agrees to bargain such changes with the Guild, in accordance with RCW 41.56.
- E. **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.
- F. **Overtime.** All overtime will be paid at a rate of one and one half (1-1/2) times the employees regular hourly 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, provided that there are enough volunteers to meet public safety requirements. If there are not enough volunteers to meet public safety requirements, shift extension overtime shall be mandatory except where the employee subject to holdover has a pre-scheduled conflict that has been communicated to their supervisor at the start of their shift. Overtime will be calculated in 15 minute increments.
- G. **Compensatory Time.** 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 vs.) 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. Compensatory time can be carried over from year to year. An employee can choose to cash in compensatory time at their 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.
- H. **Shift Extensions.** Shift extensions are paid at the employee's overtime rate of pay or in compensatory time off.
- I. **Emergency Call Back.** 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 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.

- J. **On-Call Detectives.** Employees who are assigned to work as Detectives are required to rotate serving on an on-call status. Detectives who are on-call and are called into work are required to respond and are limited in their personal activities. Given the inconvenience in serving on-call outside of regularly scheduled work hours, Detectives 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. Detectives who are called back to work outside their regularly scheduled shift shall be entitled to call back pay.
- K. **Court.** When a court appearance falls outside the normal duty hours, the employee will be paid at the overtime rate with a four (4) hour minimum. A court appearance is any appearance directed by a subpoena or court related conference requested by the prosecutor or judge.
- L. **Standby Status.** Employees may be placed on "Standby" status by the Police Chief, when it is anticipated that they may be called back to duty. 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. Employees placed on standby by the City shall be paid at \$15.00 per hour. Standby at the request of an authorized court officer shall be confirmed and authorized daily by the Police Chief or designee. Standby duty shall not be counted as hours worked for the purposes of computing overtime or eligibility to receive fringe benefits. If the Employee is called back to work while on standby status, standby pay will cease.
- O. **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 four (4) hour minimum. However, the four (4) hour 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, Kelly, 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.
- P. **Working out of Classification.** Employees temporarily assigned to work at a supervisory classification for one full shift or more shall be paid an additional 5% of base pay or the first step in the supervisory classification, whichever is higher, for the hours worked at the higher classification.

ARTICLE 9. VACATION

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	255 hours
4 - 6 years	10 hours per month	270 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

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.

ARTICLE 10. LEAVES

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.

- A. 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).
- B. 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).
 - 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
- C. 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.
- D. Employees will continue to earn City sick leave while on paid City sick leave, vacation leave, holiday leave and/ or Kelly time leave. Employees shall not earn any City sick leave benefits during a suspension without pay or a leave without pay.
- E. 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.
- F. 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.
- G. Accrued State sick leave must be utilized first, followed by City sick leave once the employee’s State sick leave is exhausted.
- H. 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.
- I. All State and City sick leave used in conjunction with an L & I injury shall be counted as hours worked for calculation of overtime.
 1. **On-Duty Injuries:** Employees, injured in the line of duty and who receive total temporary disability payments under RCW 51.32.0909, will not be required to augment their L&I time loss payments with their sick leave hours. The City shall pay the entire disability supplement portion, both employer and employee, for up to twenty-one (21) days. After twenty-one (21) days, the City of Des Moines LEOFF 2 Disability Leave Supplement Program shall apply. The City Manager shall have the discretion, on a case by case basis, to extend the twenty-one (21) day limit in the event of a significant on-duty injury.
 - J. LEOFF II employees shall have no maximum accrual of City sick leave hours.
 - K. State and City sick leave may be utilized according to the rules contained in the City of Des Moines Personnel Manual.
 - L. Employees covered by this Agreement with a sick leave balance over one hundred and fifty (150) hours shall have 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 ICMA-RC. Employees with a sick leave balance over two hundred and fifty (250) hours shall have 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 ICMA-RC.
 - M. 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.
 - N. **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 11. HOLIDAYS

- A. **Observed Holidays.** The following holidays will be recognized and observed as paid holidays: New Year's Day, Martin Luther King Jr.'s Birthday, Presidents' Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and the Friday following Thanksgiving Day, Christmas Day, and two (2) floating holidays.
- B. **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 Kelly 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.

- a. 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.

Patrol officers who work New Year's Day or Independence Day will be paid two (2) times their regular rate of pay. Patrol officers who work Thanksgiving Day or Christmas Day shall be paid two and one half (2.5) times their regular rate of hourly pay for all hours worked on those days. Detectives who voluntarily work on the holidays listed above shall be paid their 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.

- C. 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 12. CLOTHING AND EQUIPMENT

- A. 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.
- B. The Employer agrees to provide necessary cleaning of all such clothing and equipment.
- C. The Employer agrees to replace or repair clothing and equipment which is damaged in the line of duty including "fair wear and tear".
- D. Detectives shall be granted a clothing allowance of 1 % of base pay per year. Cleaning shall be provided as defined in Subsection B above.

ARTICLE 13. GUILD ACTIVITIES

- A. 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.
- B. 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.
- C. 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.

- D. 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.
- E. 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 his designates, 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 intranet.

ARTICLE 15. EMPLOYEE BILL OF RIGHTS

A relationship of trust and confidence between employees of the Des Moines Police Department and the community they serve and between employees of the Des Moines Police Department and their Employer is essential to effective law enforcement. Police employees must be free to exercise their best judgment and to initiate law enforcement action in a reasonable, lawful, and impartial manner. In addition, law enforcement employees are obligated to respect the rights of all people, and the Employer is obligated to respect the rights of its employees.

It is essential public confidence be maintained in the ability of the Employer to investigate and properly adjudicate complaints against its employees. The rights of the employee, as well as those of the public, must be protected.

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 a system of complaint and 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. To this end, the Employer welcomes constructive and valid criticism of Employer procedures and complaints against its employees from concerned citizens of the community and from employees.

When an internal 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 he/ she is being interrogated, such interrogation shall be conducted under the following terms and conditions:

- A. An internal 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 internal investigation, informal discussions regarding work performance, and meetings to discuss performance evaluations and Personal Action Forms are not internal investigations and not the subject of this Article. Nothing in this Article or agreement prohibits an employee from invoking his or her right to have a representative present during a preliminary investigation, discussion, or meeting if the employee reasonably believes disciplinary action might result.

- B. All internal investigation interrogations shall be at a reasonable hour. Seventy- two (72) hours or three (3) business days, not to include weekends, before any interview commences, 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 an attorney or Guild Representative to represent him/her in the matter when the investigation may involve any discipline up to and/ or including termination of the employee. The written investigative notice shall provide sufficient detail to reasonably apprise the employee of the factual nature of the accusation.
- C. All interviews shall be limited in scope to activities, circumstances, events, conduct or actions that are the subject of the investigation. If additional information is developed on a subject not related to the initial charge(s), questioning may not commence on the additional information, and the employee and Guild shall be notified of additional charges in writing.
- D. The length of time of the interrogation shall be reasonable, and the employee being interrogated shall have the right to attend to his/her own personal physical necessities.
- E. If prior to or during an internal investigation interrogation of an employee it is determined he/ she may be charged with a criminal offense, he/ she shall immediately be informed of his/her constitutional rights.
- F. If the investigation may lead to criminal charges, the Employer shall inform the employee if he/ she is being ordered to answer questions and his/her rights under the Garrity court decision.
- G. Disciplinary actions may include, but not 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.
- H. No employee shall be required to take a polygraph test and no adverse comment may be included in his/her personnel file or disciplinary hearing for his/her declining to take such polygraph test (RCW 49.44.120).
- I. 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.
- J. 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 discipline in a manner that is least likely to embarrass the employee.
- K. **Investigation Timeline.**

If an employee is facing discipline due to an internal investigation, the following shall govern the timeliness of the investigation:

- 1. Internal Investigations shall be completed within ninety (90) calendar days, subject to the provisions of paragraph 2, 3, and 4 below. In the event the internal 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. 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 until the emergency no longer exists.

2. The Employer shall notify the employee and the Guild by way of Statement of Charges at the start of the internal investigation and upon completion of an internal investigation with a Memorandum of Finding, or a Loudermill process.
3. Internal Investigations may be extended due to determined, exigent circumstances beyond the control of the Employer or Guild. Such circumstances shall include the following: 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.
4. Investigations covered by this paragraph may also be extended if the Chief of Police requests specific, additional investigation. An extension on this basis shall require the notification in paragraph 4 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 paragraph three (3) above, the extension must be agreed upon by the Employer and the Guild.
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.
6. The Employer's obligation to limit extensions of investigations under paragraph 3 shall be subject to the grievance procedure in Article 16, to include arbitration.
7. In the event an internal investigation has identified possible criminal conduct the internal investigation may be suspended pending the outcome of the criminal investigation and judicial process. This will stop all time clocks as relating to internal investigations.
8. Investigations shall be deemed completed when the employee is advised of the Employer's memorandum of findings, 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.
9. At the conclusion of the investigation and no later than (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 (3) business days, not to include weekends, prior to the pre-disciplinary process, for the employee to prepare a response at the disposition hearing.
10. Complaints not meeting the severity of internal investigations will be investigated. Investigations arising out of these complaints shall be completed within thirty (30) calendar days and subject to the provisions of paragraph 3, and 4 above in the event the investigation requires additional time for completion. If the investigation is not completed within forty five (45) calendars days, and subject to the provisions of paragraph 3, and 4 above no discipline shall be discharged. The original complaint and all the attendant documentation shall be removed from the employee's disciplinary and personnel records. The affected employee and the Guild shall be notified in writing of the findings of these investigations within 7 business days, not including weekends, of the completion of the investigation.

L. Psychological or Medical Evaluations.

When there is reasonable suspicion to believe an employee is psychologically and/ or medically unfit to perform his/her 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 modification(s). The doctor will keep all information made available to him/her confidential, following HIPAA privacy rules

As used in the above paragraph, "doctor" refers to a physician, psychologist or psychiatrist.

The Guild/Employee shall have an opportunity at its expense, to discuss with the Employer's examining professional their conclusion and reasons therefore. 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 report shall be in writing and shall be available to the Employer.

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.

Should an Employee Grieve a disciplinary or 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.

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.

M. Personnel Records.

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, Internal Affairs files, or applicant background investigation documents such as, but not limited to, psychological evaluations and polygraph results.
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 (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.
3. Each employee's personnel files 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.

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 occurred within that time. Written reprimands and memos of concern will no longer be active for the purpose of progressive discipline after (3) years provide the same or similar incidents have not occurred within that time.

N. **Officer involved Critical Incidents.**

1. **Statement of Purpose.** The parties recognize adequate training is critical for preventing unnecessary use of force and for minimizing the impact on an employee who is involved in a critical incident.
2. The Employer recognizes its obligation to provide adequate training in this area, including the reactions of employees in critical instances and in dealing with problems that result after being involved in such an incident.
3. Any time a critical incident occurs the following will apply:
 - a. Upon arrival at a scene where use of a firearm has taken place, representatives of the Employer shall only request from the employee Public Safety Information needed to secure the scene and identify and apprehend any perpetrators of the crime who may be at large. The Employer will not question the employee(s) except to acquire the above information.
 - b. The employee involved in a critical incident will be given reasonable accommodations to have contact with any persons allowed under RCW 5.60.060 (spouse, clergy, peer support, etc.)
 - c. The case investigation will be made available to the Guild or its attorney, upon request when completed and available to the department.
 - d. The Employer must preserve a chain of custody for the weapon or weapons utilized in an incident and the employee may be immediately issued a replacement weapon or weapons (department issued weapons only) unless circumstances as determined by Command Staff deem it inappropriate to do so.
 - e. If there are multiple investigators assigned because concurrent investigations are underway, the investigators will coordinate so one investigator will be primarily responsible for the interview. All attempts will be made to minimize the need for successive interviews.
 - f. During the interview of the employee relating to a critical incident, the employee will be given reasonable breaks and periods to prepare for the interview, and be given the right to consult with legal counsel and / or guild representation prior to and during the interview upon request. If requested, the interview may be postponed until the employee has been able to seek professional counseling before the interview takes place.
 - g. If the incident is captured on video, the employee will be allowed to review the video prior to any statement being made unless the investigation has determined possible criminal culpability by the involved employee.
 - h. At the option of the Employer (considering input from the affected employee and/or Guild Representative), the employee shall be placed on administrative duty or administrative leave. Employees placed on either of these two leaves will revert to a weekly (Monday through Friday) dayshift work schedule for interview and administrative availability.
 - i. While on administrative assignment, the employee will be allowed access to the employee's choice

of counselors or doctors without loss of pay or benefits to the employee for a reasonable period determined by the employer and under medical coverage plan options.

- j. When either the employee or the Employer believes the employee should return to the employee's regular assignment, at the Employer's option, the employee shall provide documentation from his/her counselor or doctor indicating the employee is fit to return to his/her regular duties or to modified duties. The Employer at its option may request (at their expense) an independent examination of fitness for duty.
 - k. After returning to duty, the employee will be encouraged and allowed full access to counselors without loss of pay or benefits to the employee while participating in a Department/ City approved program.
 - l. The Guild President, or his designee, will be advised as soon as possible of any change(s) or deviation from the Officer Involved Shooting (310) policy is made by the Chief of Police or his designee.
- O. **Officer/Employee Legal Representation.** The City agrees to provide a legal defense for an Employee in defense of criminal charges brought pursuant to CrRLJ 2.1(c) against the Officer for acts and/ or omissions occurring while the Officer was acting in good faith in the performance or purported failure to perform his/her official duties. If a prosecutor files criminal charges as a result of the complaint being brought pursuant to CrRLJ 2.1(c), the City's obligation to provide a legal defense shall terminate immediately, except that the reimbursement provisions of 15.P. shall apply.
- P. **Reimbursement for Legal Representation.** If an Officer is prosecuted for acts and/ or omissions occurring while the Officer was acting in good faith in the performance or purported failure to perform his/her official duties, the City shall reimburse the Officer for legal defense, in an amount up to \$100,000, if the Officer is not convicted or does not suffer any other disposition of the criminal complaint that is adverse to him or her. (e.g. An acquittal due to a finding of not guilty by reason of insanity; a dismissal by reason of incompetency, pursuant to chapter 10.77 RCW; a dismissal entered after a period of probation, suspension, or deferral of sentence; or an Alford plea.)

ARTICLE 16. REDUCTION IN FORCE PROCEDURES

- 1. Layoff and recall shall be in accordance with established rules and regulations of the Des Moines Civil Service Commission with the following exceptions:
 - A. Seniority will be determined by the employees 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.
 - B. In the event of layoff, employees will be laid off in the order of their reverse seniority with the lowest seniority employees being laid off first. Seniority for officers shall be defined as time in the bargaining unit. Seniority for sergeants shall be defined as time in the classification.
 - C. At the time of any layoff, sergeants may be given an opportunity to accept a reduction to the next lower rank in lieu of layoff. Such employees shall have bumping rights over the employee in the next lower rank with a lesser amount of seniority within the bargaining unit.
 - D. Employees laid off or demoted in lieu of layoff shall be placed on a reinstatement list for the classification from which the layoff/ demotion took place.
 - E. Members who are demoted in lieu of layoff shall remain on the reinstatement list indefinitely. These members will be reinstated to their previous promotional positions in opposite order of their demotion as positions become available. Once all members have been restored to their previous rank, the department may then proceed with routine testing for future promotions.

- F. Members 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.
 - G. An individual will lose rights to reinstatement and/ or be removed from the reinstatement list if he commits an act that would be cause for termination of employment or if he loses his/her commission as a general authority law enforcement officer.
 - H. 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.
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.

ARTICLE 17. GRIEVANCE PROCEDURE

Section 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 2. Procedure

- Step 1. An Employee must present a grievance in writing within twenty-one (21) calendar days of its alleged occurrence to a Commander. The written grievance shall include a statement of the issue, the section of the Agreement violated and the remedy sought. The Commander 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 Commander, it shall be presumed resolved.
- Step 2. If the Employee is not satisfied with the solution by the Commander, the grievance, in writing, may be presented within fourteen (14) calendar days of the Commander'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. 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 his or her staff. 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 its 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 his/her selection by a joint letter from the Employer and the Guild requesting that he/ she set a time and place subject to the availability of the City and the Guild representatives. The arbitrator selection procedure described above is only applicable for non-disciplinary cases. Arbitrators in disciplinary cases shall be assigned by PERC in accordance with state law. The arbitrator shall have no right to amend, modify, ignore, add to, or subtract from the provisions of this agreement. He/ she shall consider and decide only the specific issue submitted to him/her in writing by the City and the Guild, and shall have no authority to make a decision on any other issue not submitted to him/her. The arbitrator shall submit his/her 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 his/her 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 3. Special Provisions.

- A. The cost of the arbitration shall be borne equally by the parties including the arbitrator's fees and expenses, room rental and cost of record. Each party shall bear the cost of the preparation and presentation of its own case.
- B. The term "Employee" as used in this article shall mean an individual employee, a group of employees, and/ or their Guild representative.

- C. An aggrieved party shall be granted time off without loss of pay for the purpose of attending a hearing on a grievance.
- D. A grievance may be entertained in, or advanced to, any step in the grievance procedure if the parties so jointly agree.
- E. 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.
- F. Any grievance shall be considered settled at the completion of any step if the Employee is satisfied or deemed withdrawn if the matter is not appealed within the prescribed period of time.
- G. Grievance claims involving retroactive compensation shall be limited to one hundred twenty (120) days prior to the written submission of the grievance.

Section 4. Discipline

Disciplinary actions at a level of suspension or greater may be processed through the grievance procedure established under this Article, provided that, in no event shall this Agreement alter or interfere with disciplinary procedures followed by the City or provided for by Department Policy, City Ordinance or other applicable law.

An employee covered by this Agreement must – upon initiating objections relating to disciplinary action at a level equal to a suspension of eight (8) hours of work or more, demotion or termination-use either the grievance procedure established under this Agreement or pertinent Civil Service procedures regarding disciplinary appeals. Should the employee attempt to adjudicate their objections(s) relating to a disciplinary action through both the grievance procedure and the Civil Service Commission, the grievance shall be considered withdrawn upon first notice that an appeal has been filed with the Civil Service Commission.

The time period for filing a grievance regarding disciplinary action that is subject to appeal under this Agreement, as well as the standard of review, shall be the same as that provided in a disciplinary appeal that may be filed with the Civil Service Commission. A grievance regarding disciplinary action may only be filed by a signatory of this Agreement. Grievances regarding discipline shall proceed through steps 1 through 3, as appropriate, of the grievance process. In the event the grievance is not resolved at one of the first three steps, the Guild and the City agree that Step 4, Mediation, shall be skipped and the grievance shall proceed per the provisions of Step 5, Arbitration.

ARTICLE 18. 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. This protection shall also apply for any claims or suits arising from an employee's authorized off duty employment within the city limits of Des Moines; provided such claim or suit results from acts or omissions made while acting or, in good faith purporting to act, within the scope of the employee's official duties as a Des Moines Police Officer. This shall not preclude

the City from recovering losses, to the extent coverage is otherwise provided by the off duty Employer or his insurer. Indemnity and defense shall not be provided by the City for any dishonest, unlawful, fraudulent, criminal, or malicious act.

ARTICLE 19. OFF DUTY EMPLOYMENT

Off duty supplemental overtime pay is defined to address overtime worked by employees while off-duty (hereafter referred as “supplemental overtime”), which is funded and paid by external third parties. The City will document, process and record all such supplemental overtime. The City agrees to perform the scheduling, bookkeeping and reporting functions of such supplemental overtime for the City of Des Moines commissioned officers. The employees will hereafter be paid for such supplemental shifts through City payroll and be subject to all applicable payroll related taxes and benefits deductions.

- A. **City overtime** is defined as additional hours of work for City staffing purposes or additional staffing needed due to special events planned, organized and funded by the City of Des Moines.
- B. **Supplemental overtime** is defined as additional hours of work which are planned/organized, funded and paid by an independent third party (hereafter referred as “non-City related events”). These are generally events which are not funded or paid by the City. Examples of supplemental overtime include, but are not limited to, security for a private business, security for a private party/event, personal protection for a non-government official, or traffic control at construction sites.
- C. Any employee who has passed their new hire probationary period is eligible to work supplemental overtime.
- D. An employee’s conduct while working supplemental overtime shall be considered on-duty conduct. Employees working supplemental overtime shall be subject to all policies, procedures, practices and standards of the City and the Des Moines Police Department, and shall be subject to all laws, rules, and regulations of the State of Washington and/or the Federal Government applicable to police work and law enforcement. Failure to abide by applicable laws, rules, regulations, policies, procedures, practices and standards may subject the officer to disciplinary action up to and including termination of employment. The officer will be afforded all applicable protections as provided by the collective bargaining agreement, Des Moines Civil Service rules and City and Department policies and procedures for conduct that arises while working supplemental overtime.
- E. No employee may work supplemental overtime while on State or City sick leave.
- F. The Chief retains the right to restrict officers from working supplemental overtime with cause (i.e. disciplinary action, documented performance concerns, paid administrative leave, etc.).
- G. Employees working or scheduled to work supplemental overtime may be redirected, at the discretion of the Chief, to cover City overtime, Des Moines Police Department functions and emergencies. City overtime shall be paid at the officers’ regular overtime rate, as applicable, per the collective bargaining agreement.
- H. Supplemental overtime worked shall only be paid and shall not be eligible for compensatory time accrual.

- I. The minimum number of hours for each supplemental overtime shift/assignment shall be four (4) hours.
- J. Compensation for supplemental overtime is worked for and paid by an independent third party, and is therefore, exempt from Fair Labor Standards Act (FLSA) and Minimum Wage Act (MWA) overtime calculations. Supplemental overtime hours and pay shall not be included in the calculation of City overtime obligations.
- K. The supplemental overtime rate will be a flat base rate calculated annually on January 1 and will remain in effect until December 31st of the same year.
- L. The rate of pay shall be calculated as follows:
 - a. Take an average of all active officers (excluding Sergeants and Master Sergeants) hourly base pay rate, to include all premiums and employees' portion of all applicable payroll taxes (Medicare, Social Security replacement plan) and times it by one and one half (1-1/2) for an average hourly base pay rate.
 - b. Such supplemental overtime pay less applicable payroll taxes will be included in the employee's regular paycheck from the City. Applicable payroll taxes to be deducted from the employee's supplemental overtime earnings shall include the employee's portion of payroll taxes (i.e. Social Security replacement plan, Medicare, WA State LEOFF retirement, etc.).
 - c. The City shall report supplemental overtime earnings and deductions to the appropriate governmental agencies.
- M. The third party employer shall pay the City for all supplemental overtime hours worked at a mutually agreed upon contract rate. This contract rate shall include the employer's portion of applicable payroll taxes plus up to a ten (10%) percent administrative fee.
- N. If a supplemental overtime shift is canceled, the City agrees to make a reasonable effort to notify employees of such changes at least ten (10) hours prior to the start time of the supplemental overtime shift, provided the City has advance knowledge of such changes.
- O. This article does not apply to off-duty additional employment work with volunteer groups or if an employee wishes to take additional employment during off-duty hours. Time worked in off-duty additional employment, is not recognized as hours worked on duty or as off duty supplemental overtime pay as defined by this Article. An employee who wishes to take off-duty additional employment during off-duty hours must first submit a written request seeking approval to the Chief of Police and receive the Chief's approval before accepting the employment. In doing so, the employee will; (1) name the company and/or employer, (2) fully describe the nature of the work to be performed, (3) list hours of work, and (4) obtain from the company/employer an agreement in a form approved by the City that indemnifies, releases and holds the City harmless from any liability arising from the employee's discharge of his/her duties as an employee of the company/employer.

ARTICLE 20. RETIREE RIGHTS

Effective the first of the month after ratification of this agreement. An employee separating from service in good standing with five (5) or more years of service with the Des Moines Police Department, and who meets

LEOFF eligibility requirements to receive retirement benefits will receive a retiree badge and commission card from their last duty assignment served.

An employee separating from service, in good standing with twenty (20) or more years of service as a Commissioned and/ or Certified Police Officer, and the last five (5) or more years of service with Des Moines Police Department, and who meets meeting LEOFF eligibility requirements to receive retirement benefits will additionally receive their duty weapon at retirement.

The Chief of Police shall have the discretion to issue or deny department equipment to the retiree under certain and/ or exceptional circumstances.

ARTICLE 21. 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 22. 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 should 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 23. BENEFIT PLANS

- A. 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:
1. Guild members will participate in their choice of the following medical plans:
 - LEOFF Health and Welfare Trust Plan F
 - AWC Kaiser Permanente \$20 Copay Plan
 2. Effective January 1, 2022 through December 31, 2024, the City will pay one hundred percent (100%) of the premiums for the applicable medical plans listed in Sections 23.A.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 23 B. 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 LEOFF 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. In 2022, 2023, and 2024, 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 (1) or more dependents. 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. One-hundred percent (100%) of the premium for Washington Dental Service (WDS) Basic Plan F as provided by AWC.
6. One-hundred percent (100%) of the premium for Orthodontia Option II as provided by AWC for all children required to be covered by dental plans at a level of one thousand ((\$1,000) dollars lifetime coverage.
7. For those employees who enroll in Kaiser Permanente \$20 Copay Plan, one-hundred percent (100%) of the premium for the twenty-five (\$25) deductible Vision Service Plan (VSP) as provided by AWC. Vision coverage is included in the LEOFF Trust Plan F medical plan.

B. **Medical Premium Increase.** The City shall cover any increases to health insurance premiums up to eight (8.0%) percent annually. The City and the employees shall equally split any increases above eight (8.0%) percent. If the health insurance premiums increase by more than eight (8.0%), the parties will meet and confer regarding alternative health insurance options.

C. **401 Plan, 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 6.52% of the employee's wage, while the employee contributes an amount equivalent to the current employee Social Security deduction rate.

To qualify for this program Employees must be 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 (Ph. X) each member's annual salary, excluding overtime but including educational pay. 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 24. COMPENSATION

- A. **Compensation.** See Appendix A
- B. **Body Cameras.** See Appendix A
- C. **Longevity Premium.** See Appendix A
- D. **Specialty Pay Premium.** See Appendix A
- E. **Educational Incentives.** Educational incentive pay will be paid to Employees with a qualifying AA or AS degree equal to 2.5% base pay, 4% for a BA or BS degree, and 5% for an MA, MS, MPA; or JD. Qualifying degrees are Police Science, Political Science, Sociology, Psychology, Community Service, Business Administration, Criminology, Law, Criminal Justice, Public Administration, and any other degrees approved by the Chief of Police. Employees currently earning educational incentives for

degrees other than those listed will continue to receive such pay and the increases itemized in this Agreement.

F. 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.

G. PFML. Beginning January 1, 2019, with benefits effective January 1, 2020 and onward, 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.

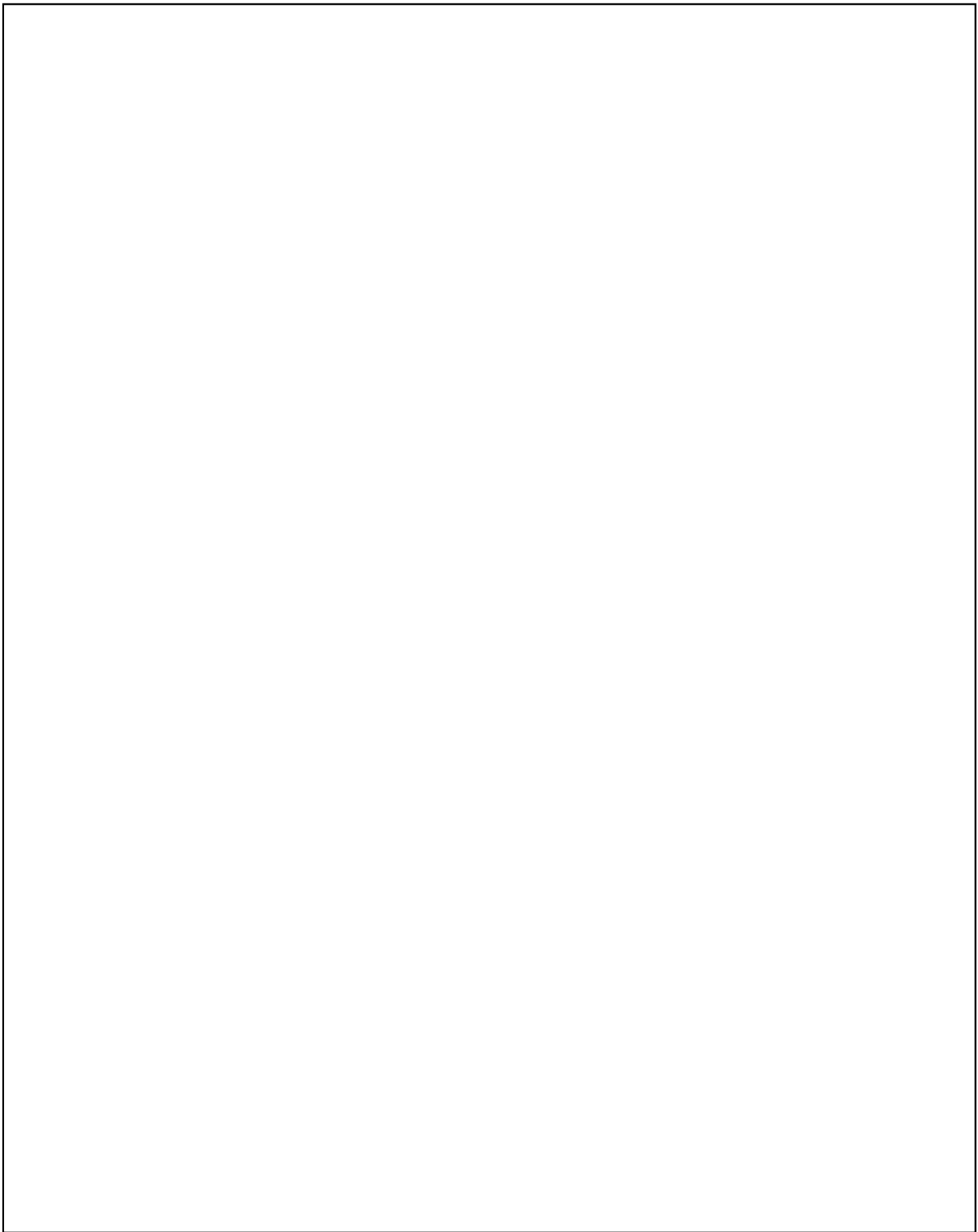
ARTICLE 25. TERM OF AGREEMENT

Changes to Article 24. Compensation will become effective January 1, 2022. The remainder of this Agreement shall become effective immediately upon the signing of this document. This agreement shall remain in full force and effect through December 31, 2024.

Approved this _____ day of _____, 2022.

Michael Matthias,
City Manager

Justin Cripe, President
Des Moines Police Guild



Longevity Premium:

5 years DMPD=1% of base pay
12 Years DMPD=2% of base pay
20 Years DMPD=3% of base pay

Increases in the longevity premium rate shall begin in January of the year in which periods of aggregate service are completed according to the schedule above.

Specialty Pay Premium:

Employees may stack up to 4%
Detectives=3%
SWAT, K-9, Tech, DRE, Marine if hired, and FTO =2%
Sergeant supervising Specialties (including Sergeant overseeing Firearms program)= 1%

Retroactive Pay:

Retroactive pay shall be to January 1, 2022 and shall be paid to active employees and employees who “retire” in good standing, pursuant to Departmental practice, during the term of this Agreement.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Draft Ordinance No: 22-070: Public Hearing on continuing moratorium for new development in the business park area and adopting findings of fact.

FOR AGENDA OF: December 8, 2022

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: November 14, 2022

ATTACHMENTS:

- 1. Draft Ordinance No. 22-070

CLEARANCES:

- City Clerk *JK*
- Community Development *DEL*
- Courts _____
- Director of Marina Redevelopment *[Signature]*
- Emergency Management _____
- Finance *[Signature]*
- Human Resources _____
- Legal */s/TG*
- Marina _____
- Police _____
- Parks, Recreation & Senior Services _____
- Public Works _____

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

Purpose and Recommendation

The purpose of this agenda item is for the City Council to hold a public hearing to receive comments on Ordinance No. 1761 enacted on October 27, 2022 that instituted a six-month moratorium prohibiting the submission or acceptance of development applications for new development within an area comprised of 73 acres located south of South 216th Street as identified on Exhibit A of Ordinance 1761. Draft Ordinance No. 22-070 (Attachment 1) adopts findings of fact to support the continuation of the moratorium in compliance with state law.

Suggested Motion

Motion 1: "I move to suspend Council Rule 26(a) in order to enact Draft Ordinance No. 22-070 on first reading."

Motion 2: “I move to enact Draft Ordinance No. 22-070 adopting findings of fact to support the moratorium instituted through Ordinance 1761.”

Background

On October 27, 2022, Des Moines City Council enacted a six-month moratorium prohibiting the submission or acceptance of development applications for new development within an area comprised of 73 acres located south of South 216th Street as identified on Exhibit A of the adopted ordinance. The moratorium area includes properties zoned Business Park (B-P), Residential Multifamily 2,400 (RM-2,400), Residential Single Family 8,400 (RS-8,400) and Suburban Estates (R-SE).

A moratorium is a temporary limitation on development. It is one of the principal tools local governments use for implementing planning and Growth Management Act (GMA) objectives. It provides a community time to conduct and review studies necessary for adopting or revising a land use plan and related regulations and allows for a “planning pause” period during which land development activity is frozen or limited until permanent regulations implementing the plan can be adopted.

Washington State grants Cities the authority to adopt a moratorium under [RCW 36.70A.390](#) and requires:

- A public hearing shall be held within at least 60-days of adoption the moratorium ordinance and findings of fact justifying the City Council’s action.
- A moratorium may be in effect for not longer than six months, but may be extended to one year.

The purpose of the moratorium is to allow the City time to study the area and develop new policies, strategies or zoning to shape future development trends, facilitate the highest and best use, and create family wage jobs. Key considerations influencing this work include the GMA periodic review and update, Puget Sound Regional Council’s VISION 2050, Countywide Planning Policies, and Des Moines’ 2044 growth targets.

Cities such as Des Moines are required to review and, if needed, revise its comprehensive plan and development regulations, to ensure they comply with the GMA (RCW 36.70A). The next periodic review and update of the Comprehensive Plan is underway and must be completed by December 2024. The Comprehensive Plan will look 20 years into the future to a planning horizon of 2044.

VISION 2050, is the region’s plan for growth. It establishes multicounty planning policies for King, Snohomish, Pierce and Kitsap Counties on how and where the region grows. Des Moines has been designated as a High Capacity Transit Community in Vision 2050. Transit such as light rail is expected to shift market demand, resulting in future development that does not resemble prior development patterns. Sound Transit’s Angle Lake station, Sea-Tac Airport and the SR-509 24th/28th Avenue South connection are all expected to influence future land use in the Moratorium Study Area.

Des Moines has been allocated new growth targets of 3,800 housing units and 2,380 jobs for the planning period by King County. By proactively planning for growth, we can ensure that our land use, transportation, and infrastructure investments among other essential functions are prepared to guide and absorb growth rather than be overwhelmed in the future.

Discussion

The moratorium will allow the City time to consider land use and economic trends along with the Comprehensive Plan vision and goals and determine if any land use, zoning or regulatory changes are warranted for the Moratorium Study Area. Without a moratorium the City could, in the near future, receive applications for new development in the moratorium area that would conflict with the achievement of the long-range vision for this area. The moratorium will prevent any new applications from being submitted to the City during the term of the moratorium.

Staff has created a tentative work plan that includes research, public outreach, drafting a proposal, required public hearings, and final action by the City Council. Over the next month, staff will refine the work plan and schedule. Based on the schedule requirements, staff anticipates an extension of 6 months may be needed. Prior to issuing an extension, the City Council would first hold a public hearing, demonstrate significant progress, and outline the steps remaining.

Alternatives

1. Approve the Draft Ordinance with Amendments based on comments received at the Public Hearing.
2. Decline to pass the Draft Ordinance, and direct staff to prepare necessary documents to terminate the moratorium.

Financial Impact

During the moratorium the City will not receive any fees from applicable building and/or land use applications for this area. New land use and zoning regulations may increase the value of the properties in this area, having long-term financial benefits.

Recommendation

Administration recommends that the City Council continue the 6-month moratorium.

Council Committee Review

N/A

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Draft Ordinance No. 22-070
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CITY ATTORNEY'S FIRST DRAFT 11/28/2022

DRAFT ORDINANCE NO. 22-070

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to land use and zoning, adopting findings of fact to support the moratorium instituted through Ordinance 1761.

WHEREAS, on October 27, 2022, the Des Moines City Council instituted an emergency six-month moratorium prohibiting the submission or acceptance of development applications for new development within an area comprised of 73 acres, located in the business park area south of South 216th Street, that includes properties zoned Business Park (B-P), Residential Multifamily 2,400 (RM-2,400), Residential Single Family 8,400 (RS-8,400), and Suburban Estates (R-SE) to enable the City to study the highest and best use for this area in consideration of Des Moines' 2044 growth targets, Countywide Planning Policies, VISION 2050, and the periodic review and update to the Des Moines comprehensive plan and development regulations, and

WHEREAS, the City Council also set a date for a public hearing on the moratorium, established six months as the tentative effective period until the Council public hearing on the continued maintenance of the moratorium, and declared an emergency necessitating immediate adoption of a moratorium, and

WHEREAS, Section 36.70A.390 and Section 35A.63.220 of the Revised Code of Washington authorizes the City Council to adopt a moratorium for a period of six months, as long as the City holds a public hearing within sixty days, and adopts findings and conclusions to support such moratorium, and

WHEREAS, immediately after the public hearing, the City Council shall adopt findings of fact on the subject of the moratorium, and

11/28/2022
Draft Ordinance No. 22-070

Draft Ordinance No. 22-070
Page 2 of 3

WHEREAS, notice of the public hearing was provided on November 21, 2022 pursuant to the DMMC, and

WHEREAS, the Des Moines City Council held a public hearing within sixty days of the passage of Ordinance 1761 on December 8, 2022, and all persons wishing to be heard were heard, and

WHEREAS, the City Council desires to enter findings of facts and conclusions in support of the continued maintenance of the moratorium for a period of six months after the adoption of the moratorium; now, therefore,

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

Sec. 1. Findings and Conclusions. The Council adopts all of the "whereas" sections, Definitions and Findings instituted through Ordinance 1761 (Exhibit 1) and all of the "whereas" sections in this Ordinance to support the Moratorium, as well as the following:

(1) The purpose of the Moratorium Ordinance is to maintain the status quo while the City considers if the existing underlying zoning districts and land development codes are appropriate for these properties.

(2) The City will perform the necessary economic, land use, concurrency and environmental analysis associated with the vision and goals that should be integrated in any new land use and zoning regulations for the Moratorium Study Area.

(3) The six-month moratorium imposed by Ordinance 1761 became effective on October 27, 2022 and is in effect until April 27, 2023 unless it is extended by the City Council in accordance with state law.

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Draft Ordinance No. 22-070

Sec. 2. Severability - Construction.

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

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

Sec. 3. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval, and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of _____ and signed in authentication thereof this ____ day of _____, 2022.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

11/28/2022
Draft Ordinance No. 22-070

ORDINANCE NO. 1761

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to land use and zoning, adopting an emergency six-month moratorium prohibiting the submission or acceptance of development applications for new development within an area comprised of 73 acres, located in the business park area south of South 216th Street, that includes properties zoned Business Park (B-P), Residential Multifamily 2,400 (RM-2,400), Residential Single Family 8,400 (RS-8,400), and Suburban Estates (R-SE) to enable the City to study the highest and best use for this area in consideration of Des Moines' 2044 growth targets, Countywide Planning Policies, VISION 2050, and the periodic review and update to the Des Moines comprehensive plan and development regulations, and setting a date for a public hearing on the moratorium, establishing six months as the tentative effective period until the Council public hearing on the continued maintenance of the moratorium, and declaring an emergency necessitating immediate adoption of a moratorium.

WHEREAS, Section 36.70A.390 of the Revised Code of Washington authorizes the City Council to adopt a moratorium for a period of six months, as long as the City holds a public hearing within sixty days, and adopts findings and conclusions to support such moratorium, and

WHEREAS, the City of Des Moines is required by RCW 36.70A.130(5)(a) to review and, if needed, revise its comprehensive plan and development regulations by December 30, 2024, to ensure they comply with the Growth Management Act (GMA), and

WHEREAS, moratoria are one of the principal tools in the "toolbox" of local governments for implementing planning and GMA objectives that provide a community with the time to conduct and review studies necessary for adopting or revising a land use plan and related regulations to achieve growth management policies, and allow for a "planning pause" period during which land development activity is frozen or limited until permanent regulations implementing the plan can be adopted, and

WHEREAS, the Puget Sound Regional Council (PSRC) adopted VISION 2050 and a revised Regional Growth Strategy that focuses growth on a network of designated Regional Growth Centers and high capacity transit station areas, and

WHEREAS, VISION 2050 designates Des Moines as a "high capacity transit community", and

WHEREAS, high capacity transit such as light rail is expected to shift market demand, resulting in future development that does not resemble prior development patterns, and

WHEREAS, the North Central area of Des Moines is located within one mile of Sound Transit's Angle Lake station, and

WHEREAS, the 2021 King County Urban Growth Capacity Report, commonly referred to as "Buildable Lands," provides a periodic assessment of development capacity for future housing and employment, examines how jurisdictions are achieving 2035 growth targets and density goals with consideration for market and infrastructure constraints, and establishes new growth targets by jurisdiction for the 2019-2044 planning period, and

WHEREAS, since 2006, Des Moines has grown at 29 percent of the pace needed to achieve its 2035 housing growth target of 3,480 units and 36 percent of the pace needed to achieve its jobs growth target of 5,800 jobs, and

WHEREAS, Des Moines has been allocated new growth targets of 3,800 housing units and 2,380 jobs for the 2019-2044 planning period, and will need to plan for the remaining growth targets, largely through updated policies and increases in development capacity, such as rezones and changes to development standards, as part of its GMA periodic review and update that is underway, and

WHEREAS, approximately 14 percent of the City's total land supply is zoned for mixed use, commercial and institutional uses that support job growth, of which about 25 percent within the North Central part of the City, and

WHEREAS, a primary goal of the North Central Neighborhood Element of the Des Moines 2035 Comprehensive Plan is to catalyze economic opportunity and investment by strengthening and supporting business growth and vitality and the creation of family wage jobs, and

Ordinance No. 1761
Page 3 of 6

WHEREAS, the Comprehensive Plan envisions a mix of uses including offices, research and development, wholesale trade, light manufacturing, and other related uses within the B-P Zone, and

WHEREAS, the City has invested over \$30 million in transportation and infrastructure improvements along 24th Avenue South and South 216th Street to facilitate freight mobility and the creation of 3,000 to 5,000 family wage jobs in the North Central Planning Area, and

WHEREAS, recent development of the Des Moines Creek Business Park and adjacent commercial properties along 24th Avenue South to the east have been predominantly distribution, warehouse and logistics, and light industrial uses, and

WHEREAS, the City desires a more balanced mix of commercial and business uses and job opportunities, and

WHEREAS, without a moratorium the City could, in the near future, receive applications for new development that could conflict with the achievement of the long-range vision and job growth for this area, and

WHEREAS, adopting and implementing new policies, strategies or zoning will help shape future development trends to facilitate the highest and best use of the City's limited commercial land supply and the creation of new family wage jobs, and

WHEREAS, as required by RCW 35A.63.220, the Des Moines City Council will hold a public hearing within sixty days of the passage of this Ordinance; now therefore,

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

Sec. 1. Definitions. The following definitions apply to the terms used in this Ordinance:

(1) "Moratorium Study Area" means the 73-acre area located south of South 216th Street, that includes properties zoned Business Park (B-P), Residential Multifamily 2,400 (RM-2,400),

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Residential Single Family 8,400 (RS-8,400), and Suburban Estates (R-SE) as shown on Exhibit A.

(2) "Development Permit Applications" means applications for design review, building permits, conditional use permits, master plans, subdivisions (short plat, preliminary plat), variances, and other permit applications related to new development.

(3) "Exempt Permit Applications" means the moratorium imposed under Section 3 of this Ordinance shall not apply to the following permit applications: (1) Vested Applications, (2) applications for tenant improvements of existing non-residential buildings, (3) applications for home occupations, (4) applications for sign permits, and (5) applications for permits or approvals that are required for upkeep, repair or maintenance of existing buildings and properties or work mandated by the City to maintain public health and safety.

Sec. 2. Findings. The Council adopts all of the "whereas" sections of this Ordinance as findings to support this Moratorium Ordinance, as well as the following:

(1) The purpose of this Moratorium Ordinance is to maintain the status quo while the City considers if the existing underlying zoning districts and land development codes are appropriate for these properties.

(2) The City will perform the necessary economic, land use, concurrency and environmental analysis associated with the vision and goals that should be integrated in any new land use and zoning regulations for the Moratorium Study Area.

Sec. 3. Moratorium Imposed. The City Council hereby imposes an immediate six-month moratorium on the acceptance of all non-exempt development permit applications for development activities on property located within the Moratorium Study Area, as shown in the map attached hereto as Exhibit A. All such non-exempt applications shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development application, such acceptance shall only allow

processing to proceed, but shall not constitute an assurance that the application will be approved.

Sec. 4. Duration of Moratorium. The moratorium imposed by this Ordinance shall commence on the date of the adoption of this Ordinance. As long as the City holds a public hearing on the moratorium and adopts findings and conclusions in support of the moratorium (as contemplated by Section 2 herein), the moratorium shall not terminate until six (6) months after the date of adoption, or at the time all of the tasks described herein have been accomplished, whichever is sooner. The Council shall make the decision to extend the moratorium by six (6) months or to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Sec. 5. Public Hearing on Moratorium. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption, and hereby sets a hearing date of December 8, 2022. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this moratorium and either justify its continued imposition or cancel the moratorium.

Sec. 6. Severability - Construction.

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

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

Sec. 7. Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum (RCW 35A.12.130). Without an immediate moratorium on the City's acceptance of non-exempt development applications for property, such applications could become vested, leading to development that could be incompatible

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with the codes eventually adopted by the City. Therefore, the moratorium must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of development applications to the City in an attempt to vest rights for an indefinite period of time. This Ordinance does not affect any existing vested rights, nor will it prohibit all development in the City, because those property owners with exempt applications/permits, those with previously obtained approvals for development or redevelopment of the type identified as "exempt" may proceed with processing and development, as the case may be.

Sec. 8. Effective date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth in Section 7, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.13.190.

PASSED BY the City Council of the City of Des Moines this 27th day of October and signed in authentication thereof this 27th day of October, 2022.


MAYOR

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk

Published: November 1, 2022

Exhibit A
Moratorium Study Area

