

AGENDA

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Suite C.
Des Moines, Washington
Thursday, May 8, 2025 - 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

PROCLAMATIONS

- Item 1. NATIONAL POLICE WEEK PROCLAMATION
Motion is to approve the Proclamation recognizing May 11th – 17th, 2025 as National Police Week.
[National Police Week Proclamation](#)

EXECUTIVE SESSION

- Item 1. POTENTIAL LITIGATION RCW 42.30.110(1)(i) and PROPERTY ACQUISITION RCW 42.30.110 (1)(b) – 30 MINUTES

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

COMMENTS FROM THE PUBLIC

COMMITTEE REPORTS

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

- Item 1. PORT OF SEATTLE STAKEHOLDER ADVISORY ROUNDTABLE (START) COMMITTEE UPDATE
- Item 2. UPDATE ON ADMINISTRATIVE SERVICES
- Item 3. DISCUSSION ON APPOINTIVE COMMITTEE STRUCTURE
[Discussion on City Appointive Committees](#)

CONSENT AGENDA

- Item 1. APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through April 24, 2025 and payroll transfers through April 18, 2025 in the attached list and further described as follows:

EFT Vendor Payments	#11697-11776	\$1,220,527.29
Wires	#2930-2944	\$ 893,135.24
Accounts Payable Checks	#166675-166723	\$ 650,348.42
Payroll Checks	#19939-19939	\$ 2,253.94
Payroll Advice	#13289-13444	\$ 486,430.37

Total Checks and Wires for A/P & Payroll: \$3,252,695.26

[Approval of Vouchers](#)

Item 2. APPROVAL OF MINUTES

Motion to approve the minutes from the City Council Regular Meetings held on March 13, 2025, and March 27, 2025, as well as the City Council Study Session held on April 3, 2025.

[Approval of Minutes](#)

Item 3. ADDENDUM 2 WITH MOFFATT NICHOL ENGINEERING - L, M, & N DOCKS REPLACEMENT PROJECT

Motion is to approve the addendum with Moffatt Nichol in the amount of \$74,251.00 for design and permitting of the L, M, & N Docks Replacement Project and authorize the City Manager to sign the addendum substantially in the form as attached.

[Addendum 2 with Moffatt Nichol Engineering - L, M, & N Docks Replacement Project](#)

Item 4. NORTH HILL ELEMENTARY WALKWAY IMPROVEMENTS PROJECT – CONSULTANT CONTRACT SUPPLEMENT #1

Motion is to approve Supplement #1 for Parametrix to provide final design and right-of-way services for the North Hill Elementary Walkway Improvements Project in the amount of \$129,112.00 and further authorize the City Manager to sign said contract amendment substantially in the form as submitted.

[North Hill Elementary Walkway Improvements Project – Consultant Contract Supplement #1](#)

Item 5. 2025 DES MOINES FARMERS MARKET AGREEMENT

Motion is to approve the Agreement with the Des Moines Farmers Market for the 2025 Des Moines Waterfront Farmers Market to be held at the Des Moines Marina, and authorize the City Manager to execute the Agreement substantially in the form as attached.

[2025 Des Moines Farmers Market Agreement](#)

NEW BUSINESS

Item 1. LAKEHAVEN UTILITY DISTRICT FRANCHISE UPDATE AND EXTENSION

[Lakehaven Utility District Franchise Update and Extension](#)

Item 2. NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

UNFINISHED BUSINESS

Item 1. MIDDLE HOUSING DISCUSSION

Item 2. PROTOCOL MANUAL REVIEW

[City Council Protocol Manual Review](#)

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

NEXT MEETING DATE

May 22, 2025 City Council Regular Meeting

ADJOURNMENT

[Projected Future Agenda Items](#)

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: National Police Week Proclamation

FOR AGENDA OF: May 8, 2025

ATTACHMENTS:

1. Proclamation

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: April 29, 2025

CLEARANCES:

- ☒ [X] City Clerk *SK*
☐ [] Community Development ____
☐ [] Courts ____
☐ [] Finance ____
☐ [] Human Resources ____
☐ [] Legal ____
☐ [] Marina ____
☐ [] Police ____
☐ [] Parks, Recreation & Senior Services ____
☐ [] Public Works ____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

The purpose of this agenda item is to show Council support and proclaim May 11th – 17th, 2025 as National Police Week.

Suggested Motion

Motion: “I move to approve the Proclamation recognizing May 11th – 17th, 2025 as National Police Week.”

Background

National Police Week, observed during the week of May 15, honors fallen officers and recognizes those who serve our communities with dedication and professionalism. Established in 1962 by President Kennedy, it includes Peace Officers Memorial Day on May 15, when flags are flown at half-staff.

The attached proclamation designates May 11–17, 2025, as National Police Week in Des Moines. Through this action, the City Council formally recognizes the service and sacrifice of the Des Moines Police Department, along with all law enforcement officers across Washington State and the nation. This proclamation reflects the Council's ongoing support for public safety and the men and women who protect our community.



City of Des Moines

ADMINISTRATION
21630 11TH AVENUE SOUTH, SUITE A
DES MOINES, WASHINGTON 98198-6398
(206) 878-4595 T.D.D.: (206) 824-6024 FAX: (206) 870-6540



Proclamation

WHEREAS, in 1962, President Kennedy proclaimed May 15 as National Peace Officers Memorial Day and the calendar week in which May 15 falls, as National Police Week; and

WHEREAS, the dedicated men and women of the City Of Des Moines Police Department dedicate themselves to protecting the lives, property, and rights of our residents, upholding the law with courage, integrity, and professionalism; and

WHEREAS, these officers serve as guardians of our community, responding to emergencies, fostering public safety, and building trust through their commitment to justice and compassion; and

WHEREAS, it is important that all citizens know and understand the duties and responsibilities of their police department, and that members of our police department recognize their duty to serve the people by safeguarding life and property, defending them against violence or disorder, and guarding the innocent against deception and the weak against oppression, and

WHEREAS, our police department has grown to be a modern and well-respected law enforcement agency which unceasingly provides a vital public service; and

WHEREAS, U.S. flags should be flown at half-staff on May 15th for Peace Officers Memorial Day, in honor of all fallen officers and their families.

NOW THEREFORE, THE DES MOINES COUNCIL HEREBY PROCLAIMS
May 11-17, 2025, as

National Police Week

SIGNED this day 8th day of May, 2025

Traci Buxton, Mayor

The Waterland City

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Discussion on City Appointive
Committees

ATTACHMENTS:
1.

FOR AGENDA OF: May 8, 2025

DEPT. OF ORIGIN: City Manager

DATE SUBMITTED: April 25, 2025

CLEARANCES:

- ☐ City Clerk _____
- ☐ Communications _____
- ☐ Community Development _____
- ☐ Courts _____
- ☐ Emergency Management _____
- ☐ Finance _____
- ☐ Human Resources _____
- ☐ Legal _____
- ☐ Marina _____
- ☐ Police _____
- ☐ Parks, Recreation & Senior Services _____
- ☐ Public Works _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

This item addresses the structure of Council-Appointed Committees. Staff was asked to review the current committee structure and provide recommendations for consideration. An initial recommendation was presented at the March 6 Study Session. Based on Council feedback, staff is now bringing forward two additional options, with a focus on the value to citizen participants.

Background

The City of Des Moines currently has seven Appointive Committees:

- Arts Commission
- Citizens Advisory Committee

- Civil Service Commission
- Human Services Advisory Board
- Lodging Tax Advisory Committee
- Police Advisory Committee
- Senior Services Advisory Committee

Additionally, Council recently directed staff to create two new citizen boards: an Airport Committee and a Planning Commission.

Each existing committee requires a staff liaison to manage agenda creation, posting, record keeping, and meeting support. However, past adherence to these practices has been inconsistent.

At the March Study Session, Council was presented with an option for merging the Arts Commission, Human Services Advisory Board, and Senior Services Advisory Committee into one new committee. The Council asked Staff to gather more input from those individual Board and Committee members and to explore a different approach. Additionally, Staff were asked to identify the value proposition for residents regarding any structural changes to the committees.

Feedback from Committees:

Following the March Study Session, Staff met with members of the Citizens Advisory Committee, Arts Commission, Human Services Advisory Board, and Senior Services Advisory Committee. Key feedback included:

- Committees often met infrequently due to limited material to discuss, especially for Arts, Human Services, and Senior Services.
- Many members felt unclear about their committee's role or felt underutilized.
- Several committees lacked dedicated staff support, causing frustration.
- Some members were interested in serving on broader, combined committees; others preferred to stay focused on their specific Committee charter .
- The "alternate" role for CAC can be vague and unclear.
- There is not always enough interest in serving on the Appointive Committees; at times the number of applications can be lower than the necessary membership

No Recommended Changes:

Staff recommends no changes to the following committees:

- Civil Service Commission
- Lodging Tax Advisory Committee
- Police Advisory Committee

These groups are either mandated by State code or are seen as effective in their current form.

Options for Moving Forward:

To address the concerns raised and plan for the staffing impact of the new Airport Committee and Planning Commission staff presents two options for Council consideration, with the corresponding value propositions for citizen participants outlined below.

Option A: Expand the Citizens Advisory Committee (CAC)

Under Option A:

- Expand the CAC by adding seven at-large members (nominated by Councilmembers or selected via existing processes), which would be in addition to the current neighborhood representatives (eliminating the Alternate Position).
- Broaden the CAC's role to include three subcommittees for:
 - Arts
 - Human Services
 - Senior Services

Subcommittees could meet independently as needed and report back to the full CAC.

Support Structure:

- A dedicated Staff Liaison and a City Clerk's Office staff member would support the CAC and subcommittees, ensuring proper posting, records management, and meeting facilitation.

Citizen Value Proposition:

- **Broader Civic Impact:** Citizens would have the opportunity to influence a wide range of city issues—arts, human services, senior services, and neighborhood improvements—through a single committee.
- **More Opportunities for Service:** Additional membership seats create more pathways for new residents to get involved.
- **Clearer Purpose and Stronger Support:** Structured subcommittees and consistent staff support ensure citizen efforts are focused, supported, and impactful.
- **Greater Visibility and Influence:** Citizens can contribute to broader initiatives while still focusing on their areas of interest through subcommittees.
- **Balanced Representation:** Appointed neighborhood seats ensure geographic diversity, while at-will positions invite broader participation from residents eager to serve.

Advantages:

- CAC has a larger role and greater impact across multiple policy areas.

- Expanded opportunities for civic involvement, leadership development and more inclusive representation.
- Strengthened support infrastructure improves meeting frequency and consistency.

Disadvantages:

- Expands an already large committee.
- Some current Arts, Human Services, and Senior Services committee members may prefer not to serve under the broader CAC umbrella.
- Interest from the community, especially in certain geographic areas, in serving can sometimes be low, leading to persistent vacancies.

Option B: Maintain CAC and Create a New Community Events and Services Committee (CESC)

Under Option B:

- Keep the CAC's current membership and role, adding only a Human Services subcommittee.
- Create a new Community Events and Services Committee (CESC) with seven members to address:
 - Senior Services
 - Arts
 - Parks and Recreation

Support Structure:

- Both CAC and CESC would each have a dedicated Staff Liaison and City Clerk's Office support.

Citizen Value Proposition:

- Specialized Focus: Residents passionate about arts, senior services, or parks can participate in a committee focused specifically on their area of interest.

Advantages:

- Provides more specialized attention to arts, recreation, and senior services programming.
- Opens new seats and opportunities for participation.

Disadvantages:

- Does not fully expand CAC's scope; concerns about limited influence and meeting frequency may remain.
- Adds a second board requiring dedicated staff resources, which does not ease staffing constraints as much as Option A would.
- Interest from community in serving can be low, which results in persistent vacancies.

Summary Comparison of Options

	Option A (Expanded CAC)	Option B (CAC + CESC)
Breadth of Citizen Influence	Wide, across multiple areas	Specialized, depending on committee
Ease of Participation	One larger umbrella committee with subcommittees	Choice between general (CAC) and specialized (CESC) service
Opportunities for New Members	7 new at-large seats added to CAC	7 new seats created in CESC
Support and Structure	Consolidated and dedicated	Divided but supported equally
Pathway to Civic Leadership	Strong exposure across multiple city functions	Strong, but more narrowly focused

Additional Considerations

- **Code Amendments:** Implementing either option will require amendments to DMMC Title 4 (Council and Appointive Committees).
- **Current Committee Membership:** Many committee member terms have expired. Staff recommends allowing current unexpired-term members of the Arts Commission, Human Services Advisory Board, and Senior Services Advisory Committee to apply for the new committees. As terms expire, members can reapply or new applicants may be appointed.

Review of Other Cities:

Additionally, staff reviewed committee practices in nearby cities, including Burien, Federal Way, SeaTac, and Tukwila.

<u>City of SeaTac</u>	<u>Council Only</u>	<u>Citizens Only</u>	<u>Both Council and Citizens</u>
https://www.codepublishing.com/WA/SeaTac/#!/html/SeaTac02/SeaTac0215.html			
Arts, Culture & Library Advisory Committee		Individuals who work or reside in the City, one of which can be a youth member	
Community Services Advisory Committee		Individuals who work or reside in the City, one (1) of which can be a youth member.	
Senior Citizen Advisory Committee		Residents fifty-five (55) years of age or older at the time of appointment	
Tree Board			1 Councilmember, 1 Resident, and 3 City Employees
StART Committee	Not a SeaTac Committee; however, residents are appointed by the Mayor confirmed by the Council		
Hotel/Motel Tax Advisory Committee			1 Councilmember plus People involved in activities authorized to be funded by revenue received from the Lodging Tax AND Representatives of businesses required to collect tax
Planning Commission		<p>If qualified candidates are available, one (1) member should represent each of the following interests:</p> <ul style="list-style-type: none"> a. Homeowner, two (2) members preferred. b. Renter, two (2) members preferred. c. Owner, operator, or employee of a small business within the City limits. d. Representative of the construction community, such as builders, architects, engineers, urban planners, and designers. 	

<u>City of Burien</u>	<u>Council Only</u>	<u>Citizens Only</u>	<u>Both Council and Citizens</u>
https://www.codepublishing.com/WA/Burien/#!/Burien02/Burien0250.html#2.50			
Planning Commission		Members must be Burien residents	
Airport Committee			1 Councilmember Sarah Moore - 2 Staff - 4 Citizens
Human Services Commission		At least five of the appointed members must be Burien residents and the other two members shall be community stakeholders	
Parks and Recreation Board		Members must be Burien residents	
Arts Commission		Arts Commission. Members must be Burien residents	
Business and Economic Development Partnership		Members must be Burien business owners, managers, and employees; commercial property owners; Chambers of Commerce and merchants' associations; residents; employment and job training services; educators; and other stakeholders	

<u>City of Tukwila</u>	<u>Council Only</u>	<u>Council & Residents/ Others</u>	<u>Citizens Only</u>	<u>No Council – but more than just Tukwila Residents</u>	<u>Requirements</u>	<u>Numbers</u>
https://records.tukwilawa.gov/WebLink/1/edoc/54057/Tukwila%20Municipal%20Code%20-%20Title%2002%20-%20Administration%20and%20Personnel.pdf						
Arts Commission				X	resident and/or own/work at business within Tukwila city limits (and student rep)	5-7 members... three must be involved in instruction or professionally engaged in visual or performing arts when possible plus student rep
Civil Services Commission			X		Citizen of USA, resident of Tukwila minimum of 3 years, registered voter	3 members
Community Oriented Policing Citizen Advisory Board				X	Resident, Business, Board Member or Employee of Faith-based or Non-Profit in city, School District	8 members with minimum of 5 residents, 2 business, and 1 school.
Equity & Social Justice Commission		X			Council Rep, City Employees, Residents or Business Owner/Worker, Education Worker (and student rep)	9 members: 2 City employees, 1 Councilmember, 3 community members meet resident OR business criteria, 3 representing education field plus student rep
Human Services Advisory Board				X	Medical/Health, School District, Resident, Business, Faith-Based	7 members: 1 business, 1 faith-based or non-profit, 3 community members, 1 school district, 1 medical health community
Landmark Commission			X		Resident with demonstrated interest in historic preservation	1 member (serves as special member of KC Landmark Comm)
Library Advisory Board			X		City resident (and student rep)	5-7 members plus student rep
Lodging Tax Advisory Committee		X			Council, Businesses Collecting Tax (hotels and motels), Businesses Funded by Tax (restaurants, museums, sports facilities, commercial property owners, retailers, etc.)	7 total – 1 elected, 3 collect, 3 received.
Park Commission				X	Resident or own/work at business in Tukwila (and student rep)	5-7 members plus student rep
Planning Commission				X	Resident, Business Owner, or Operator/Management Level Employee	6 residents, 1 business owner/management level

SeaTac Airport Stakeholder Advisory Round Table				X	Community, Non-Elected Staff	3 members – 2 non-elected staff and community/business member
King County Airport Roundtable			X		Appointed by King County (city recommends)	1 member

<u>City of Federal Way</u>	<u>Council Only</u>	<u>Citizens Only</u>	<u>Both Council and Citizens</u>
https://www.codepublishing.com/WA/FederalWay/#!/FederalWay02/FederalWay02.html			
Art Commission		Persons appointed to serve on the arts commission shall reside within the corporate limits of the city during the members' term.	
Diversity Commission		All persons appointed to serve on the commission shall reside within the corporate limits of the city.	
Disability Board			2 Council Members, 1 Law Enforcement Officer, 2 residents, the Mayor or an appointed employee
Ethics Board		X	
Historic Landmarks Committee		X	
Human Services Commission		Persons appointed to serve on the human services commission shall reside within the corporate limits of the city.	
Independent Salary Commission		(No city officer, official, or employee of the city or any of their immediate family members may serve on the commission)	
Lodging Tax Advisory Committee			The membership of the lodging tax advisory committee is governed by RCW 67.28.1817 and shall consist of at least five members appointed by the city council: one member shall be an elected official of the city who shall serve as the chair; at least two members shall be representatives of businesses required to collect the tax, and at least two members shall be persons involved in activities authorized to be funded by revenue received from the tax
Parks & Recreation Commission		Persons appointed to serve on the commission shall reside within the corporate limits of the city during the members' terms.	
Planning Commission		The planning commission shall consist of up to seven voting members and up to three alternate	

		members appointed by city council who are residents of the city with interest in land use and planning issues and a commitment to the planned development of the community.	
Senior Advisory Commission		Persons appointed to serve on the commission shall reside within the incorporated city limits.	
Youth Commission		Persons appointed to serve on the commission shall reside within the city of Federal Way city limits, attend high school within the city limits, or attend a high school within the Federal Way public school district during the members' terms.	
Lodging Tax Advisory Committee			X – Council President appoints Chair (Councilmember) for 2-year term

Feedback Sought:

Staff is seeking input on the information presented and the Council's thoughts on the proposed process and approach.

CITY OF DES MOINES
Voucher Certification Approval

May 8, 2025

Auditing Officer Certification

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

As of **May 8, 2025** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through April 24, 2025 and payroll transfers through April 18, 2025 included in the attached list and further described as follows:

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


 Jeff Friend, Finance Director

		# From	# To	Amounts
Claims Vouchers:				
EFT's		11697	11776	1,220,527.29
Wires		2930	2944	893,135.24
AP Checks		166675	166723	650,348.42
Total Vouchers paid				2,764,010.95
Payroll Vouchers				
Payroll Checks	4/18/2025	19939	19939	2,253.94
Payroll Advice		13289	13444	486,430.37
Total Paychecks & Direct Deposits				488,684.31
Total checks and wires for A/P & Payroll				3,252,695.26

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Suite C
Des Moines, Washington
Thursday, March 13, 2025 - 6:00 PM**

CALL TO ORDER

Mayor Traci Buxton called the meeting to order at 6:03 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Gene Achziger.

ROLL CALL

Council Present:

Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Gene Achziger; Councilmember Yoshiko Grace Matsui; Councilmember JC Harris; and Councilmember Matt Mahoney

Staff Present:

City Manager Katherine Caffrey; City Attorney Tim George; Harbormaster Scott Wilkins; Public Works Director Michael Slevin; Director of Community/Administrative Services Bonnie Wilkins; Community Development Director Rebecca Deming; Assistant Police Chief Cory Stanton; City Prosecutor Tara Vaughn; City Engineer Tommy Owen; Surface Water and Environmental Engineering Manager Tyler Beekley; Civil Engineer I Khai Le; Civil Engineer I Alex Johnson; Engineering Technician - SWM Michael Posey; and Deputy City Clerk Sara Lee

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

- No further correspondence was received beyond the emails already received by Council.

COMMENTS FROM THE PUBLIC

- Tedd Teppo, Memorial Flag Triangle Project
- Randy Williams, Six-Gill Sharks
- Jess Alexanderson, Six-Gill Sharks
- Natalie Anderson, Six-Gill Sharks

COMMITTEE CHAIR REPORT

- TRANSPORTATION COMMITTEE MEETING: Chair Matt Mahoney
 - Councilmember Matt Mahoney provided an update on the Transportation Committee Meeting held on March 13, 2025.
- ENVIRONMENT COMMITTEE MEETING: Chair JC Harris
 - Councilmember JC Harris provided an update on the Environment Committee Meeting held on March 13, 2025.
- PUBLIC ISSUES COMMITTEE MEETING: Chair Harry Steinmetz
 - Deputy Mayor Harry Steinmetz provided an update on the Public Issues Meeting.
- PUBLIC SAFETY/EMERGENCY MANAGEMENT COMMITTEE: Chair Traci Buxton
 - Mayor Traci Buxton provided an update on the Public Safety/Emergency Management Committee Meeting held on March 06, 2025.

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

Item 1: 2025 DES MOINES YACHT CLUB COMMODORE – PEGGY CLaar

Commodore Peggy Claar gave council an update on the Des Moines Yacht Club 2025 events.

Item 2: CONSIDERATION TO JOIN K4C - KING COUNTY CITIES CLIMATE COLLABORATION

Ross Freeman and Terry Sullivan from the Office of County Executives gave council a PowerPoint Presentation on K4C - King County Cities Climate Collaboration and consideration to join.

Item 3: 6 GILL SHARK PRESENTATION
Presentation by Rus Higby with the MaST Center Aquarium

Rus Higby from the MaST Center Aquarium gave council a PowerPoint Presentation on the 6 Gill Sharks in the Des Moines/Redondo Marina.

Direction/Action

Motion made by Councilmember Matt Mahoney to make Des Moines, Washington the Six Gill Shark Capital of the world and to create a proclamation to honor that on July 6, we direct city staff to explore the cost of 6th Ave. being renamed as honorary Six Gill Shark Avenue and explore grant opportunities for the education boards, bring the last two components of the motion back before Council for approval; seconded

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by Deputy Mayor Steinmetz.

Councilmember Matt Mahoney asks Council to withdraw his previous motion.

Motion to withdraw the previous motion passed 7-0.

Motion 1 made by Councilmember Matt Mahoney to make Des Moines, Washington the Six Gill Shark Capital of the world and make July 6, Six Gill Shark Day; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 5-2.

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

Against: Councilmember Gene Achziger; Council Member JC Harris

Motion 2 made by Councilmember Matt Mahoney to ask staff to look at the cost of renaming 6th Avenue in an honorary capacity, Six Gill Shark Avenue and explore any potential grant opportunities they may have to assist in the funding of education boards in the future or direct staff; seconded by Deputy Mayor Steinmetz.
Motion passed 7-0.

CONSENT AGENDA

Item 1: APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through February 27, 2025 and payroll transfers through March 05, 2025 in the attached list and further described as follows:

EFT Vendor Payments	#11460-11506	\$ 501,980.42
Wires	#2877-2884	\$ 375,382.06
Accounts Payable Checks	#166482-166541	\$1,105,068.35
Payroll Checks	#19928-19929	\$ 723.80
Payroll Advice	#19930-19932	\$ 479,689.73
Payroll Checks	#19930-19932	\$ 3,290.34
Payroll Advice	#12791-12960	\$ 518,193.43

Total Checks and Wires for A/P & Payroll: \$ 2,984,328.13

Item 2: APPROVAL OF MINUTES

Regular Meeting Minutes
March 13, 2025

Motion to approve the minutes from the City Council Study Sessions on January 30, 2025, and February 6, 2025, as well as the City Council Regular Meeting on February 13, 2025.

Item 3: REDONDO RESTROOM REPLACEMENT PROJECT –
CONSTRUCTION CONTINGENCY AMENDMENT

Motion 1 is to increase the project construction contingency for the Redondo Restroom Replacement Project, in the amount of \$130,000, bringing the total project construction contingency to \$320,000.

Motion 2 is to direct administration to bring forward a budget amendment to the 2025-2030 Capital Improvement Plan and the 2025 Capital Budget to include the amended Redondo Restroom Replacement Project as described herein, and include such amendment in the next available budget amendment ordinance.

Item 4: PARKSIDE WETLAND CLEANUP – CONSULTANT SERVICES
CONTRACT AWARD

Motion is to approve the Consultant Services Contract with Totem Logistics Inc for the Parkside Wetland Cleanup, in the amount of \$72,195.48, authorize a project contingency in the amount of \$5,000, and further authorize the City Manager to sign said Contract substantially in the form as submitted.

Direction/Action

Motion made by Councilmember Matt Mahoney to approve the Consent Agenda; seconded by Deputy Mayor Harry Steinmetz.

Councilmember JC Harris pulled Consent Agenda Item #3.

The remainder of the Consent Agenda was approved 7-0.

Council discussed Consent Agenda Item #3.

Motion made by Councilmember JC Harris to approve Consent Agenda Item #3 Motion 1 as read; seconded by Deputy Mayor Harry Steinmetz. Motion passed 7-0

Motion made by Councilmember JC Harris to approve Consent Agenda Item #3 Motion 2 as read; seconded by Deputy Mayor Harry Steinmetz. Motion passed 7-0.

UNFINISHED BUSINESS

Item 1: AIRPORT ADVISORY COMMITTEE PURPOSE AND COMPOSITION

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Staff Presentation by Community Development Director Rebecca Deming

Council discussed the Airport Advisory Committee Purpose and Composition

NEW BUSINESS

- Item 1: DES MOINES MEMORIAL FLAG TRIANGLE PROJECT – CONTRACT AWARD
Staff Presentation by Surface Water Engineer Alex Johnson, EIT CMIT

Direction/Action

Motion 1 made by Councilmember Matt Mahoney to approve the public works contract with Tikka Inc. for the Des Moines Memorial Flag Triangle Project in the amount of \$268,325.00, authorize a project construction contingency in the amount of \$26,800.00 and further authorize the City Manager to sign said contract substantially in the form as submitted; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 4-3.

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

Against: Councilmember Gene Achziger; Councilmember JC Harris;
Councilmember Yoshiko Grace Matsui.

Motion 2 made by Councilmember Matt Mahoney to direct administration to bring forward a budget amendment to the 2025-2030 Capital Improvements Plan and the 2025 Capital Budget to include the amended Memorial Flag Triangle Project as described herein and include such amendment in the next available budget amendment ordinance; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 4-3.

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

Against: Councilmember Gene Achziger; Councilmember JC Harris;
Councilmember Yoshiko Grace Matsui.

- Item 2: CONSIDERATION TO JOIN K4C- KING COUNTY CITIES CLIMATE COLLABORATION

Direction/Action

Regular Meeting Minutes
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Motion made by Councilmember Matt Mahoney to enter into an Interlocal Agreement with the King County Cities collaboration for the City of Des Moines; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 7-0.

- Item 3: 24TH AVE S IMPROVEMENTS PROJECT – CONSTRUCTION
CONTINGENCY AMENDMENT
Staff Presentation by Principal Engineer Khai Le, P.E.

Direction

Motion made by Councilmember Matt Mahoney to extend the meeting to 9:10 p.m.; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 6-1.

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

Against: Councilmember JC Harris.

Motion 1 made by Councilmember Matt Mahoney to increase the project construction contingency for the 24th Ave South Improvement Project in the amount of \$1,185,080.00 bringing the total project construction contingency to \$1,887,080.00; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 7-0.

Motion 2 made by Councilmember Matt Mahoney to direct administration to bring forward a budget amendment in the 2025-2030 capital improvement plan and the 2025 capital budget to include the amended 24th Ave South Improvement Project as described herein and include such amendment in the next available budget amendment ordinance; seconded by Councilmember Jeremy Nutting.
Motion passed 7-0.

- Item 4: NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes
- There were no New Agenda Items For Consideration.

EXECUTIVE SESSION

NEXT MEETING DATE

March 27, 2025 City Council Regular Meeting

ADJOURNMENT

Regular Meeting Minutes
March 13, 2025

Direction/Action

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

The meeting adjourned at 9:10 p.m.

[Projected Future Agenda Items](#)

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Suite C
Des Moines, Washington
Thursday, March 27, 2025 - 6:00 PM**

CALL TO ORDER

Mayor Traci Buxton called the meeting to order at 6:02 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Deputy Mayor Harry Steinmetz.

ROLL CALL

Council Present:

Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Yoshiko Grace Matsui; Councilmember JC Harris; and Councilmember Matt Mahoney

Council via Zoom:

Councilmember Jeremy Nutting

Council Absent:

Councilmember Gene Achziger

Direction/Action

Motion made by Councilmember Yoshiko Grace Matsui to excuse Councilmember Gene Achziger; seconded by Deputy Mayor Harry Steinmetz.

Motion passed 6-0.

Staff Present:

City Manager Katherine Caffrey; City Attorney Tim George; Assistant City Manager Adrienne Johnson-Newton; Director of Community/Administrative Services Bonnie Wilkins; Harbormaster Scott Wilkins; Police Chief Ted Boe; Finance Director Jeff Friend; Public Works Director Michael Slevin; City Engineer Tommy Owen; Assistant City Attorney Matt Hutchins; Community Development Director Rebecca Deming; IT Manager Chris Pauk; and City Clerk Taria Keane

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

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- No further correspondence was received beyond the emails already received by Council.

COMMENTS FROM THE PUBLIC

- De'Sean Quinn, King County District 5 Councilmember
- Anne Pantzke, Amenity Regulations
- Kim Richmond, Amenity Rentals
- Ellie Richmond, Amenity Rentals
- Bettina Carey, Rotary Blues & Brews

COMMITTEE CHAIR REPORT

- ECONOMIC DEVELOPMENT MEETING: Chair Jeremy Nutting
 - Councilmember Jeremy Nutting provided an update on the Economic Development meeting held on March 27, 2025.

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

- Item 1: City Manager Katherine Caffrey provided Council with an update regarding the Animal Control.
- Item 2: SOUTH KING HOUSING AND HOMELESSNESS PARTNERS
 - SKHHP Executive Manager Claire V. Goodwin gave Council a PowerPoint presentation on the South King Housing and Homelessness Partners Capital Fund Recommendations.
- Item 3: WASHINGTON STATE AUDITOR'S OFFICE – AUDIT PRESENTATION
 - Audit Lead Marcus Nelson and Audit Manager Paul Griswold from the State Auditor's Office gave Council a PowerPoint on the City of Des Moines Audit.

CONSENT AGENDA

- Item 1: APPROVAL OF VOUCHERS
Motion is to approve the payment vouchers through March 13, 2025 in the attached list and further described as follows:

EFT Vendor Payments	# 11507-11586	\$808,613.34
Wires	# 2885-2904	\$537,384.05
Accounts Payable Checks	#166542-166593	\$606,508.95

Total Checks and Wires for A/P & Payroll: \$1,952,506.34

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- Item 2: APPROVAL OF MINUTES
Motion is to approve the minutes from the City Council Regular Meeting on February 27, 2025.
- Item 3: REGULATING USE OF THE REDONDO BOAT LAUNCH
Motion is to enact Draft Ordinance No. 25-011, amending DMMC 15.04.315, Use of Redondo Boat Launch.
- Item 4: SOUTH KING HOUSING AND HOMELESSNESS PARTNERS – FUNDING ALLOCATION APPROVAL
Motion is to enact Resolution No. 25-016, Authorizing the Allocation of Funds to Finance Affordable Housing in South King County in Accordance with the 2024 South King Housing and Homelessness Partners (SKHHP) Housing Capital Fund.
- Item 5: PUBLIC WORKS ENGINEERING BUILDING BASEMENT HVAC UPGRADES
Motion is to approve the MacDonald-Miller Proposal #1221CW for the 2025 Public Works Engineering Building Basement HVAC Upgrades in the amount of \$74,840.13, authorize a project construction contingency in the amount of \$7,500.00, and further authorize the City Manager to sign said Proposal substantially in the form as submitted.
- Item 6: CITY OF DES MOINES RIGHT-OF-WAY PROCEDURES STAFFING UPDATE
Motion is to approve the City of Des Moines Right-of-Way Procedures Staffing Update and authorize the Mayor to sign the Staffing Update substantially in the same form as submitted.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the Consent Agenda as read; seconded by Deputy Mayor Harry Steinmetz. Motion passed 6-0.

NEW BUSINESS

- Item 1: 2025 POVERTY BAY BLUES AND BREWS FESTIVAL PARTNERSHIP PROPOSAL
- City Manager Katherine Caffrey and Rotary President Jeff Gross gave Council PowerPoint Presentations on the Des Moines Normandy Park Rotary Club Proposal

Direction/Action

Motion made by Councilmember Yoshiko Grace Matsui to approve the Partnership Proposal from the Des Moines Normandy Park Rotary Club for the 2025, 2026 and 2027 Poverty Bay Blues and Brews Festival as

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proposed and authorize the City Manager to execute agreements consistent with the proposal; seconded by Deputy Mayor Harry Steinmetz.

Amended Motion made by Councilmember JC Harris to amend the agreement to 1 year.
Amended motion died for a lack of a second.

Amended Motion made by Deputy Mayor Harry Steinmetz to approve the Partnership Proposal from the Des Moines Normandy Park Rotary Club for the 2025, 2026 and 2027 Poverty Bay Blues and Brews Festival and authorize the City Manager to negotiate with Rotary a mechanism that will increase the contribution for the Parks and Recreation Scholarships; seconded by Councilmember Matt Mahoney.
Deputy Mayor Harry Steinmetz withdrew the amendment.

The main motion passed 5-1.

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

Against: Councilmember JC Harris.

EXECUTIVE SESSION

The Special Meeting was called to order by Mayor Traci Buxton at 8:15 p.m.

ROLL CALL

Council Present:

Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Yoshiko Grace Matsui; Councilmember JC Harris; and Councilmember Matt Mahoney.

Council Present via Zoom:

Councilmember Jeremy Nutting.

Others Present:

City Manager Katherine Caffrey, City Attorney Tim George, and Community Development Director Rebecca Deming, and outside Attorney Jeff Taraday.

PURPOSE

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The purpose of the Special Meeting was to hold and Executive Session to discuss Potential Litigation under RCW 42.30.110(1)(a)(i). The Executive Session was expected to last 20 minutes.

No formal action was taken. The Executive Session lasted 20 minutes.

The Special Meeting adjourned at 8:35 p.m.

NEW BUSINESS CONTINUED

DISCUSSION ON POTENTIAL KING COUNTY PARKS LEVY

- City Manager Katherine Caffrey gave Council a PowerPoint Presentation on the Potential King County Parks Levy.

Council directed the City Manager to send a letter to Councilmember Quinn, thanking him and requesting additional numbers to bring back to Council.

NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

- Councilmember JC Harris asked Council to support having the City send a letter to MRSC to reinstating funding for education. Council Supported.

Direction/Action

Motion made by Mayor Traci Buxton to extend the meeting to 9:10 p.m.; seconded by Councilmember Yoshiko Grace Matsui.
Motion passed 4-2.

For: Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Yoshiko Grace Matsui, and Councilmember JC Harris.

Against: Councilmember Matt Mahoney, and Councilmember Jeremy Nutting.

At 8:55 p.m. Councilmember Jeremy Nutting left the meeting.

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

COUNCILMEMBER JC HARRIS

- Regional Transportation Advisory Committee

COUNCILMEMBER MATT MAHONEY

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- No Report

COUNCILMEMBER YOSHIKO GRACE MATSUI

- Downtown District Sponsored Egg Hunt
- Senior Services Shred Event
- Rotary Top Golf Fundraiser

DEPUTY MAYOR HARRY STEINMETZ

- Burien Airport Committee
- 33rd Legislative District Town Hall
- 30th Legislative District Town Hall
- Good Eggs Breakfast sponsored by King County Councilmember Pete von Reichbauer
- Destination Des Moines Meeting
- Rotary Meeting
- Meetings with other Elected Officials

PRESIDING OFFICER'S REPORT

- King County Sexual Assault Resource Centers Be Loud Breakfast
- Fund our Ferries Meeting
- Attended State of the City Addresses
- Metro Safety Task Force

NEXT MEETING DATE

April 03, 2025 City Council Study Session

ADJOURNMENT

Direction/Action

Motion made by Deputy Mayor Harry Steinmetz to adjourn; seconded by Councilmember Yoshiko Grace Matsui.

Motions passed 5-0.

The meeting adjourned at 9:03 p.m.

MINUTES

**DES MOINES CITY COUNCIL
STUDY SESSION
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, April 3, 2025 - 5:00 PM**

CITY COUNCIL COMMITTEE OF THE WHOLE

5:00 p.m. - 5:50 p.m.

CALL TO ORDER

Mayor Traci Buxton called the Committee of the Whole meeting to order at 5:00 p.m.

ROLL CALL

Council Present:

Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Gene Achziger; Councilmember Yoshiko Grace Matsui; Councilmember JC Harris; and Councilmember Matt Mahoney

Council via Zoom:

Councilmember Jeremy Nutting

Staff Present:

City Manager Katherine Caffrey; City Attorney Tim George; Assistant City Manager Adrienne Johnson-Newton; Director of Administrative Services Bonnie Wilkins; Harbormaster Scott Wilkins; Police Chief Ted Boe; Public Works Director Michael Slevin; Community Development Director Rebecca Deming; Planning & Development Services Manager Laura Techico; Senior Planner Jason Woycke; Land Use Planner I Alicia Jacobs; Civil Engineer Allyssa Beaver; Land Use Planner II Peyton Murphy; Finance Director Jeff Friend; Assistant City Attorney Matt Hutchins; City Prosecutor Tara Vaughn; and City Clerk Taria Keane

COMMITTEE OF THE WHOLE ITEMS

NEIGHBORHOOD TRAFFIC CALMING PROCEDURES

- Civil Engineer Allyssa Beaver presented a PowerPoint to Council on Neighborhood Traffic Calming Procedures.

CONTRACTING ALARM MANAGEMENT

- Police Chief Ted Boe presented a PowerPoint to Council on

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Contracting Alarm Management.

ACCESSORY DWELLING UNITS

- Land Use Planner Alicia Jacobs presented a PowerPoint to Council on Accessory Dwelling Units.

CITY COUNCIL STUDY SESSION,

6:00 p.m. - 9:00 p.m.

CALL TO ORDER

Mayor Traci Buxton called the City Council Study Session to order at 6:05 p.m.

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember JC Harris.

ROLL CALL

Council Present:

Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Gene Achziger; Councilmember Yoshiko Grace Matsui; Councilmember JC Harris; and Councilmember Matt Mahoney

Council via Zoom:

Councilmember Jeremy Nutting

Staff Present:

City Manager Katherine Caffrey; City Attorney Tim George; Assistant City Manager Adrienne Johnson-Newton; Director of Community/Administrative Services Bonnie Wilkins; Harbormaster Scott Wilkins; Police Chief Ted Boe; Public Works Director Michael Slevin; Community Development Director Rebecca Deming; Planning & Development Services Manager Laura Techico; Senior Planner Jason Woycke; Land Use Planner I Alicia Jacobs; Civil Engineer Allyssa Beaver; Land Use Planner II Peyton Murphy; Finance Director Jeff Friend; Assistant City Attorney Matt Hutchins; City Prosecutor Tara Vaughn; and City Clerk Taria Keane

CORRESPONDENCE

- There was no further correspondence aside from the emails already received by Council.

COMMENTS FROM THE PUBLIC

Comments from the public must be limited to the items of business on the Study Session Agenda. Please sign in prior to the meeting and limit your comments to three (3) minutes.

- Barbara McMichael, Chapter 4, Conservation & Environment

DISCUSSION ITEMS

Item 1: CITY LOGO DISCUSSION

- Director of Administration Bonnie Wilkins presented a PowerPoint to Council regarding the City Logo.

Item 2: CITY COUNCIL PROTOCOL MANUAL REVIEW

- The Council reviewed the City Protocol Manual and discussed the proposed changes.
- Councilmember Yoshiko Grace Matsui suggested the following changes.
 - Item 1: Bring back 26a - second reading of all ordinance changes - Council did not agree and will bring this back for discussion at another Council Meeting.
 - Item 2: Adjournment 8.06 (Q) Order of Business - Proposed this rule to be changed to read "beyond 10:00 p.m." - Council did not agree and will bring this back for discussion at another Council Meeting.

Item 3: COMPREHENSIVE PLAN UPDATE

- Community Development Director Rebecca Deming, accompanied by Planning and Development Services Manager Laura Techico, presented an in-depth PowerPoint briefing to the Council on the Comprehensive Plan Update.

Following the presentation, the Council provided feedback and suggested changes to the staff.

Item 4: CITY PROTOCOL MANUAL REVIEW CONTINUED

- Councilmember Yoshiko Grace Matsui suggested the following changes.
 - Item 3: Executive Session 8.06 (O) Order of Business – Regular Meetings. Proposed we add a section on how to extend an Executive session. According to MRSC (Municipal Research and Services Center), the "If the executive session runs long, the presiding officer must come back to the location of the regular meeting and announce the new time the open session will reconvene." No vote is needed, three other councilmembers don't need to accompany the Mayor back to the dais.

Direction/Action

Motion made by Mayor Traci Buxton to approve the Executive Session extension policy (Item 3) as discussed into a draft to revise the Protocol Manual for future Council Consideration; seconded by Councilmember Yoshiko Grace Matsui.

Motion passed 6-1.

For: Mayor Traci Buxton; Deputy Mayor Harry Steinmetz; Councilmember Gene Achziger; Councilmember Yoshiko Grace Matsui; Councilmember JC Harris; and Councilmember Matt Mahoney.

Against: Councilmember Jeremy Nutting.

1. Item 4: Code of Conduct - Assistant City Manager Adrienne Johnson-Newton will bring back the Code of Conduct policy for Councils approval.

- Mayor Traci Buxton suggested the following changes.
 - Item 5: Adding the Councils Vision/Mission/Value to the foreward.

Direction/Action

Motion made by Mayor Traci Buxton to include item #5 as discussed into a draft revised Protocol Manual for future Council consideration; seconded by Deputy Mayor Harry Steinmetz.

Motion passed 6-1.

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

Against: Councilmember JC Harris.

- Item 6: Same item as Item 2 and will be brought back for further discussion
- Item 7: 2.08.A.6 – DMMC needs to be reflected to show that Councilmembers shall not serve on appointed City Advisory Bodies. - Council to bring back at a later date.
- Item 8: 8.5.03.B – Not practical in real life. Recommend: “The following is my opinion alone and may or may not reflect that of City of Des Moines Staff or my colleagues.” The rest can stay as information for the reader without the need to post.

Study Session Minutes
April 3, 2025

Direction/Action

Motion made by Mayor Traci Buxton to extend the meeting until 9:05 p.m.; seconded by Deputy Mayor Harry Steinmetz.
Motion failed 4-3.

For: Mayor Traci Buxton; Deputy Mayor Harry Steinmetz;
Councilmember Gene Achziger; and Councilmember JC Harris.

Against: Councilmember Yoshiko Grace Matsui; Councilmember Matt Mahoney; and Councilmember Jeremy Nutting.

EXECUTIVE SESSION

NEXT MEETING DATE

April 10, 2025 City Council Regular Meeting

ADJOURNMENT

Direction/Action
Motion made by Councilmember JC Harris to adjourn; seconded by Councilmember Matt Mahoney.
Motion passed 7-0.

The meeting adjourned at 8:59 p.m.

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Addendum 2 with Moffatt Nichol Engineering - L, M, & N Docks Replacement Project.

ATTACHMENTS:

1. Addendum 2
2. Agreement with Moffatt Nichol Dated July 6, 2021 and Addendum 1.

FOR AGENDA OF: May 8th 2025

DEPT. OF ORIGIN: Marina

DATE SUBMITTED: April 24th 2025

CLEARANCES:

- ☐ City Clerk _____
- ☐ Communications _____
- ☐ Community Development _____
- ☐ Courts _____
- ☐ Emergency Management _____
- ☒ Finance *MM 28*
- ☐ Human Resources _____
- ☒ Legal */s/ TG*
- ☒ Marina *SW*
- ☐ Police _____
- ☐ Parks, Recreation & Senior Services _____
- ☐ Public Works _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

The purpose of this item is to request the Council's approval of an addendum to the 2021 agreement with Moffat & Nichol for the design and permitting of the L, M, & N Docks Replacement Project. Additional services were required to obtain the Federal Permits for the project and to re-design parts of the project to comply with current codes which resulted in the cost exceeded the budgeted amount. Existing contingency of \$60,000 will be used to offset this \$74,251.00 in additional funding leaving a total of \$14,251 that needs to be allocated to this Project.

Suggested Motion

Motion: I move to approve the addendum with Moffatt Nichol in the amount of \$74,251.00 for design and permitting of the L, M, & N Docks Replacement Project and authorize the City Manager to sign the addendum substantially in the form as attached.

Background

In 2021 the City entered into an agreement with Moffatt & Nichol, a coastal engineering firm, to design and permit new floating docks to replace the existing L, M and N Docks. The total approved budget for the agreement is \$597,804.00 and Moffatt & Nichol's scope-of-work is divided into two phases. The goal of Phase I was to develop a long-range plan for replacing all of the docks. The tasks in this phase included developing a:

- Financial Feasibility Report,
- Marina Redevelopment Permit Approach and Mitigation Review document
- L,M,N Docks Replacement Permit Approach and Mitigation Review
- Marina Replacement Plan and Conceptual Design Report
- Final Topo Survey and Eel Grass Survey
- Final Communications Plan including Power Point presentations

Phase 1 of the scope-of-work was completed within the time allotted.

Phase II, the design and permitting for L, M, N Docks was more focused, but substantial delays were encountered during the permitting process. The scope of work for phase II included:

- 45%, 95% and final plans with structural calculations and details
- Bid Documents
- Environmental Review and Permitting including:
 - Completing SEPA checklist
 - Joint Aquatic Resources Permit Application (JARPA)
 - Shoreline Substantial Development Permit Exemption Request
 - Biological Evaluation and NHVM calculator
 - Hydraulic Project Application
 - City Building Permits
- Bid support services.

Discussion

Phase II took over 1 ½ years longer than anticipated due to delays in the Federal regulatory agencies permit review processes. The original completion date was December 31, 2022 but the actual bid opening occurred on January 14, 2025. During the long delay it was necessary for Moffatt & Nichol and their design & permitting team to provide more than anticipated pre-construction and bid support services. Those services included:

- Additional oversight, quality control, accounting and project coordination.
- Additional meetings, especially with the Federal Agencies. During this time period, the National Marine Fisheries developed a new regulatory model for the near-shore habitat in the Puget Sound region and working thru the model and negotiating an acceptable mitigation plan took more time than anticipated.
- Design revisions, mostly in the electrical distribution system to include some code revisions that the City anticipated adopting in the next code cycle. (Due to the permitting delays, the plans that were developed under the existing codes had to be updated to comply with the new codes that were adopted before the plans could be submitted for plan review.)
- Volatility in the construction industry due to disrupted supply chains made it necessary to develop new cost estimates for the project before going to bid.
- The Marina staff needed assistance producing the Division 00 and 01 contract specifications for the “issued for bid” package.

During the bid process, the design team had to produce more than planned for addenda to the bid that required modifications to the design and specifications for the project. As a result of this work, this Addendum 2 was prepared to compensate Moffat & Nichol for the additional services required under the original contract.

Alternatives

Alternative No. 1: Council may authorize the additional funding for the project and authorize the City Manager to sign the addendum to the original agreement with Moffatt Nichol.

Alternative No. 2: The Council may decline to authorize the additional funding and give the staff further direction.

Financial Impact

The approved budget for the project is \$597,804 plus a contingency fund of \$60,000. Moffatt Nichols request for \$74,251.00 in additional funding exceeds the authorized contingency fund by \$14,251 so Council authorization for the additional funds is required. This project is funded by bond proceeds and the bid for the demolition and replacement of L, M, and N Docks was significantly less than planned for so, additional funds are available.

Recommendation

Staff recommends that the Council approve the additional funding for the L, M, N Docks Replacement design and permitting agreement with Moffatt Nichol and authorize the City Manager to sign the appropriate addendum to that agreement.

CONTRACT ADDENDUM #2

**CONTRACT FOR CONSULTANT SERVICES BETWEEN
THE CITY OF DES MOINES AND MOFFATT & NICHOL**

THIS ADDENDUM is entered into on this May 9, 2025, pursuant to that certain Contract entered into on the 26th day of July, 2021, between the **CITY OF DES MOINES, WASHINGTON** (hereinafter "City"), and **MOFFATT & NICHOL**, (hereinafter the "Consultant").

The parties herein agree that the Contract dated July 26, 2021, (hereinafter "Contract") and subsequent addendums shall remain in full force and effect, except for the addendum set forth as follows:

1) **SECTION I. DESCRIPTION OF WORK** of the Contract is hereby amended to read as follows:

Add: "See additional scope and fee titled "Additional Budget Request", on page 2 of attached Exhibit "1", which by this reference, is made part of the Contract.

2) **SECTION II. TIME OF COMPLETION** of the Contract is hereby amended to read as follows: Replace the last sentence in the section with:

"Upon the effective date of this Contract, Consultant shall complete the work described in Section I, as amended, by June 30, 2025"

3) **SECTION III. COMPENSATION** of the Contract is hereby amended to read as follows: Replace the first sentence in the section with:

"The City shall pay the Consultant, based on time and materials, an amount not to exceed \$672,055.00 (**SIX HUNDRED SEVENTY-TWO THOUSAND FIFTY-FIVE DOLLARS**) for the services described in this contract."

Except as modified hereby, all terms and conditions of Contract dated remain in full force and effect.

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

<p>(Name of Party):</p> <p>By: _____ (signature)</p> <p>Print Name: _____</p> <p>Its _____ (Title)</p> <p>DATE: _____</p>	<p>CITY OF DES MOINES:</p> <p>By: _____ (signature)</p> <p>Print Name: <u>Kathrine Caffrey</u></p> <p>Its <u>City Manager</u> (Title)</p> <p>DATE: _____</p> <p>Approved as to form:</p> <p>_____ City Attorney</p> <p>DATE: _____</p>
<p>NOTICES TO BE SENT TO:</p> <p>CONSULTANT: William Gerken Moffatt Nichol 600 University St Suite 610 Seattle, WA 98101 206-622-0222 (telephone) bgerken@moffattnichol.com (facsimile/email)</p>	<p>NOTICES TO BE SENT TO:</p> <p>CITY OF DES MOINES: Scott Wilkins, Harbormaster City of Des Moines 22307 Dock Avenue S. Des Moines, WA 98198 206-824-5700 (telephone) swilkins@desmoineswa.gov (facsimile/email)</p>

EXHIBIT 1
MOFFATT & NICHOL SCOPE OF SERVICES
City of Des Moines
Des Moines Marina Redevelopment
L-M-N Docks Replacement
Additional Budget Request - Bid Support Services

Scope of Services

The project ran beyond the anticipated timeline due primarily to unavoidable delays in agencies review and permitting and additional agency coordination. The original anticipated completion date was December 31, 2022, the actual bid opening occurred on January 14, 2025. Moffatt & Nichol (M&N) and our team provided the following required Scope of Services to the City of Des Moines (City) for the Des Moines Marina Redevelopment L-M-N Docks Replacement Project - Pre-Construction/Bid Support Services beyond what was originally anticipated. The M&N team provided the required professional services as outlined in the tasks below. The following firms also provided required pre-construction/bid support services for this project working directly under contract to M&N.

- Wood/Harbinger (Electrical & Mechanical Engineering)
- Anchor QEA (Regulatory and Permits)

Task 1: Project Management and Administration

1.1. Management

Due to the extended project timeline M&N provided additional required oversight, accounting/invoicing, and coordination beyond the previously anticipated level of effort to manage the M&N team.

1.2. Meetings

Due to the extended project timeline M&N provided additional required/as needed virtual team meetings for the project.

Task 2: L, M and N Dock Replacement Design

2.4: Environmental Review and Permitting

2.4.1: Agency Coordination:

Final permitting of the project took over 1.5 years longer than initially anticipated due to delays with Federal and State regulatory agencies. These regulatory delays resulted in additional required effort associated with agency coordination and response to agency comments and requests.

2.4.3: Local Construction Permits

Local Construction Permitting coordination required a level of time and effort not initially anticipated and resulted in design modifications not initially anticipated.

2.5: Bid Support

- Final Design revisions
Due to the extended schedule and revisions following completion of what was previously the final design, limited time and effort not initially anticipated was required to make design updates.
Due to the extended schedule and considering volatility in the market, new final cost estimates were required and completed prior to bidding.

- Issued for Bid (IFB) Documents

Due to the extended schedule and revisions following completion of what had earlier been considered the final plan set, additional time and effort not anticipated was required to produce a final IFB plan set.

The anticipated level of effort for producing IFB technical specifications did not include the full level of effort required to assist the City with preparation of Division 00 and 01 contract documents/specifications and compilation of the IFB package.

- Pre-Bid Meeting

The anticipated level of effort/allowance for the pre-bid meeting was 2 M&N staff at 4 hours each to attend the meeting. Additional effort was required to prepare for meeting, help conduct meeting, a post meeting site walk, and meeting follow up.

- Request for Information (RFI) Responses and Addenda

The anticipated level of effort for response to scope and technical RFI's and assisting the City with addenda was based on 2 RFI's and 2 addenda. Additional time and effort not initially anticipated was required based on receipt of approximately 50 RFI's requiring response, resulting in 5 addenda including design/drawing and specification clarifications/modifications.

Fee:

M&N will complete the scope of work on a time-and-materials basis not to exceed seventy-four thousand two hundred and fifty-one dollars (\$74,251.00). A detailed breakdown of our fee proposal is attached (Attachment A). Subconsultant fees are included in Attachments B and C.

Additional Assumptions and Exclusions:

This scope of work is based on the following assumptions:

- Technical memoranda or studies, design and/or permit revisions, and any agency negotiations, beyond the level of effort identified herein, are not anticipated, or included in the scope of work.
- M&N does not assume liability for elements of the project that are designed by others. M&N will not be responsible for modifying the design of those elements, approving design changes requested by the Contractor, or providing other technical direction for the project that could be interpreted as a change to the design of others such as approving substitution requests or answering technical RFIs.



Exhibit 1 - Attachment A
Moffatt & Nichol Fee Proposal Detail
Des Moines Marina Redevelopment - L-M-N Docks Replacement -Additional Budget Request

2/31/2025

Project Number: 211150
Project Manager: Bill Gerken
Project Director: Shane Phillips

Subconsultant Markup: 5%
Other Direct Costs Markup: 5%

I. STAFF-HOUR BUDGET		LABOR CLASSIFICATIONS & CONTRACT RATES														STAFF-HOUR	LABOR COST
Phase	Task	Principal Eng./Sci. P-9, P-8 \$357.00	Supervisory Eng./Sci. P-7 \$338.00	Senior Eng./Sci. P-6 \$291.00	Eng./Sci. III P-5 \$263.00	Eng./Sci. II P-4 \$235.00	Eng./Sci. I P-3 \$195.00	Staff Eng. P-1, P-2 \$178.00	Sr Tech 4 T-4 \$245.00	Designer T-6 \$190.00	CADD II T-3 \$165.00	CADD I T-2, T-1 \$140.00	Project Controls A-4 \$171.00	Word Processor A-4, A-3 \$152.00	General Clerical A-1, A-2 \$121.00		
1	Project Management and Administration																
1.1	Project Management		11.0										6.0			17.0	\$4,744.00
1.2	Team Meetings		7.0													7.0	\$2,366.00
2	L, M and N Dock Design																
2.4	Environmental Review and Permitting																
2.4.1	Additional Agency Coordination		4.0													4.0	\$1,352.00
2.4.3	Local Construction Permits		6.0				7.0									6.0	\$2,418.00
2.5	Bid Support																
	Final design revisions		12.0				8.0									20.0	\$5,616.00
	Pre Bid Meeting and Site Walk		6.0				6.0									12.0	\$3,198.00
	Issued for Bid Documents		24.0				18.0									42.0	\$11,822.00
	RFIs Response and Addendum		41.0				49.0									90.0	\$23,413.00
J	TOTAL STAFF HOURS		111.0				83.0						6.0			200.0	
K	MAN LABOR COST		\$37,518.00				\$16,185.00						\$1,026.00				\$54,729.00
III. SUBCONSULTANT COSTS		Cost	Markup	Cost Subtotal													
1	Anchor GEA (permit and regulatory compliance)	\$3,207.00	\$160.35	\$3,367.35													
2	Wood Hardwinger (electrical and mechanical)	\$15,385.00	\$769.25	\$16,154.25													
3																	
4																	
5																	
6																	
7																	
8																	
9																	
10																	
Subconsultants Totals:		\$18,592.00	\$929.60	\$19,521.60													
IV. OTHER DIRECT COSTS		Cost	Markup	Cost Subtotal													
Aircraft			N/A														
Logging			N/A														
Meals			N/A														
Miscellaneous/Travel Car			N/A														
Outside Reproduction			N/A														
Postage/Delivery			N/A														
Telephone/Fax			N/A														
B&D/Driving Equipment			N/A														
Other			N/A														
Other			N/A														
Other Direct Costs Totals:																	
V. PROJECT SUMMARY																	
Total MAN Labor Cost																\$54,729	
Total Subconsultant Cost																\$18,592	
Total Other Direct Costs																	\$930
Mark-up on Subconsultants																	
Mark-up on ODCs																	
Total Project Estimate																\$74,251	



CONSULTANT SERVICES CONTRACT between the City of Des Moines and

Moffatt & Nichol

THIS CONTRACT is made between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Moffatt & Nichol, a California corporation registered to do business in the State of Washington as Moffatt & Nichol, Inc., located and doing business at [600 University St, Suite 610 Seattle Washington 98101(206) 622-0222 (hereinafter the "Consultant").

I. DESCRIPTION OF WORK.

Consultant shall perform the following services for the City in accordance with the following described plans and/or specifications:

Please see attached Exhibit "A"- Consultant Scope and Fee Proposal, Dated July 8th 2021]

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

II. TIME OF COMPLETION. The parties agree that work will begin on the tasks described in Section I above immediately upon the effective date of this Contract. Upon the effective date of this Contract, Consultant shall complete the work described in Section I By December 31st 2022

III. COMPENSATION.

- A. The City shall pay the Consultant, based on time and materials, an amount not to exceed \$597,804.00 for the services described in this Contract. This is the maximum amount to be paid under this Contract for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract. The Consultant agrees that the amount budgeted for as set forth in Exhibit "A" for its services contracted for herein shall remain locked at the negotiated rate(s) for a period of one (1) year from the effective date of this Contract.

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(Various)

- B. The Consultant shall submit Monthly] payment invoices to the City for work performed, and a final bill upon completion of all services described in this Contract. The City shall provide payment within forty-five (45) days of receipt of an invoice. If the City objects to all or any portion of an invoice, it shall notify the Consultant 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.

IV. INDEPENDENT CONTRACTOR. The parties intend that an Independent Contractor-Employer Relationship will be created by this Contract and that the Consultant 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.

V. CHANGES. The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Consultant determines, for any reason, that a change order is necessary, Consultant must submit a written change order request to the person listed in the notice provision section of this Contract, section XVI(C), within fourteen (14) calendar days of the date Consultant 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 Consultant'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 Consultant on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Consultant shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Consultant fails to require a change order within the time specified in this paragraph, the Consultant waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Consultant disagrees with the equitable adjustment, the Consultant must complete the change order work; however, the Consultant may elect to protest the adjustment as provided in subsections A through E of Section VI, Claims, below.

The Consultant accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Consultant 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.

VI. CLAIMS. If the Consultant disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Consultant may file a claim as provided in this section. The Consultant 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 Consultant 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 Consultant unless a

CONSULTANT SERVICES CONTRACT 2
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timely written claim is made in strict accordance with the applicable provisions of this Contract.

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

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

- A. Notice of Claim. Provide a signed written notice of claim that provides the following information:
1. The date of the Consultant'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 Consultant is asserting a schedule change or disruption.
- B. Records. The Consultant 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 Consultant'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. Consultant's Duty to Complete Protested Work. In spite of any claim, the Contractor shall proceed promptly to provide the goods, materials and services required by the City under this Contract.
- D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Consultant 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 Consultant completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

VII. LIMITATION OF ACTIONS. CONSULTANT 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 CONSULTANT'S ABILITY

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(Various)

TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

VIII. 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. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this project, which may be used by the City without restriction. If the City's use of Consultant's records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

IX. DISCRIMINATION. In the hiring of employees for the performance of work under this Contract or any subcontract, the Consultant, its subcontractors, or any person acting on behalf of the Consultant or subcontractor 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.

X. INDEMNIFICATION. Consultant 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 resulting from the negligent acts, errors or omissions of the Consultant in performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

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

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

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

XI. INSURANCE. The Consultant 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 the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

No Limitation. Consultant's maintenance of insurance as required by the Contract shall not be construed to limit the liability of the Consultant to the coverage

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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. Consultant shall obtain insurance of the types and coverage described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance: Consultant shall maintain the following insurance limits:

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

C. Other Insurance Provisions.

1. The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

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 Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not

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necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contract before commencement of the work.

F. Notice of Cancellation. The Consultant 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 Consultant 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 Consultant to correct the breach, immediately terminate the Agreement 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 Consultant from the City.

H. City Full Availability of Consultant Limits. If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

XII. EXCHANGE OF INFORMATION. The City will provide its best efforts to provide reasonable accuracy of any information supplied by it to Consultant for the purpose of completion of the work under this Contract.

XIII. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS. Original documents, drawings, designs, reports, or any other records developed or created under this Contract shall belong to and become the property of the City. All records submitted by the City to the Consultant will be safeguarded by the Consultant. Consultant shall make such data, documents, and files available to the City upon the City's request. The City's use or reuse of any of the documents, data and files created by Consultant for this project by anyone other than Consultant on any other project shall be without liability or legal exposure to Consultant.

XIV. 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.

XV. WORK PERFORMED AT CONSULTANT'S RISK. Consultant 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 Consultant's own risk, and Consultant

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(Various)

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.

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.

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 agreement 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 Contract, 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 X 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 this Contract, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract or such other address as may be hereafter specified in writing.

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

CONSULTANT SERVICES CONTRACT 7
(Various)

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 Consultant.

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 Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultant'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.

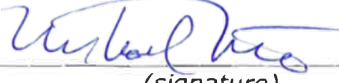
J. Records Retention and Audit. During the progress of the Work and for a period not less than three (3) years from the date of completion of the Work or for the retention period required by law, whichever is greater, records and accounts pertaining to the Work and accounting therefore are to be kept 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.

CONSULTANT:

By: R. Shane Phillips
Digitally signed by R. Shane Phillips
DN: C=US, E=ssphillips@moffattnichol.com,
O=Moffatt & Nichol, OU=SEA Business Unit,
CN=R. Shane Phillips
Date: 2021.07.26 15:54:07-07'00'
(signature)
Print Name: Shane Phillips
Its Business Unit Leader
(Title)
DATE: 7/26/2021

CITY OF DES MOINES:

By: 
(signature)
Print Name: Michael Matthias
Its City Manager
(Title)
DATE: 07/27/2021

Approved as to form:

/s/ Tim George
City Attorney
DATE: 07/27/2021

NOTICES TO BE SENT TO:

CONSULTANT:

William Gerken
Moffatt & Nichol
600 University St Suite 610 Seattle
Wa. 98101
(206) 622-0222 (telephone)
bgerken@moffattnichol.com (email)

NOTICES TO BE SENT TO:

CITY OF DES MOINES:

Scott Wilkins Harbormaster
City of Des Moines
21630 11th Avenue S., Suite A
Des Moines, WA 98198
(206) 824-5700 (telephone)
swilkins@desmoineswa.gov (email)



600 University Street, Suite 610
Seattle, Washington 98101

(206) 622-0222
www.moffattnichol.com

July 8, 2021

Attn: Scott Wilkins, Harbormaster
City of Des Moines Marina
22307 Dock Avenue South
Des Moines, WA 98198

RE: Scope of Work and Fee Proposal for City of Des Moines Marina Redevelopment Plan and M and N Dock Replacement

Dear Mr. Wilkins:

Moffatt & Nichol (M&N), and our team, appreciates this opportunity to provide professional services to the City of Des Moines (City) for the Marina Redevelopment Plan and M and N Dock Replacement project. The following Scope of Work (SOW) and attached Fee Estimate outlines the work with associated deliverables, and cost based on our understanding of the tasks required for this project.

William (Bill) Gerken will serve as Project Manager and primary team contact. The M&N Team includes the following subconsultants who will work with M&N to support completion of this SOW:

- BST Associates (BST)
- Solmar Hydro Inc. (Solmar)
- Anchor QEA
- Shannon & Wilson (S&W)
- Wood Harbinger (WH)

Subconsultant scopes of work and associated fees are included in Attachments B through F.

SCOPE OF WORK

The City is evaluating options for replacement and upgrades to the marina located on Puget Sound in Des Moines, Washington. The following SOW and Fee Estimate is presented in two phases of work to assist the City in achieving this goal:

- Phase I – Long-range Marina Replacement Plan
- Phase II – M and N Dock Replacement

Quality control and assurance activities have been scheduled and budgeted for each of the tasks and all deliverables produced by the M&N Team.

Task 0: Project Management

Task 0.1: Project Management

M&N will be responsible for the overall project management of the design team. M&N will provide contracting, oversight, accounting, invoicing and clerical support and conduct meetings to manage the project through permitting and design. Management of subconsultants will include facilitation and direct coordination between subconsultants. M&N corporate management procedures and protocol will be utilized. Project management will emphasize communication and meeting the City's needs and requirements. Project management also includes the M&N required QA/QC plan.

M&N will be responsible for the quality of the completed work. All work will be performed consistent with M&N's rigorous corporate Quality Assurance and Quality Control (QA/QC) program. The QA/QC program will establish and maintain the documentation and senior reviews necessary to eliminate "errors of omission" and to assure that the project is meeting not only M&N's quality standards, but industry, the City's, and applicable state and federal approved standards. The QA/QC for the project will include checking and reviewing all work for consistency with other members to consistently deliver coordinated documents. QA/QC tasks will be performed by qualified senior staff of M&N and other members of the design team as appropriate. Specific details concerning the types of review, who will be performing the review, and when the review occurs will be documented at the beginning of the project in a technical memorandum summarizing the QA/QC procedures to be implemented on the project.

Task 0.2: Team Meetings

A kick-off meeting will be conducted with key project staff from the City and the M&N Team. The objectives of the meeting will include, but are not limited to: the City's vision and what constitutes a successful project for the City; known and potential project constraints and opportunities; project scope and schedule in detail; establish lines and means of communication to minimize potential ambiguities in project objectives and deliverables; change (scope, schedule, or cost) management, identify and incorporate required project special procedures into the scope and schedule; and potential grant funding opportunities.

Bi-weekly meetings will be conducted with the M&N team and key City staff. The frequency of meetings will be based on project activity and issues. Meetings will follow a set rolling agenda which will include project progress/work completed, work to be completed, tracking of potential scope modifications, updated schedule and issues potentially affecting schedule, follow-up on requests from prior meetings, and any team questions or concerns.

Task 0 Deliverables

- Detailed project schedule with updates.
- Kick-off meeting agenda, materials, and post meeting memo.
- Agendas and minutes for project meetings.

PHASE 1 – LONG-RANGE MARINA REPLACEMENT PLAN

The M&N Team will provide concept development/design and planning to develop a long-range replacement strategy for the marina docks and for near term replacement of M and N docks.



Task 1: Marina Replacement Planning

Task 1.1: Economics/Financial Feasibility Analysis

The overall goal for this study is to assess redevelopment of all annual wet moorage. This work will build on the work accomplished by the City and Waggoner Marina Services & Burrows Bay Associates LLC. BST will provide the additional information, analysis, and details needed by the City in the decision-making process. This effort will carefully review all findings of the Waggoner report and non-published back-up materials (if available). BST will discuss Waggoner findings with the authors of the report as well as with City staff to assure that we fully understand the basis of their conclusions.

The primary purpose of this task is to evaluate the financial and economic feasibility of the marina, with a focus on a supportable marina replacement budget. This will be accomplished in the following scope of work.

Task 1.1.1: Financial Pro forma Development

Prepare a financial feasibility analysis that estimates the budget that is fundable and sustainable for marina development, considering the financial pro forma. Key inputs to the pro forma will include:

- Demand and Occupancy
- Rates/Rate Structure and Revenue
- O&M Expenses
- Capital costs and development schedule, and,
- Funding sources

Task 1.1.2: Capital Costs and Development Schedule

The M&N Team will refine alternatives for the marina redevelopment based on expected demand patterns. This is an iterative effort, in which we will evaluate trade-offs in maximizing moorage space in order to maximize revenues. This process will rely on estimated construction costs for different configurations of covered and open wet moorage.

A key factor in the financial analysis is the likely construction schedule. The team will estimate:

- Schedule for development, including permits and phased construction alternatives,
- Mitigation costs that may be required, and other factors that affect the schedule.
- Evaluate schedule based on funding constraints.

This work will assess capital costs and the development schedule under design options considered.

Task 1.1.3: Financing Alternatives

BST will thoroughly explore potential funding options for marina development:

- Net revenue generated by City marina operations (focusing on wet moorage).
- Potential increases in rates for other water-based operations (fueling, transient moorage etc.).
- Potential sources of funding for alternate water uses (ferries, et al.)



- Grants for marina redevelopment and/or required mitigation projects. M&N can provide grant identification support if requested, especially at the federal level with respect to waterfront facilities.

The purpose of this task is to describe and evaluate potential financing options.

Task 1.1.4: Financial Model

BST will develop a financial model that includes all of the design options and phasing of construction. Work will evaluate the supportable marina budget for marina design. It will also define the rate structure and occupancy level required to fully fund design alternatives.

Model inputs, which will be based on extensive benchmarking, will include:

- Phasing schedules
- Modelling for 5-years, as well as for longer periods (20 to 30) years
- Expected revenues based on reasonable rates and demand projections
- Capital costs based on estimates by the M&N team (including mitigation)
- O&M costs based on existing conditions, estimates based upon researched operations at other public and private marinas.
- Funding options with a reasonable expectation of achievement
- Rates of interest, inflation in revenues and capital and O&M costs
- Economic impacts associated with each alternative
- Sensitivity analysis will be performed to enable what-if assessments that lead to the selection of the optimal solution and factors for success.

Task 1.1.5: Draft Economics and Financial Feasibility Report

Prepare a draft feasibility report for City review. The report will clearly provide:

- Discussion of assumptions and results
- Key findings
- Recommend preferred alternative
- Supportable Marina Replacement Budget

Task 1.1.6: Final Economics and Financial Feasibility Report

Based on City and Stakeholder Input, revise and finalize the feasibility report.

Task 1.1 Deliverables

- Draft and Final Financial Feasibility Report in electronic format (pdf)

Task 1.2 Permitting and Mitigation Strategies

Task 1.2.1: Permit Approach and Mitigation Review

The M&N Team will develop an overall permitting approach for the entire marina, with the understanding that M and N Dock replacement will be permitted and designed first. The M&N



Team will work closely with the City on this task and is supported by Anchor QEA as permit strategy must be developed in parallel with design and financing for a successful project.

Anchor QEA will lead the evaluation of permitting and mitigation strategies for both Phase I and Phase II. M&N will provide marina planning, design, and construction expertise along with additional in-house marina permitting expertise to support this task. Time is included to review potential mitigation requirements and opportunities for both Phase I and II, including effort to consider different marina design alternatives with respect to possible mitigation costs.

M&N will be able to support preliminary concept and cost details while Anchor QEA will be able to evaluate alternative designs with NOAA's National Marine Fisheries Service Nearshore Habitat Valuation Model (NHVM) calculator for a range of in-water impacts. M&N will support Anchor QEA with rough/preliminary area, quantity, and volume estimates for use with the NHVM calculator to better understand potential mitigation costs.

Permit strategy and mitigation review will be tied closely with the economic analysis for the long-range development to develop Draft and Final Permit Approach and Mitigation Review Memorandums for both Phase I and Phase II. Deliverables for both Phase I and Phase II Permit Approach and Mitigation Review Memorandums will provide review for one marina redevelopment alternative and one alternative for M and N Dock replacement.

Task 1.2 Deliverables

- Draft and Final Marina Redevelopment Permit Approach and Mitigation Review in electronic format (pdf)
- Draft and Final M and N Dock Replacement Permit Approach and Mitigation Review in electronic format (pdf)

Task 1.3: Marina Planning

Task 1.3.1: Conceptual Layouts for Economic Feasibility and Evaluation of Replacement Strategy

Conceptual layouts for the marina replacement will be based on the slip distribution described in the Waggoner report. Slip mix and configuration will be refined in conjunction with the Economic and Financial Feasibility Analysis. The amount of covered versus open moorage will be reviewed in order to assess the impacts to economics and financial feasibility and permitting and mitigation. Marina layouts will include allowances for accessible gangways, identify potential areas that may be needed to support a dry stack storage operation. Up to three (3) layouts will be developed.

Task 1.3.2: Marina Basis of Design

A marina basis of design (BOD) document will be developed in order to provide the foundation for the marina replacement program. The focus of the BOD will be to identify general structure type, guidance for dock layout geometry, utility requirements. The document will also serve to guide the development of costs that will be used as part of the financial feasibility analysis.



Task 1.3.3: Planning Level Quantities ROM Estimates of Construction Costs

Using the conceptual layouts and marina BOD, order-of-magnitude estimates of construction costs based on unit prices will be developed for each layout. The costs will be reported in current costs and then escalated according to a phasing plan for the marina replacement program.

Task 1.3.4: Draft Marina Replacement Plan and Conceptual Design Report

Prepare draft design report to summarize the financial analysis, engineering and planning, field survey data, and permitting and mitigation strategy for the marina. Conclusions and recommendations for planning the replacement of the marina docks and related marina infrastructure will be presented based on the Phase 1 work, with consideration to public outreach efforts.

Task 1.3.5: Final Marina Replacement Plan and Conceptual Design Report

Finalize report based on comments received from City.

Task 1.3 Deliverables

- Draft and Final Marina Replacement Plan and Conceptual Design Report in electronic format (pdf)

Task 1.4: Field Surveys

Task 1.4.1: Bathymetry/Base Map

Solmar will complete this task. Data will be collected using high resolution multibeam sonar (MBES) throughout the project area. MBES will yield 100% coverage bathymetry data and will be of high enough resolution to identify marine vegetation areas as textured bottom surfaces. Since the bathymetric survey will cover the entire marina basin (Docks A thru N and Guest Moorage docks), the combined benefit of updated bathymetry and marine vegetation survey will be achieved.

A small UAV flight will be conducted to provide a base map aerial imagery, areal imagery will be georeferenced for use in updated base map(s).

Additional topographic/planimetric survey work will be completed to support this effort. At each gangway abutment for M and N Docks, survey points will be collected to locate the existing gangway hinge points, angle points for the concrete bulkhead cap where the gangway is attached, and utilities penetrating the bulkhead cap.

Task 1.4.2: Macroalgae Presence Survey

As noted above in Task 1.4.1, the MBES will provide marine vegetation presence data. The MBES data provides resolution adequate to outline potential areas of vegetation for closer inspection.

At select locations where marine vegetation is identified, and on a second separate day from the bathymetric survey work, a camera or remotely operated vehicle (ROV) will be used to confirm the presence and type of vegetation. A biologist from Anchor QEA will accompany the survey field crew for this effort (up to one day). This approach assumes that the number of drop-cam times for confirmation will be substantially fewer than those required following a detailed walking/wading or diving transect framework.



Anchor QEA will take the collected macroalgae data and develop a draft and final Macroalgae and Eelgrass Survey Report.

Task 1.4 Deliverables

- Survey data in electronic format(s) suitable for design and development of project plans.
- Draft and Final Survey Report and Macroalgae and Eelgrass Survey Report in electronic format (pdf)

Task 1.5: Stakeholder Outreach and Public Involvement

Stakeholder outreach and public involvement was not specifically requested within the City's Request for Qualifications (RFQ) for this project. The M&N Team has included an allowance for this task, to be available on an as-needed basis, based on recent scope discussions. The following subtasks present our allowance based on this preliminary understanding of involvement. Task 1.5 will likely require scope and fee modifications as the project moves forward.

A third-party facilitator is not included for this task. If the marina redevelopment planning process garners substantial interest from the public, it is recommended that a third-party, non-biased facilitator be considered.

Task 1.5.1: Technical Support

The M&N Team will provide technical support to the City as requested on project specific topics including design, financial feasibility, permitting and mitigation, and construction.

Task 1.5.2: Graphics and Renderings

M&N will support the development of graphics and/or renderings for the marina redevelopment planning process.

Task 1.5.3: Public Workshop

The M&N Team provides time to participate in one public workshop for the marina redevelopment planning process. Time to prepare for this meeting is also included.

Task 1.5.4: Communications Plan

Anchor QEA will lead the effort in developing a Communications Plan for the marina redevelopment planning process. The Plan will include details for consistent messaging with agencies, stakeholders, tribes, and other interested parties. The preparation of this Plan will include up to two 1-hour meetings with the City (Anchor and M&N) to understand previous public involvement activities conducted as part of the marina redevelopment planning process and obtain other relevant information. This plan will be a living document that is updated during the process so it can be referenced for future use.

Task 1.5.5: City Meetings

M&N and Anchor QEA have included time to attend up to three (3) City Council meetings to provide technical support to the City, as needed. Time to support the preparation of meeting materials is also included.



Task 1.5 Deliverables

- Draft and Final Communications Plan in electronic format (pdf)
- Microsoft PowerPoint presentation(s) for public workshop and City Council meetings in electronic format (PowerPoint and/or pdf)

PHASE 2: M AND N DOCK REPLACEMENT DESIGN

Based on the conceptual design and permitting strategy developed in the Long-Range Conceptual Design and Phasing Plan, the M&N Team will complete the project design, construction plans, technical specifications, and estimates of probable construction costs (PS&E) for the replacement of M and N docks. The M&N Team will coordinate with the City to verify the type of design and construction contracting approach, that will best serve the project by a full design package or a level of performance specification design to better capture value and cost savings from the supplier and contractor market. It is currently anticipated that design and P&S will be a detailed performance format. Design, P&S and costs will be developed in 3 stages (45%, 95% and final) with 2 City reviews at 45% and 95%.

Plans - Plans will be prepared according to established City standards. Plans submitted for review at the 45% and 95% level of completion will be submitted as half size (11-inch x 17-inch) plots and in electronic format. Final plans will be submitted as full size and half size plots and in electronic format(s) suitable for issuance to building exchange websites for bidding purposes. All plan sheets will be subject to M&N QA/QC throughout development and prior to submittal to the City.

Specifications – The M&N Team will prepare all technical specification sections of the contract documents and provide review/comment of City produced General Conditions. Outline technical specifications along with a partial set of specification sections will be submitted for review at the 45% submittal. Complete, edited, and coordinated pre-final technical specifications will be provided at the 95% submittal. Final complete, edited, coordinated, and signed technical specifications will be provided with the final submittal. Specifications will be provided in hard copy and electronic formats; the final submittal will include specifications in electronic format(s) suitable for issuance to building exchange websites for bidding purposes. All technical specifications will be subject to M&N QA/QC throughout development and prior to submittal to the City.

Opinion(s) of Probable Construction Costs – The M&N Team will provide an estimate of probable costs of the constructed value at the 45%, 95% and final level of design using unit prices and contingencies consistent with the level of design completeness. The Consultant will provide the City with an evaluation of each cost estimate highlighting changes in unit pricing, quantities, and/or total cost from previous estimates with explanation of the reasons for the change(s).

Task 2.1 – 2.3 Deliverables

An outline of the work/deliverables associated with each phase of design completeness is provided below.

Task 2.1: 45% (Preliminary) Design

- 45% Level Civil/Marine & Structural – Calculations, Plan(s), Sections, Details
- 45 % Level Utilities (Elec, Mech, Fire) - Calculations, Plan(s), Details
- 45% Level Technical Specifications and Product Cut-Sheets



- 45% Level Quantities and Opinion of Probable Construction Costs
- 45% Level Submittal

Task 2.2: 95% (Pre-Final) Level Civil/Marine & Structural – Calculations, Plan(s), Sections, Details

- 45% Level Civil/Marine & Structural – Calculations, Plan(s), Sections, Details
- 95% (Pre-Final) Level Utilities (Elec, Mech, Fire) - Calculations, Plan(s), Sections, Details
- 95% (Pre-Final) Level Technical Specifications
- 95% (Pre-Final) Level Quantities and Opinion of Probable Construction Costs
- 95% (Pre-Final) Submittal

Task 2.3: Final Design/Bid Documents

- Final Design/Bid Documents Level Civil/Marine & Structural – Calculations, Plan(s), Sections, Details
- Final Design/Bid Documents Level Utilities (Elec, Mech, Fire) - Calculations, Plan(s), Sections, Details
- Final/Bid Documents Technical Specifications
- Final Design/Bid Documents Level Quantities and Opinion of Probable Construction Costs
- Final Design/Bid Documents Submittal

Task 2.4: Environmental Review and Permitting

Anchor QEA will lead the State Environmental Policy Act (SEPA) and permitting effort for the City for M and N Dock replacement. The SEPA and permitting approach for the project is based on the most recent conceptual design and discussions with the City and includes a replacement scenario that could result in reduced overwater cover compared to existing conditions and the removal of creosote-treated timber from the aquatic environment.

Task 2.4.1: Agency Coordination

The M&N Team will provide early agency engagement, coordination during the regulatory review process, and coordination through construction. Anchor QEA will lead the SEPA and resource permitting effort for the City (effort is included for preliminary application coordination, including one early multi-agency meeting to introduce the project in the context of the marina redevelopment program), while M&N will lead the local construction permitting effort (effort is included for M&N or WH to engage with the City prior to City permit application submittal). Additional scope and fee will be required for ongoing agency coordination through permitting and/or to support SEPA comments or permit application questions by the resource agencies.

Task 2.4.2: SEPA and Resource Permitting

Table 1 developed by Anchor QEA, includes a summary of SEPA review, and resource permits and approvals typically required for the replacement of existing in-water structures.



Table 1: Environmental Permits and Approvals

Approvals	Agency	Trigger	Notes
Nationwide Permit (NWP) 3 or Letter of Permission (LoP)	U.S. Army Corps of Engineers (USACE)	Maintenance activities	A Joint Aquatic Resources Permit Application (JARPA) form will be prepared for an NWP 3 or LoP. If any new or expanded in-water or overwater structures are proposed, an individual permit will be required.
Endangered Species Act (ESA) Concurrence	National Marine Fisheries Service and U.S. Fish and Wildlife Service	Potential impacts to ESA-listed species and/or habitat	A Short-Form Biological Evaluation (BE) will be required to assess potential impacts from in-water activities. This will also include an assessment of potential mitigation requirements based on the NHVM calculator.
National Historic Preservation Act Section 106 Compliance	Washington Department of Archaeology and Historic Preservation	Potential impacts to archaeological, cultural, or historic resources	Preliminary archaeological review indicates that a Cultural Resources Assessment memorandum may not be required for the project. Documentation of limited potential for encountering artifacts will be included in the JARPA and State Environmental Policy Act (SEPA) Checklist.
Clean Water Act Section 401 Water Quality Certification (WQC)	Ecology	Potential water quality impacts to waters of the state	A pre-filing notice will be submitted to Ecology to support Coastal Zone Management Act (CZMA) and Section 401 review. Section 401 compliance will be covered under the NWP 3, and an individual WQC is not required due to limited in-water work and impacts.
CZMA Consistency Determination	Ecology	USACE permit requirement	CZMA compliance will be covered under the NWP 3.
Hydraulic Project Approval (HPA)	Washington Department of Fish and Wildlife (WDFW)	Work within waters of the state	Application materials will be submitted via the WDFW Aquatic Protection Permitting System (APPS) online project portal upon issuance of SEPA determination.
Aquatic Use Authorization	Washington Department of Natural Resources (DNR)	Work occurring on or over state-owned aquatic lands	JARPA Attachment E will be completed and submitted to DNR with the JARPA. The City will be responsible for aquatic lease terms negotiations.
SEPA Determination	City	Projects requiring local review in Washington State	A SEPA Checklist will be prepared and submitted to the City for SEPA review.
Shoreline Substantial Development Permit (SSDP) Exemption	City	Repair and maintenance activities located within the shoreline buffer	An SSDP exemption request letter will be submitted to the City for normal maintenance activities occurring within the shoreline buffer that are exempt per the City's Shoreline Master Plan Chapter 7.2(2).
Floodplain Code Compliance	City	In-water structures within floodplain	A Floodplain Code Consistency Memorandum will be submitted to the City.

The below further describes the different efforts required to support the City through SEPA and permitting, which will be based off of, or around the 30% design phase to minimize potential changes to the project during or after completion of the impact analyses.

- SEPA: Anchor QEA will lead the completion of a SEPA Checklist for the City. A SEPA Determination of Nonsignificance (DNS) or Mitigated Determination of Nonsignificance (MDNS) is anticipated for the project. An Environmental Impact Statement (EIS) is not anticipated. Extensive technical analyses to support the SEPA determination are also not anticipated (i.e., traffic analysis, noise beyond that necessary to permit pile driving, cultural or historic surveys, etc.). M&N will support Anchor QEA by developing the project description, including any applicable area, quantity, and volume takeoffs necessary to support SEPA review. M&N will also develop preliminary project figures to attach to the



SEPA Checklist, anticipated to be similar to anticipated figures to support the Joint Aquatic Resources Permit Application (JARPA).

- JARPA: Anchor QEA will lead the completion of the JARPA for the City. M&N will support Anchor QEA by developing any further detail needed with respect to area, quantity, and volume takeoffs necessary to support the JARPA. M&N will also complete the JARPA figures.
- Short-Form Biological Evaluation (BE): A Short-Form BE will be completed to assess potential impacts from in-water activities. This will also include an assessment of potential mitigation requirements based on the NHVM calculator. M&N will support Anchor QEA with any more detailed area, quantity, and volume takeoffs to complete this effort. The BE will be submitted by Anchor to the U.S. Army Corps of Engineers (USACE) for coverage under Nationwide Permit (NWP) #3 or a Letter of Permission (LOP). The BE will also support NMFS and U.S. Fish and Wildlife Service (USFWS) review.
- Shoreline Substantial Development Permit (SSDP): Anchor QEA will complete an SSDP exemption request letter that will be submitted to the City.
- Floodplain Compliance: Floodplain code compliance is required for in-water structures. Anchor QEA will prepare a floodplain code consistency review memorandum to demonstrate that changes to the piling infrastructure at the project site will not adversely affect base flood elevations determined by the Federal Emergency Management Agency (FEMA). M&N will provide design information for incorporation.
- Ecology Clean Water Act Section 401 Water Quality Certification (WQC) and Coastal Zone Management Act (CZMA) Pre-filing: Anchor QEA will complete a pre-filing notice to submit to Ecology to support WQC and CZMA compliance, both of which should be automatically covered by issuance of a USACE NWP.

Draft permit application materials will be submitted to the City for review prior to formal agency submittal by Anchor QEA.

At this time, complex permitting and the development of a detailed Mitigation Plan is not proposed. If, during preliminary planning, design, and/or agency coordination tasks, more complex mitigation opportunities are determined necessary, additional scope and fee may be required.

Task 2.4.3: Local Construction Permits

The M&N Team will develop a permit strategy to identify specific construction permits needed, review code compliance requirements, and to complete the application materials and drawings necessary to support the City in obtaining local City building, electrical, mechanical, and/or water (potable) permits. M&N will lead the building permit application submittal, which will include the submittal of final design drawings completed under Task 2.4. WH will lead the electrical, mechanical, and/or water permitting efforts. Time and effort are included to support coordination with South King County Fire.

If other construction permits are identified during this task, additional scope and fee may be required.

Task 2.4 Deliverables

- Draft and Final SEPA Checklist in electronic format (word)



- Draft and Final JARPA, JARPA Attachment E, and JARPA figures in electronic format (pdf)
- Draft and Final SSDP Exemption Request Letter in electronic format (pdf)
- Draft and Final Floodplain Code Consistency Memorandum in electronic format (pdf)
- Draft and Final Short-Form BE and NHVM calculator in electronic format (pdf)
- Ecology pre-filing notice form in electronic format (pdf)
- HPA application via APPS (online)
- Draft and Final City Building Permit application and drawings in electronic format (pdf)
- Draft and Final City Electrical, Mechanical, Water Permit application and drawings in electronic format (pdf)

Task 2.5 Bid Support

Bid support services will include the following allowances:

- Attendance at Pre-Bid Meeting
- Prepare responses to Requests for Information (allow up to 2)
- Prepare addenda in response to RFI (allow up to 2)
- Assist City with review of bids received. Work may include preparation of bid tabulation, review of references, and prepare written recommendation for the City.

PHASE 3 – CONSTRUCTION SUPPORT SERVICES

Task 3.2 Construction Support Services. Construction support services are not included at this time. Services will be negotiated at a later date as needed.

ASSUMPTIONS

- Phase I, Task 1.2 deliverables provide a permit approach and mitigation review for one marina redevelopment alternative and one alternative for the M and N Dock replacements project.
- In-water and overwater project activities will qualify as repair and maintenance. The review agencies will not deem the project activities to be considered new or expanded in-water or overwater structures.
- A National Environmental Policy Act (NEPA) Environmental Assessment or EIS is not anticipated at this time (project is not federally funded).
- A SEPA Determination of Nonsignificance or Mitigated Determination of Nonsignificance will be issued for the project. An Environmental Impact Statement will not be required. Extensive technical analyses to support the SEPA determination are also not anticipated (i.e., traffic analysis, noise beyond that necessary to permit pile driving, cultural or historic surveys, etc.)
- The project will qualify for an SSDP exemption and not require an individual shoreline permit.
- The project will not trigger the requirement for a USACE Individual Permit.



- The macroalgae presence survey approach assumes that the number of drop-cam times for confirmation will be substantially fewer than those required following a detailed walking/wading or diving transect framework.
- Cultural and/or historic resources surveys or reporting will not be required for Section 106 compliance.
- Additional field surveys (e.g., sediment surveys) are not anticipated.
- Work will occur on Department of Natural Resources (DNR) owned aquatic lands. The City will be responsible for DNR aquatic lease negotiations and aquatic land survey requirements.
- A mitigation plan will not be required for M and N Dock Replacement project. Project activities will generally be self-mitigating due to overwater cover reduction and creosote-treated pile removal. Any additional debits generated by the project will be offset by credits made available through mitigation for the Entrance Channel Maintenance Dredging Project.
- Agency comments on the permit application materials will be minor and will not result in additional data gathering or substantial new evaluations.
- Effort to support permit appeals are not included and would require additional scope and fee.
- Permit fees are the responsibility of the City.
- Effort to support stakeholder outreach and public involvement is based on present assumptions and a limited effort. Scope and fee modifications may be required to better support the City through this process.
- The stakeholder outreach and public involvement task does not include providing a third-party meeting facilitator.

SCHEDULE AND FEE

We are ready to begin work as soon as we receive notice to proceed (NTP). A detailed project schedule will be developed at project start-up and updated throughout the project based on elements such as results of the economic/financial feasibility analysis, selection of the preferred alternative, and feedback from the regulatory and permitting agencies during the permitting tasks. It is currently anticipated that project duration will be 18 to 20 months following NTP.

M&N proposes to complete the scope of work on a time-and-materials basis not to exceed five hundred and ninety-seven thousand, eight hundred and four dollars. A breakdown of our fee proposal is provided in the table below. A detailed level of effort is attached (Attachment A). Subconsultant scopes of work and associated fees are included in Attachments B through F.

Total M&N Cost	\$334,816.00
Total Subconsultant Costs	\$262,988.00
Total	\$597,804.00



We thank you for the opportunity to provide a fee proposal for this project, and we look forward to working with you on this important project. If you have any questions regarding this proposal, feel free to contact me by phone, (206) 501-2311, or by email, bgerken@moffattnichol.com.

Sincerely,

MOFFATT & NICHOL



Bill Gerken, PE, Project Manager
bgerken@moffattnichol.com
(206) 501-2311 (direct)
(206) 491-6350 (cell)



ATTACHMENT A
MOFFATT & NICHOL FEE
AND TOTAL FEE

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Budget & Nichols Fee Proposal Detail
 One Member Marine Deck Replacement
 July 16, 2017

Project Summary		Project Information		Project Location		Project Dates		Project Status		Project Budget		Project Schedule		Project Details		Project Notes	
Phase	Task	Start Date	End Date	Location	Area	Start Date	End Date	Status	Priority	Budget	Actual	Start Date	End Date	Description	Quantity	Unit	Notes
1. PRELIMINARY WORK	Site Visit	7/16/17	7/16/17	Marine Deck	Deck	7/16/17	7/16/17	Completed	High	100.00	100.00	7/16/17	7/16/17	Initial site visit and assessment.	1	Visit	
	Design	7/16/17	7/16/17	Marine Deck	Deck	7/16/17	7/16/17	Completed	High	200.00	200.00	7/16/17	7/16/17	Design and plan development.	1	Design	
	Permitting	7/16/17	7/16/17	Marine Deck	Deck	7/16/17	7/16/17	Completed	High	100.00	100.00	7/16/17	7/16/17	Obtain necessary permits.	1	Permitting	
	Material Procurement	7/16/17	7/16/17	Marine Deck	Deck	7/16/17	7/16/17	Completed	High	100.00	100.00	7/16/17	7/16/17	Procure materials for deck replacement.	1	Material Procurement	
2. DECK REPLACEMENT	Deck Removal	7/16/17	7/16/17	Marine Deck	Deck	7/16/17	7/16/17	Completed	High	100.00	100.00	7/16/17	7/16/17	Remove existing deck structure.	1	Deck Removal	
	Deck Installation	7/16/17	7/16/17	Marine Deck	Deck	7/16/17	7/16/17	Completed	High	100.00	100.00	7/16/17	7/16/17	Install new deck structure.	1	Deck Installation	
	Deck Finishing	7/16/17	7/16/17	Marine Deck	Deck	7/16/17	7/16/17	Completed	High	100.00	100.00	7/16/17	7/16/17	Finish deck with appropriate material.	1	Deck Finishing	
	Deck Inspection	7/16/17	7/16/17	Marine Deck	Deck	7/16/17	7/16/17	Completed	High	100.00	100.00	7/16/17	7/16/17	Inspect deck for quality and safety.	1	Deck Inspection	
TOTAL PROJECT BUDGET										400.00	400.00						
TOTAL PROJECT SCHEDULE																	
TOTAL PROJECT STATUS																	
TOTAL PROJECT NOTES																	

ATTACHMENT B
BST

BST Associates

*PO Box 2224
Anacortes, WA 98221
(425) 486-7722
bstassoc@seanet.com*

July 7, 2021

Mr. Bill Gerken, P.E., Senior Coastal Engineer
Moffatt & Nichol
600 University Street, Suite 610
Seattle, WA 98101

Re: Des Moines Marina Feasibility Study

Dear Bill:

We are very pleased to assist Moffatt & Nichol and the City of Des Moines in evaluating the financial feasibility of the proposed marina improvements. I am enclosing a revised draft scope of work, budget and schedule for your review. Please review this proposal and let us know if you have comments or questions. We look forward to working with you.

Sincerely,

Paul Sorensen
Principal

Scope of Work

Statement of Understanding

The City's overall goal for this study is to assess redevelopment of all annual wet moorage floats. This effort builds on work accomplished by the City and Waggoner Marina Services & Burrows Bay Associates LLC. BST's work will provide additional details to assist the City in the decision-making process. This effort will carefully review all findings of the Waggoner Marina Services & Burrows Bay Associates LLC. reports and non-published back-up materials (as available). BST will discuss findings with the authors of the report as well as with City staff to assure that we fully understand the basis of their conclusions.

The primary purpose of this task is to evaluate the financial and economic feasibility of the marina, with a focus on a supportable marina replacement budget. This will be accomplished in the following scope of work.

Task 1.1 Economic/Financial Feasibility Analysis

1.1.1 Financial Pro forma Development:

Prepare a financial feasibility analysis that estimates the budget that is fundable and sustainable for marina development, taking into account the financial pro forma. Key inputs to the pro forma will include:

- Demand and occupancy.
- Management alternatives,
- Rates/rate structure and revenue,
- O&M expenses,
- Capital costs and development schedule, and,
- Funding sources

1.1.1.1 Demand and Occupancy

Demand and occupancy rates will be estimated based on current and expected conditions for alternative design options (number of covered slips and open slips, by length). We will review Waggoner Marina Services & Burrows Bay Associates LLC. data, analysis and report and the City of Des Moines records. Based upon this analysis, we will validate and/or refine findings, as required. This subtask will include analyzing:

- City of Des Moines studies/records over time
 - Review Waggoner analysis/data (as available)
 - Validate/refine Waggoner results
 - Trends in occupancy and waitlists by wet moorage size/type
 - Define key market areas for the marina (primary, secondary and tertiary)

- Trends at other key marinas from Tacoma to Elliott Bay. BST will interview marina operators, focusing on market served, waitlists, and occupancy rates by type/size of wet moorage slip
- Registration and boat sale trends, focusing on the Des Moines market regions
- Projections of demand and occupancy will be based on expected growth, taking into account user/demographic trends

BST will provide reasonable estimates of future boating in the area served by the Des Moines Marina.

This task will determine the potential demand for the facility.

1.1.1.2 Management Alternatives

BST will provide an evaluation of potential models for marina management, including but not limited to: 1) continued operation by the City of Des Moines, and 2) potential private operation (with City ownership) of the marina.

BST will present examples of relevant publicly owned / privately operated marinas, including:

- City of Seattle - Leschi Marina and Lakewood Marina
- Thea Foss Waterway - Dock Street Marina, Delin Docks, et al.
- University of Washington - Boat Street Marina
- Other relevant examples, as available

BST will discuss the potential structure of a private operation, and will outline the pros and cons of this approach.

1.1.1.3 Rates/Rate Structure and Revenue

BST will review rate trends at the City of Des Moines marina, and will compare these with rates at selected public and private marinas in the Seattle/Tacoma area. The goal of this task will be to identify market rates for moorage (by type of slip and length), as well as long-term trends in marina rates in the market region.

We will also estimate revenues from other potential wet moorage uses, such as tour boats, hand-powered craft, and new vendors and services.

This task will determine the potential revenue streams for the facility under all design options.

1.1.1.4 O&M Expenses

Operations and maintenance costs will be estimated based on our extensive knowledge of the trends in marina operations in the Pacific Northwest, which includes public management as well as public-private operations. We will focus on the O&M costs of:

- Existing operations at City of Des Moines Marina, based on City records.
- Other public marinas, focusing on comparable publicly operated marinas (Edmonds, Everett, La Conner, et al.).

- Public-private operations (City of Seattle, Thea Foss Waterway, and the University of Washington, among other examples, as data is available).

We will summarize the expected costs under each category of ownership/management and assess the rate of growth of cost components based on trends at relevant public and private marinas.

This task will estimate O&M costs under public and private management/operation scenarios for each design option.

1.1.2 Capital Costs and Development Schedule

BST will work closely with the MN team to refine alternatives for the marina redevelopment. This effort will use the Waggoner results as a starting point, which will then be refined based on projected demand patterns. This is an iterative effort, in which we will evaluate trade-offs in maximizing moorage space in order to maximize revenues. This process will rely on estimated construction costs for different configurations of covered and open wet moorage.

A key factor in the financial analysis is the likely construction schedule. BST will work with the MN team to estimate:

- Schedule for development, including permits and phased construction alternatives,
- Mitigation costs that may be required, and other factors that affect the schedule.
- Evaluate schedule based on funding constraints.

This task will assess capital costs and the development schedule under all design options considered.

1.1.3 Financing Alternatives

We will thoroughly explore funding options for marina development options:

- Net revenue generated by City marina operations (focusing on wet moorage).
- Potential increases in rates for other water-based operations (fueling, transient moorage etc.).
- Potential investment by private sector partners.
- Potential sources of funding for alternate water uses (ferries, et al)
- Grants for required mitigation projects

The purpose of this task is to describe and evaluate potential financing options.

This task will evaluate potential funding sources for each design/management option.

1.1.4 Financial Model

BST will develop a financial model that includes all of the design options and phasing of construction, et al.

Model inputs, which will be based on extensive benchmarking, will include:

- Phasing schedules,

- Modelling for 5-years, as well as for longer periods (20 to 30) years,
- Expected revenues based on reasonable rates and demand projections,
- Capital costs based on estimates by the MN team (including mitigation),
- O&M costs based on existing conditions, estimates based upon researched operations at other public and private marinas,
- Including or excluding dry stack storage,
- Funding options with a reasonable expectation of achievement,
- Rates of interest, inflation in revenues and capital and O&M costs,
- Economic impacts associated with each alternative,
- Sensitivity analysis will be performed to enable what-if assessments that lead to the selection of the optimal solution and factors for success.

This task will evaluate the supportable budget for marina design for each management option. It will also define the rate structure and occupancy level required to fully fund design alternatives.

1.1.5 Draft Economics and Financial Feasibility Report:

BST will present summary draft results for staff. After review and refinement, BST will present final study results to City staff, City Council and/or Council Committees as necessary to narrow choices and build buy-in.

The report will clearly provide:

- Discussion of assumptions and results
- Key findings
- Recommend preferred alternative
- Supportable Marina Replacement Budget

This task will include delivery of the draft report and discussion of results.

1.1.6 Final Economics and Financial Feasibility Report:

Based upon City/stakeholder input, the report will be refined and finalized.

1.1.7 Meetings/teleconferences

BST will participate in meetings with the team and City, including a presentation of draft results. This will include:

- Kick off Meeting – 1 person / 2 hours
- Team Coordination Meetings – up to 6 meetings – 1 person for 1 hour long each meeting.
- Other meetings, as required.

Proposed project budget and project timeline

A draft report can be presented within 2.5 months of entering into a contract. After review, we will prepare the Final Report.

The budget for this project is \$49,935, arranged by task in the following table.

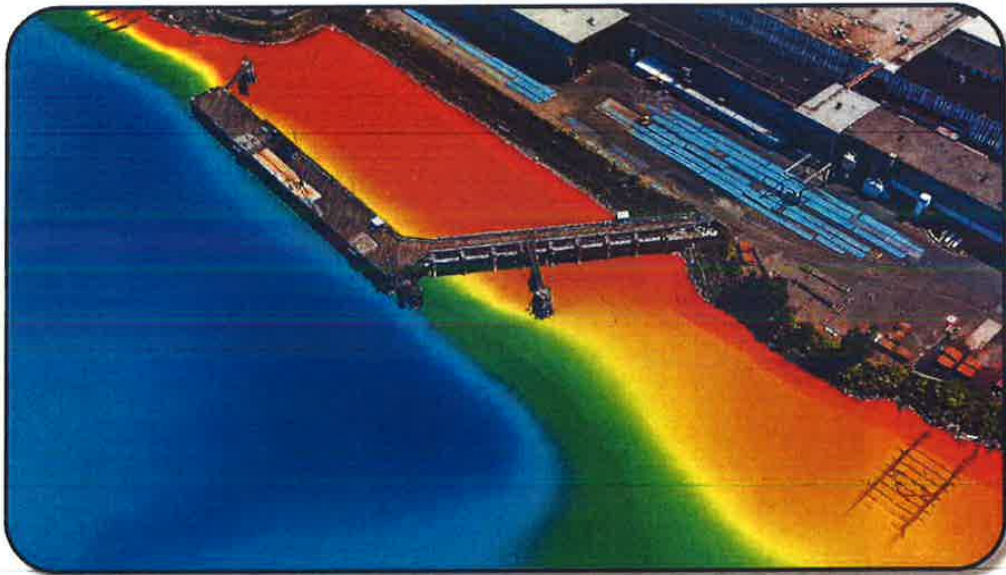
	Hours	Budget	Hours	
			Sorensen	Winningham
Economics/Financial Feasibility Analysis				
Demand and Occupancy	45	\$8,075	20	25
Management Alternatives	23	\$4,175	15	8
Rates/Rate Structure and Revenue	33	\$5,855	8	25
O&M Expenses	25	\$4,475	10	15
Capital Costs and Development Schedule	20	\$3,620	12	8
Financing Alternatives	20	\$3,600	10	10
Financial Model	40	\$7,250	25	15
Draft Economics and Financial Feasibility Report:	23	\$4,105	8	15
Final Economics and Financial Feasibility Report:	16	\$2,880	8	8
Meetings/teleconferences	30	\$5,400	15	15
Labor	275	\$49,435	131	144
Expenses		\$500		
Total Budget		\$49,935		
Hourly Rate			\$185.00	\$175.00

ATTACHMENT C
SOLMAR HYDRO

SURVEY PROPOSAL

Des Moines Marina – Des Moines, WA

June 2021



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INTRODUCTION

BACKGROUND

Solmar Hydro, Inc. (SHI) welcomes the opportunity to propose a high-resolution hydrographic survey and photogrammetric topographic survey for Moffatt & Nichol (M&N) on behalf of the City of Des Moines, WA. The project site is the Des Moines Marina (see Figure 1). The project objectives are to measure updated bottom elevations throughout the marina and complete an eelgrass survey in preparation for forthcoming construction at M and N Docks.



Figure 1. MBES survey area (red outline).

COMPANY, EXPERIENCE, AND EXPERTISE

SHI is an expert hydrographic surveying, mapping, and ocean engineering firm founded in 2004 and is located in Portland, OR. We offer a wide range of hydrographic, terrestrial, marine geophysical, and ocean engineering services to numerous public and private clients nationally and internationally. Personnel comprise USCG licensed vessel captains, National Society of Professional Surveyors (NSPS) Certified Hydrographers, Professional Land Surveyors, and Professional Engineers licensed in the states of Oregon and Washington. Our technical expertise in hydrographic, topographic, and marine geophysical surveying, our extensive equipment suite, and our knowledge and understanding of how our data are utilized provides us with the capability to offer clients a comprehensive in-house solution tailored to their needs.

SHI is accustomed to conducting survey operations within shallow waters, adjacent to shorelines, and near submerged hazards, where operating conditions may be tight. Our standard protocol is to work toward the shoreline as tides are rising, completing our final pass along the shoreline at the highest water level.

SHI has completed several similar surveys near this site in recent years. For example, in 2019 (and to be completed again in 2021) SHI utilized the same MBES and sUAV systems proposed below to generate a complete DEM of a Point Ruston shoreline project site (see Figure 2). Also in 2019 SHI completed a bathymetric (MBES) and topographic (sUAV) survey of the Port of Poulsbo marina and shoreline. And, SHI was the on-call hydrographic surveyor for the Port of Tacoma between 2011 and 2016, providing bi-annual shoreline-to-shoreline MBES survey data products to support safe navigation clearance.



Figure 2. Combined MBES and sUAV survey at Point Ruston in 2019 illustrating high-resolution, shallow water imaging capabilities, shoreline measurement capabilities, and ability to identify underwater debris and hazards.

SCOPE OF WORK

MBES SURVEY METHODOLOGY

At The Des Moines Marina project, multi-beam bathymetric data will be acquired from our 24-ft aluminum survey vessel (Figure 3). This vessel is ideally-suited for this project site as it has a very small draft and is easy to maneuver in small quarters, allowing for transit in and around the shoreline and potential submerged hazards.

Our MBES is an R2Sonic 2024 and will be operated at a frequency of 400 kHz with a restricted swath width of 110 degrees or less to improve data accuracy at outer angles. The R2Sonic 2024 improves over other MBES systems with its individual beam widths of 0.45° by 0.9° when operated at 450 kHz. This translates into finer resolution final data products than MBES systems with larger beam widths.

The survey area will comprise dimensions of approximately 1800-ft by 600-ft overall, with most survey operations taking place within the fairways between docks. The survey will be completed at a high tide to maximize coverage into the shoreline and beneath the slips. During survey operations, soundings will be collected to as shallow and as near the shoreline as can be safely completed (generally this means to water depths of approximately 4-6 feet below the sonar). Per SHI's standard operating procedures, we will conclude our surveys by electronically rotating the sonar beams toward the starboard side of the vessel which will provide for additional coverage beneath the docks/slips and into the shallow waters to the extents feasible. This allows us to measure into inaccessible locations (e.g., dead head pile areas) and waters too shallow for safe navigation.



Figure 3. SHI's 24' aluminum survey vessel with MBES on side pole-mount.

MBES horizontal and vertical positioning will be provided with an Applanix POS/MV WaveMaster II inertial navigation system. The WaveMaster II is an RTK-GNSS augmented system that provides accurate position, heading and attitude for the survey vessel. The WaveMaster II provides inertially-derived

positions throughout any areas of signal loss (e.g., near covered boat slips) for continuous and accurate vessel positioning.

SHI employs the latest GNSS positioning solution utilities available including Post-Processed Kinematic (PPK) GNSS solutions to create Smoothed Best Estimated Trajectory (SBET) files. The inclusion of PPK and SBET during post-processing significantly reduces positioning errors to sub-centimeter precisions, both vertically and horizontally. PPK navigation and positioning provides the most accurate and precise solution available for mobile GNSS mapping, especially in GNSS-compromised environments.

SHI understands that the project site may include submerged hazards or surface hazards such as submerged debris and/or shallow water conditions. We routinely work in, and are comfortable working around, similar conditions. Our unique sonar mount includes a sacrificial break-away block that protects the sonar system should a submerged hazard be encountered. During normal operation, the block immobilizes the sonar pole mount in place. If an underwater object is struck by the sonar head or pole mount, the block will break and allow the sonar pole mount to rotate, thereby preventing damage to the pole or sonar system. Following such an occurrence, the block can be rapidly replaced, and pole locked back into position, allowing the survey to continue uninterrupted, and without the need for re-calibration of the system. This ability is a clear advantage over other MBES setups that would require re-calibration of the sonar system before proceeding.

SUAV SURVEY METHODOLOGY

Topographic and/or aerial imagery data will be obtained via structure-from-motion photogrammetric techniques. Our sUAV is a Yuneec H520 that has been specifically-developed for commercial surveying and mapping applications. Its six rotors (hexacopter) allows for precise and stable flight, and provide redundancy in case of rotor failure. The survey-grade camera is a Yuneec E90 which contains a 20 megapixel 1" CMOS sensor and is mounted to the sUAV with a 3-axis stabilized gimbal with a precision of +/- 0.02°.



Prior to launching the sUAV, several ground control points (GCPs) will be established, marked, and surveyed, spread uniformly throughout the survey area. These are necessary for aerial-based systems in order to geo-rectify the photogrammetric model accurately in 3D space (i.e., create a DEM). In addition, GCPs not used for the 3D optimization process can be used to independently compute statistics on the georectified DEM to verify survey accuracy.

The sUAV will be programmed and operated by an FAA-certified (Part 107 Remote Pilot in Command) for the flight. The actual flight will take place during the lowest possible water level to maximize coverage of the shoreline into the Sound, and increasing the potential for coverage overlap with the MBES data. Since this flight location falls within SEA controlled airspace, air traffic control (ATC) approval will be required prior to completing the flight. Automated authorization is likely to be attained rapidly, however, since the sUAV survey will not exceed 400-ft above ground level. SHI will request approval through the LAANC (Low Altitude Authorization and Notification Capability) upon notice to proceed to avoid any potential schedule delays.

When combined, the MBES and sUAV survey data will allow a complete digital elevation model (DEM) of the waterfront elevations to be created that will extend throughout submerged and upland survey areas.

EELGRASS DELINEATION METHODS

Under Section 404 of the Clean Water Act (33 U.S.C. 1344), eelgrass beds (e.g., *Zostera Marina*, *Zostera Japonica* in Pacific NW) are defined as a type of special aquatic site. Methods for identifying and delineating eelgrass beds follow the technical guidelines and procedures outlined by the USACE (*Components of a Complete Eelgrass Delineation Report*, [USACE, 2018]), Washington DNR (*Technical Memorandum: Operational Definition for Determining Edge of Eelgrass (Zostera marina) Presence*, [WADNR, 2012]), and NOAA NMFS (*California Eelgrass Mitigation Policy and Implementing Guidelines*, [NOAA 2014]).

Eelgrass surveys in this area of the country typically follow one or more steps, as necessary.

1 - PRELIMINARY SURVEY

Non-quantitative preliminary surveys are typically employed to support a statement of the absence of eelgrass at the project site. This method is used when, e.g., eelgrass is present near the project site, the substrate is conducive to eelgrass growth, historical evidence of eelgrass beds exists, etc.

Preliminary surveys incorporate a systematic method to document presence/absence of eelgrass across the project site. This may comprise, e.g., photographic evidence along walking/wading transects or low altitude high resolution unmanned aerial vehicle imagery.

****The Preliminary Survey in this case comprises the MBES survey***

2 - DEFINING AND DELINEATING EELGRASS BED BOUNDARIES (TIER 1 DELINEATION)

If eelgrass is known to be present or if the preliminary survey reveals the presence of eelgrass beds, the boundaries must be defined. Once a preliminary survey identified the general locations where eelgrass may exist, the boundaries are defined in one of two methods:

- 1) **Eelgrass Delineation Method A:** An eelgrass bed is defined as a minimum of 3 shoots per 0.25 m² (1/4 square meter) within 1 meter of any adjacent shoots. To identify the bed boundary, proceed in a linear direction and find the last shoot that is within 1 meter of an adjacent shoot along that transect. The bed boundary (edge) is defined as the point 0.5 meter past that last shoot, in recognition of the average length of the roots and rhizomes extending from an individual shoot (Washington Dept. of Natural Resources (WADNR) 2012).
- 2) **Eelgrass Delineation Method B:** The California Eelgrass Mitigation Policy and Implementing Guidelines (NOAA Fisheries 2014) identify eelgrass bed edge as follows: any eelgrass within one square meter quadrat and within 1 meter of another shoot.

The goal of a Tier 1 delineation survey is to identify the boundaries and spatial distribution of the eelgrass beds in relationship to tidal elevation and the proposed project footprint to assist in avoidance of eelgrass beds. Ground-truthing may be completed via walking/wading during low tides, using divers in subtidal areas, or applying remote sensing methods over larger spatial sites (e.g., aerial photography, underwater photography, and/or hydroacoustic surveying). Remote sensing methods necessarily require collection of select or limited ground-truth verification via direct observation methods (walking/wading/diving) to provide supplementary information.

A series of linear transects are typically established parallel to the project centerline to ground-truth suspected eelgrass beds and determine boundaries. It may also be necessary to distinguish between different eelgrass species at a location. There may be more than one eelgrass species present along each

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Des Moines Marina – Des Moines, WA*

transect (e.g. an upper intertidal zone of continuous or patchy non-native dwarf eelgrass (*Zostera japonica*), a mid-intertidal bed of *Z. japonica* mixed with native eelgrass (*Z. marina*), a patchy or sparse *Z. marina* bed, and a dense or continuous *Z. marina* bed in the lower intertidal/subtidal zone) (see Appendix B for examples). Or both eelgrass species may not be present at each site. Identification of the *Z. japonica* along each transect is necessary because of the potential for confusion and misidentification between the two *Zostera* species.

Along each transect, identify the locations of the upper and lower boundaries (based on MLLW datum) of the eelgrass beds or patches according to the instructions for either Method A or B.

Final products are to include detailed notes and metadata, eelgrass bed map(s) and a delineation report.

****A Tier 1 Survey is not anticipated at this time since previous eelgrass surveys have indicated an absence of eelgrass beds within the marina.***

EQUIPMENT LIST

A complete list of the equipment planned to be used during this effort is listed here:

- 24 ft aluminum survey vessel
- R2Sonic 2024 MBES, 450 kHz, 256 beams
- Applanix POS/MV Wavemaster II V5, RTK-enabled
- Trimble R7/R8/R10 RTK-GNSS base/rover
- HPB450 Radio modems
- YSI Castaway Sound Velocity Profiler
- Valeport miniSVS real-time SV sensor
- Universal Sonar Mount
- Yuneec H520 Hexacopter with E90 Camera
- Seaviewer 600 HD Sea Drop Underwater Camera
- CARIS HIPS V9.1.5 (post-processing software)
- POSPAC MMS V 7.2 (post-processing software)
- HYPACK 2021 (data acquisition and navigation software)
- Blue Marble Global Mapper V20 with LiDAR Module (post-processing software)
- AgiSoft Metashape (post-processing software)

PROJECT SURVEY CONTROL

Unless otherwise requested by the client, the horizontal datum for this survey will use be based on NAD83 (2011), State Plane Coordinate System, Washington South Zone, with units in U.S. Survey Feet. The vertical datum will be NAVD88, with units also in feet. The final surveys will be stamped and certified by a professional engineer in the State of Washington.

SHI assumes that project survey control exists near the project site or will be established by the client. We will plan to setup our RTK GNSS base station on a valid control point and complete 1-2 QC check shots on nearby points. Successful check-ins will indicate establishment of survey control. In absence of nearby survey control, SHI will establish our own temporary benchmarks and submit raw GNSS data to the NOAA NGS Online Users Positioning Service (OPUS) following the survey.

QUALITY CONTROL AND SAFETY

PROFESSIONAL STANDARDS

SHI adheres to not only the USACE quality standards (e.g., EM 1110-2-1003), but also the NOAA/NOS Specifications and Deliverables, and the International Hydrographic Organization specifications. All of the hydrographic data collected by SHI is rigorously scrutinized with QA/QC analysis routines recognized as industry standards in addition to further in-house procedures. Prior to submittal, all field operations, post-processing and QA/QC procedures will be thoroughly reviewed for completeness.

In addition, and pursuant to the laws of the State of Washington, SHI strictly adheres to the Revised Code of Washington (RCW) 18.43 regarding practicing engineering and surveying within the state boundaries. Pursuant to RCW 18.43, SHI surveys are completed and/or supervised, and certified by a practicing Professional Engineer in the State of Washington qualified to complete hydrographic and geophysical surveys of this nature. The hydrographic survey crew, at a minimum, will consist of a National Society Professional Surveyors (NSPS) Certified Hydrographer and a Licensed USCG vessel operator.

SYSTEM CALIBRATIONS

SHI routinely calibrates our MBES system prior to survey initiation to ensure the highest accuracy final data products. Following vessel mobilization, SHI will complete a heading and installation calibration for our attitude and orientation sensor, an Applanix POS/MV Wavemaster II. Subsequently, a patch test will be performed before hydrographic surveying operations commence. The patch test calibration quantifies any residual alignment biases between the POS/MV and the MBES (roll, pitch and yaw). The patch test will also calculate the latency (typically zero) between the time positioning data was received and the time the computed position was logged by the acquisition system.

MINIMIZING VERTICAL UNCERTAINTY

Vertical reference elevations during surveying will be collected with RTK-GNSS positioning direct from the IMU to the MBES sonar head. The benefits of using direct transformation RTK positioning techniques at the point of measurement (i.e., sonar head) eliminates several potentially significant vertical error components such as those introduced from vessel settlement and squat or other static and dynamic draft changes. As a benefit, separate water level logger deployment or tide gage monitoring will not be necessary.

BAR CHECK VALIDATION

To check that vertical elevations from the transducer are digitized correctly, a bar will be lowered below the MBES sonar at a known depth and recorded. Necessary adjustments will be made to the draft and sound velocity measurements if the barcheck does not provide satisfactory results, which is seldom the case.

SOUND SPEED

A recently-calibrated sound velocity profiler will compensate for acoustic refraction within the water column. Sound velocity measurements will be collected at frequent intervals to capture the changes with depth during varying tidal stages. After each deployment, the instrument will be downloaded to verify collection of water column sound speed data and to determine if any significant sound velocity changes are occurring.

SAFETY MEETING

SHI surveying personnel are committed to practicing safe operations. We hold daily “tailgate” safety meetings prior to all field activities to ensure all crew members are aware of the possible job hazards.

DELIVERABLES

SHI will prepare and submit the following deliverables:

- **Tabulated bathymetric survey results as a *.txt file**
 - Gridded ASCII XYZ text file at 1.0 foot spacing (1 data point every 1.0 feet, in a gridded format created from a Triangular Irregular Network (TIN) model.
 - If topographic data are included in the SOW, the gridded ASCII XYZ text file will comprise a combined DEM of the bathymetric and topographic data.
- **1.0 foot resolution sun-illuminated (hill-shaded) GeoTiff of the bathymetric survey data DEM (or combined bathymetric/topographic DEM)**
- **Orthoimagery from aerial survey**
- **Supporting documentation/data for eelgrass report/maps**

COST AND SCHEDULE

The cost to complete the MBES and eelgrass surveys is separated into several options as listed in the table below. The MBES hydrographic survey will encompass the area outlined in red in Figure 1.

CLIN	Schedule of Supplies/Services	Amount
1	Task 1 – MBES/sUAV/Planimetric Survey	\$15,809
2	Task 2 – Eelgrass Survey	\$4,960
-	Optional: Additional Leadline Day (if needed)	\$2,786
-	Optional: Omit topographic sUAV survey data	(\$900)

For Task 1, we anticipate 2 days to mobilize, survey, and demobilize from the site. For Task 2, we anticipate 1 full day of drop camera ground-truthing necessary. This is based on previous eelgrass survey report which indicated little to no eelgrass presence within the marina.

Typically, final survey products are submitted within 30 days of completion of the survey, or as agreed upon with the client.

ASSUMPTIONS/CAVEATS

- SHI has not included travel labor and other mobilization costs for the Task 2 (eelgrass) effort in an attempt to reduce costs.
- MBES survey will be completed during as high a daylight tide as possible.
- sUAV survey will be completed during as low a daylight tide as possible.
 - sUAV data will yield georeferenced aerial imagery and topographic elevations

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- If topographic elevations are not needed as a part of the sUAV deliverable, the cost decrease is approximately \$900 from the Task 1 total.
- If needed to infill hydrographic survey data gaps, and time permits during Task 1, SHI will measure leadline elevations along docks to support creation of a full bottom coverage map
 - If time does not permit and/or a large number of leadlines are needed to infill data gaps, M&N may exercise an optional additional leadline day.
 - It is assumed that this day will coincide with the Task 2 field effort to minimize the number of mobilizations needed.
- SHI will provide preliminary suggestions and recommendations to M&N regarding potential eelgrass ground-truthing locations within the marina.
 - Final drop-camera locations will be selected in conjunction with M&N and the team biologist.
- SHI will supply the vessel, GNSS system, and drop camera for the eelgrass ground-truthing effort.
- SHI assumes that the eelgrass survey report and maps will be prepared by others; however, we are happy to discuss inclusion of these items in our SOW (and will revise our costs accordingly).

Thank you very much for considering Solmar Hydro, Inc. for your hydrosurveying needs. We look forward to working with you on this project. Please feel free to contact us at any time for clarification of any information within this proposal.

Sincerely,



Jason Magalen, C.H., P.E.
541-740-3715
jason@solmarhydro.com



Date: 7/6/2021
Prepared by: JM

Fully Burdened Labor Hours / Rates						
Tasks	Lead Hydrographer \$130.72	Survey Tech \$112.20				Total Hrs
						Total
Labor:						
Mob/Demob (8 hrs R/T)	6	6				12
MBES Survey and Planimetric Survey	8	8				16
Set GCPs and Complete sUAV Survey	8	8				16
Post-Process MBES		12				12
Post-Process sUAV		12				12
Final Product Generation		12				12
Total Hours	22	58	0	0	0	68
Total Labor Cost	\$2,876	\$6,508	\$0	\$0	\$0	\$9,384.00
Equipment and ODCs						
R2Sonic 2024 Wideband UHF MBES	1	day(s)	850			\$850
Trimble R10 RTK-GNSS Base and Rover	2	day(s)	450			\$900
Applanix POS/MV Inertial Motion Unit	1	day(s)	450			\$450
24' Oaks Survey Vessel	1	day(s)	850			\$850
YSI Castaway SVP	1	day(s)	75			\$75
Valeport MiniSVS	1	day(s)	75			\$75
Yuneec H520 sUAV with E90 RGB Camera	1	day(s)	350			\$350
Vessel and generator fuel	1	day(s)	50			\$50
HD 4x4 Truck	2	day(s)	150			\$300
						\$5,163
Travel						
Mileage R/T (Truck and Trailer Wear/Tear)	350	miles	0.95			\$333
M+IE per diem (2 ppl)	3	day(s)	142			\$426
Lodging per diem (2 ppl)	2	day(s)	252			\$504
						\$1,263
Grand Total						\$15,809

(\$897.60)



Date: 7/6/2021
Prepared by: JM

Fully Burdened Labor Hours / Rates						
Tasks	Lead Hydrographer \$130.72	Survey Tech \$112.20				Total Hrs
						Total
Labor:						
Mob/Demob (8 hrs R/T)	0	0				0
Eelgrass Ground Truth Survey	8	8				16
Final Product Generation Assistance		8				8
Total Hours	8	16	0	0	0	24
Total Labor Cost	\$1,046	\$1,795	\$0	\$0	\$0	\$2,841.00
Equipment and ODCs						
Seaviewer 6000HD Sea Drop Underwater Camera	1	day(s)	550			\$550
Trimble R10 RTK-GNSS Base and Rover	1	day(s)	450			\$450
21' or 24' Survey Vessel	1	day(s)	550			\$550
Vessel and generator fuel	1	day(s)	25			\$25
HD 4x4 Truck	1	day(s)	150			\$150
						\$1,725
Travel						
Mileage R/T (Truck and Trailer Wear/Tear)	0	miles	0.95			\$0
M+IE per diem (2 ppl)	1	day(s)	142			\$142
Lodging per diem (2 ppl)	1	day(s)	252			\$252
						\$394
Grand Total						\$4,960



Date: 7/6/2021
Prepared by: JM

Fully Burdened Labor Hours / Rates						
Task	Lead Hydrographer \$110.72	Survey Tech \$112.20	Total Hrs			Total
Labor:						
Additional LeadLines	8	8			16	\$1,944
Data Entry and Processing		4			4	\$449
Total Hours	8	12	0	0	4	
Total Labor Cost	\$1,046	\$1,346	\$0	\$0	\$0	<u>\$2,392.00</u>
Equipment and ODCs						
R2Sonic 2024 Wideband MBES	0	day(s)	850		\$0	
RTK GPS	0	day(s)	450		\$0	
POS MV	0	day(s)	450		\$0	
Vessel	0	day(s)	850		\$0	
SVS	0	day(s)	75		\$0	
MiniSVS	0	day(s)	75		\$0	
Yuneec H520 with E90 RGB Camera	0	day(s)	250		\$0	
Boat Fuel	0	day(s)	50		\$0	
HD 4x4 Truck	1	day(s)	150		\$150	
						\$150
Travel						
Mileage R/T (Truck and Trailer Wear/Tear)	0	miles	0.95		\$0	
M+IE per diem (2 ppl)	1	day(s)	142		\$142	
Lodging per diem (2 ppl)	1	day(s)	252		\$252	
						\$394
Grand Total						<u>\$2,786</u>

ATTACHMENT D
ANCHOR QEA



Scope of Work

July 1, 2021

City of Des Moines Marina Dock Replacements Moffatt & Nichol

Project Understanding

The City of Des Moines (City) is evaluating options for full replacement and upgrades to the City marina located on Puget Sound in Des Moines, Washington. This scope of work is intended to cover two phases of the project. Phase 1 includes developing a plan to determine the economic feasibility of the long-range plan of full replacement and upgrades. Phase 2 includes designing and permitting the replacement of the marina's M and N docks with a more modern and functional design. The preliminary design approach includes a more environmentally friendly dock system.

Anchor QEA appreciates the opportunity to join the Moffatt & Nichol team and provide environmental permitting, mitigation, and public involvement support for Phases 1 and 2 of this project. This scope of work provides an estimated scope and budget for the following tasks:

Phase 1

- 1a. Permit Approach and Mitigation Review
- 1b. Environmental Survey Support

Phase 2

- 2a. Environmental Permitting
- 2b. Agency Coordination
- 2c. Project Management and Meetings
- 2d. Public Involvement (OPTIONAL)

Phase 1 Scope of Services and Deliverables

Task 1a: Permit Approach and Mitigation Review

Task 1a includes preparing a permit approach and reviewing mitigation options for activities being considered under Phases 1 and 2 of the project. The permit approach will evaluate a strategy for potential programmatic opportunities for the long-range redevelopment of the marina and will identify any associated permitting or schedule constraints. A review of mitigation requirements and opportunities will also be provided, including the completion of the National Marine Fisheries Service Nearshore Habitat Valuation Model (NHVM) calculator for a range of in-water impacts. The mitigation review will be tied closely with the economic analysis for the long-range development and will help the team better assess mitigation requirements and mitigation opportunities located both on and off site.

This task also includes developing a permit approach and mitigation review for the more immediate M and N dock replacement project. The mitigation review will include assessing self-mitigating actions proposed as part of the M and N dock replacements project, and it will consider any additional credits generated from the Entrance Channel Maintenance Dredging Project mitigation action.

Deliverables

- Draft and Final Marina Redevelopment Permit Approach and Mitigation Review
- Draft and Final M and N Dock Replacement Permit Approach and Mitigation Review

Task 1b: Environmental Survey Support

Under a separate task, a surveyor will employ multibeam or similar equipment that is of high enough resolution to identify the presence or absence of aquatic vegetation. If aquatic vegetation is found, the surveyor will employ underwater cameras or a remotely operated vehicle (ROV) to capture photographs or video of the aquatic vegetation to include in the report. The methodology and results of the survey will be documented in a macroalgae and eelgrass survey report that will be included with the environmental permitting documentation.

Task 1b includes time for one Anchor QEA biologist to join the surveying team (surveyor will be under separate contract) during any necessary second day on-site field investigation by the surveyor to help locate and identify macroalgae and eelgrass within the marina. This is anticipated to occur over 1 day.

Deliverables

- Draft and Final Macroalgae and Eelgrass Survey Report

Phase 2 Scope of Services and Deliverables

Task 2a: Environmental Permitting

Task 2a includes environmental permitting support for the M and N dock replacement project. The permitting approach for the M and N dock replacement project, based on conceptual design and discussions with the City, includes a repair and replacement scenario that will result in reduced overwater cover compared to existing conditions and the removal of creosote-treated timber from the aquatic environment. Table 1 includes a summary of anticipated environmental permits and approvals typically required for repair and replacement of existing in-water structures.

Table 1
Environmental Permits and Approvals

Approvals	Agency	Trigger	Notes
Nationwide Permit (NWP) 3 or Letter of Permission (LoP)	U.S. Army Corps of Engineers (USACE)	Maintenance activities	A Joint Aquatic Resources Permit Application (JARPA) form will be prepared for an NWP 3 or LoP. If any new or expanded in-water or overwater structures are proposed, an individual permit will be required.
Endangered Species Act (ESA) Concurrence	National Marine Fisheries Service and U.S. Fish and Wildlife Service	Potential impacts to ESA-listed species and/or habitat	A Short-Form Biological Evaluation (BE) will be required to assess potential impacts from in-water activities. This will also include an assessment of potential mitigation requirements based on the NHVM calculator.
National Historic Preservation Act Section 106 Compliance	Washington Department of Archaeology and Historic Preservation	Potential impacts to archaeological, cultural, or historic resources	Preliminary archaeological review indicates that a Cultural Resources Assessment memorandum may not be required for the project. Documentation of limited potential for encountering artifacts will be included in the JARPA and State Environmental Policy Act (SEPA) Checklist.
Clean Water Act Section 401 Water Quality Certification (WQC)	Ecology	Potential water quality impacts to waters of the state	A pre-filing notice will be submitted to Ecology to support Coastal Zone Management Act (CZMA) and Section 401 review. Section 401 compliance will be covered under the NWP 3, and an individual WQC is not required due to limited in-water work and impacts.
CZMA Consistency Determination	Ecology	USACE permit requirement	CZMA compliance will be covered under the NWP 3.
Hydraulic Project Approval (HPA)	Washington Department of Fish and Wildlife (WDFW)	Work within waters of the state	Application materials will be submitted via the WDFW Aquatic Protection Permitting System (APPS) online project portal upon issuance of SEPA determination.
Aquatic Use Authorization	Washington Department of Natural Resources (DNR)	Work occurring on or over state-owned aquatic lands	JARPA Attachment E will be completed and submitted to DNR with the JARPA. The City will be responsible for aquatic lease terms negotiations.
SEPA Determination	City	Projects requiring local review in Washington State	A SEPA Checklist will be prepared and submitted to the City for SEPA review.

Approvals	Agency	Trigger	Notes
Shoreline Substantial Development Permit (SSDP) Exemption	City	Repair and maintenance activities located within the shoreline buffer	An SSDP exemption request letter will be submitted to the City for normal maintenance activities occurring within the shoreline buffer that are exempt per the City's Shoreline Master Plan Chapter 7.2(2).
Floodplain Code Compliance	City	In-water structures within floodplain	A Floodplain Code Consistency Memorandum will be submitted to the City.

The permit application materials will be prepared at or around the 30% design phase to minimize potential changes to the project during or after completion of the impact analyses. Draft permit application materials will be submitted to Moffatt & Nichol prior to City review and formal agency submittal by Anchor QEA. A contingency may be added in the permit documentation to the quantities and takeoffs associated with the 30% design to provide flexibility in later design phases and the permits as needed.

Floodplain code compliance will be required for in-water structures (piles) that will be installed as part of the dock replacements. Anchor QEA will prepare a floodplain code consistency review memorandum to demonstrate that changes to the piling infrastructure at the project site will not adversely affect base flood elevations determined by the Federal Emergency Management Agency. The memorandum will also demonstrate that the project will not adversely divert flood waters causing hazards in other areas per King County Code Chapter 21A.24.250, King County Surface Water Design Manual Section 4.4.2, and City of Des Moines Municipal Code Chapters 16.15.180 and 16.15.190. The memorandum will incorporate Moffatt & Nichol design information. A draft will be submitted to Moffatt & Nichol for review prior to City review and formal agency submittal by Anchor QEA.

Deliverables

- Draft and Final JARPA and JARPA Attachment E
- Draft and Final Short-Form BE and NHVM calculator
- Ecology pre-filing notice form
- HPA application via APPS
- Draft and Final SEPA Checklist
- Draft and Final SSDP Exemption Request Letter
- Draft and Final Floodplain Code Consistency Memorandum

Task 2b: Agency Coordination

Task 2b includes early agency engagement, coordination during the regulatory review process, and coordination through construction. This task covers preliminary application coordination, including one early multi-agency meeting to introduce the project in the context of the marina redevelopment program. Once permit applications are developed and approved by Moffatt & Nichol and the City, Anchor QEA will submit permit materials to the applicable regulatory agencies and assist the City with responding to agency comments, as needed.

Deliverables

No specific deliverables are included as part of this task, but they are assumed to consist of email and phone correspondence. Existing deliverables may be updated in response to agency feedback during the regulatory review process.

Task 2c: Project Management and Meetings

Project management activities include preparation of and monthly updates to the project schedule, budget tracking, internal project team coordination, and monthly invoice preparation and submittal to Moffatt & Nichol. This task includes budget for attendance by one Anchor QEA staff at one 2-hour kick-off meeting. In addition, this task includes participation in up to seventeen additional 1-hour coordination meetings with Moffatt & Nichol and/or City staff to occur throughout the planning and design phases of the project. One of the meetings will be in person, either at the marina, Moffatt & Nichol office, or Anchor QEA Seattle office. The remaining meetings will be via teleconference.

Deliverables

- This task is based on a level of effort assumed for up to 18 months of project management activities required to support the project.
- One project meeting will be a 2-hour in-person kick-off meeting and the remaining 17 project meetings will be 1-hour teleconferences.

OPTIONAL Task 2d: Public Involvement

Task 2d is an optional task for providing public involvement support as part of the marina redevelopment planning process. This task was requested after publication of the request for qualifications issued by the City, so the specific elements required for this task will be determined in coordination with the City. As the basis for setting a budget for this task, the following elements are assumed to be required. The final task scope will be refined in coordination with the City.

This task includes preparing a communications plan that includes details for consistent messaging with agencies, stakeholders, tribes, and other interested parties. The preparation of this plan will include up to two 1-hour meetings with the City to understand previous public involvement activities conducted as part of the marina redevelopment planning process and obtain other relevant

information. This plan will be a living document that is updated during the process so it can be referenced for future use.

This task also includes preparing for and attending one public workshop to discuss the marina redevelopment, and up to three City Council meetings to present and/or provide technical support as needed. A third-party facilitator is not included in the budget for this task. If the marina redevelopment planning process starts to garner significant interest from the public, it is recommended that a third-party, non-biased facilitator be considered.

Deliverables

- Draft and Final Communications Plan
- Microsoft PowerPoint presentation(s) for public workshop and City Council meetings

Assumptions

- Moffatt & Nichol will prepare JARPA and SEPA plan drawing sets. If needed for specific permit documentation requirements, Moffatt & Nichol will provide AutoCAD data of the design and survey results.
- Moffatt & Nichol will provide a project description to support the SEPA and permit application materials, including quantity and area takeoffs based on the 30% design.
- Task 1a deliverables will provide a permit approach and mitigation review for one marina redevelopment alternative and one alternative for the M and N dock replacements project.
- Survey activities will include 1 day for completing the eelgrass and macroalgae survey.
- In-water and overwater project activities will qualify as repair and maintenance. The review agencies will not deem the project activities to be considered new or expanded in-water or overwater structures.
- The project will not trigger the requirement for a USACE Individual Permit.
- Cultural resources surveys or reporting will not be required for Section 106 compliance.
- Work will occur on DNR-owned aquatic lands. The City will be responsible for DNR aquatic lease negotiations and aquatic land survey requirements.
- A SEPA Determination of Nonsignificance or Mitigated Determination of Nonsignificance will be issued for the project. An Environmental Impact Statement will not be required. Extensive technical analyses to support the SEPA determination are also not anticipated (i.e., traffic analysis, noise beyond that necessary to permit pile driving, cultural or historic surveys, etc.).
- The project will qualify for an SSDP exemption and will not require an individual shoreline permit.
- A mitigation plan will not be required for the project. Project activities will be self-mitigating due to overwater cover reduction and creosote-treated pile removal. Any additional debits generated by the project will be offset by credits made available through mitigation for the Entrance Channel Maintenance Dredging Project.

- Local Building, Demolition, and Grading Permits and other miscellaneous trade permits will be obtained by Moffatt & Nichol or the contractor.
- Agency comments on the permit application materials will be minor and will not result in additional data gathering or substantial new evaluations.
- This scope of work does not include work related to permit appeals. Should support for permit appeals be required, Anchor QEA will discuss a path forward with the City and Moffatt & Nichol, and a separate scope of work would need to be developed.
- The budget does not include permit fees. Permit fees will be paid for by the City.
- The public involvement task does not include providing a third-party meeting facilitator.

Budget

Table 1 includes a summary of the estimated budget for this scope of work. Exhibit A includes Anchor QEA 2021 Billing Rates. Exhibit B includes an estimated budget summary spreadsheet.

Table 1
Estimated Budget Summary

Task(s)	Estimated Budget
PHASE 1	
Task 1a: Permit Approach and Mitigation Review	\$11,454
Task 1b: Environmental Survey Support	\$7,904
PHASE 2	
Task 2a: Environmental Permitting	\$25,958
Task 2b: Agency Coordination	\$7,156
Task 2c: Project Management and Meetings	\$12,493
OPTIONAL Task 2d: Public Involvement	\$12,598
TOTAL (Phases 1 and 2)	\$77,563

Exhibit A

Anchor QEA 2021 Billing Rates

Anchor QEA, LLC

2021 BILLING RATES

Professional Level Hourly Rates

Principal CM ¹ /Engineer/LA ² /Planner/Scientist	\$278
Senior Managing Analyst/CM/Engineer/LA/Planner/Scientist	\$246
Managing Analyst/CM/Engineer/LA/Planner/Scientist	\$230
Senior Analyst/CM/Engineer/LA/Planner/Scientist	\$204
Staff 3 Analyst/CM/Engineer/LA/Planner/Scientist	\$179
Staff 2 Analyst/CM/Engineer/LA/Planner/Scientist	\$161
Staff 1 Analyst/CM/Engineer/LA/Planner/Scientist	\$136
Senior CAD ³ Designer	\$141
CAD Designer	\$118
Technician	\$114
Senior Technical Editor	\$139
Technical Editor	\$118
Senior Project Coordinator	\$134
Project Coordinator	\$110

Special Hourly Rates

National expert consultant	\$456
All work by a testifying expert	1.5 times professional level rate
Expert Advisor	\$350

EXPENSE BILLING RATES

Expense Rates

Computer Modeling (per hour)	\$10.00
Graphic Plots (varies with plot size)	\$3-\$6/sf
Mileage (per mile)	Current Federal Standard

FEE ON LABOR AND EXPENSE CHARGES

Subcontracts/subconsultants	10%
Travel and other direct costs	10%
Field equipment and supplies	10%

This is a company confidential document.

¹ CM: Construction Manager

² LA: Landscape Architect

³ CAD: Computer Aided Design

Exhibit B

Estimated Budget Summary Spreadsheet

Des Moines Marina Dock Replacement

Task	Description	Hours by Labor Categories (hourly rates shown in parentheses)							Total Labor Hours	Total Labor Cost	Reimbursable Direct Costs	Total Reimbursable Costs	Total Direct Costs	Total Cost
		Principal (\$1,176)	Manager (\$5,188)	Senior Staff (\$5,940)	Staff 3 (\$5,176)	Staff 1 (\$5,210)	Technical Editor (\$5,111)	Project Coordinator (\$5,140)						
Task1	(1a) Permit Approach and Mitigation Review													
1.1	Marina Redevelopment	5.00	14.00		16.00		4.00		39.00	\$ 2,936	\$	\$	\$	\$ 7,946
1.2	M&N		8.00		8.00		2.00		18.00	\$ 3,508	\$	\$	\$	\$ 3,508
Task2	(1b) Environmental Survey Support													
2.1	Survey		2.00	10.00					12.00	\$ 2,500	\$	\$ 41	\$ 41	\$ 2,541
2.2	Report		2.00	16.00		8.00	4.00		30.00	\$ 5,284	\$ 80	\$ 80	\$ 80	\$ 5,364
Task3	(2a) Environmental Permitting													
3.1	HAIPA	1.00	4.00		14.00		4.00		23.00	\$ 4,176	\$	\$	\$	\$ 4,176
3.2	HA		6.00		28.00	4.00	6.00		44.00	\$ 7,664	\$ 40	\$ 40	\$ 40	\$ 7,664
3.3	Ecology Pre-filing		2.00		2.00		1.00		5.00	\$ 936	\$	\$	\$	\$ 936
3.4	HPA		2.00		2.00		1.00		5.00	\$ 936	\$	\$	\$	\$ 936
3.5	SEPA Checklist	2.00	4.00	2.00	14.00		4.00		26.00	\$ 4,862	\$	\$	\$	\$ 4,862
3.6	SSDP Ex Letter		2.00		8.00		2.00		12.00	\$ 2,128	\$	\$	\$	\$ 2,128
3.7	Zero Rise Analysis	2.00	2.00	12.00	4.00	4.00	4.00		28.00	\$ 5,196	\$ 40	\$ 40	\$ 40	\$ 5,236
Task4	(2b) Agency Coordination													
4.1	Agency Coord.		28.00		4.00				32.00	\$ 7,156	\$	\$	\$	\$ 7,156
Task5	(2c) PM and Meetings													
5.1	PM and Meetings	2.00	40.00		4.00			18.00	64.00	\$ 12,452	\$ 41	\$ 41	\$ 41	\$ 12,493
Task6	(2d) OPTIONAL Public Involvement													
6.1	Communication Plan	2.00	4.00		14.00		4.00		24.00	\$ 4,454	\$ 41	\$ 41	\$ 41	\$ 4,495
6.2	Public Workshop	1.00	6.00		8.00		4.00		19.00	\$ 3,562	\$ 81	\$ 81	\$ 81	\$ 3,643
6.3	City Council Meetings		8.00		12.00		4.00		24.00	\$ 4,460	\$	\$	\$	\$ 4,460
Total Hours		15.00	134.00	40.00	138.00	16.00	44.00	18.00	405					
Total Cost		\$6,170	\$30,820	\$6,160	\$24,702	\$2,176	\$5,192	\$1,980		\$77,200	\$363	\$363	\$363	\$77,563

ATTACHMENT E
SHANNON & WILSON



July 6, 2021

Mr. Bill Gerken, PE
Moffatt & Nichol
600 University Street, Suite 610
Seattle, WA 98101

RE: REVISED PROPOSAL FOR GEOTECHNICAL ENGINEERING SERVICES, DES
MOINES MARINA DOCK REPLACEMENT PROJECT, DES MOINES, WASHINGTON

Dear Mr. Gerken:

This letter presents our proposal for geotechnical engineering services for the proposed dock replacement project at the Des Moines Marina in Des Moines, Washington. The Des Moines Marina has been operating for over 50 years, and the docks are nearing the end of their useful life. The proposed project includes replacing and reconfiguring the floating docks. To support the City of Des Moines (City) for this project, the design team will:

- Develop a dock replacement plan for Docks M and N,
- Prepare a conceptual dock design for Docks M and N,
- Provide permitting support, and
- Prepare design bid documents.

Shannon & Wilson will provide geotechnical engineering services to support the design team in the planning and design of the project. This proposal revises our previous proposal, dated June 21. Revisions include reducing the assumed duration of meetings, and reducing the assumed number of submittals.

SCOPE OF SERVICES

We have divided our proposed scope of services into five tasks, summarized in the following sections. These services are for design of the proposed project only; additional scope and fee would be required for construction support services.

Task 1 – Project Management, Administration, and Meetings

Jeremy Butkovich, PE, will serve as Project Manager and will actively monitor budgets and progress to enable project completion in accordance with the proposed scope, schedule, and budget. We will perform review of internal calculations and documents in accordance with

Shannon & Wilson Quality Assurance and Quality Control procedures. We will attend a kick-off meeting with the design team and City staff and up to six other meetings as needed to facilitate the project. We anticipate up to three meetings during the planning phase and up to three meetings during the design phase.

Task 2 – Subsurface Data Collection and Interpretation

We will review available subsurface and construction information to evaluate the subsurface conditions. This task includes:

- Reviewing publicly available subsurface data, including published geologic maps;
- Performing a site reconnaissance; and
- Reviewing pile-driving and other construction records.

Based on discussions with you, we have assumed that additional subsurface explorations would not be required for design of this project. If, during our review of available subsurface and construction information, we determine that the available information is insufficient for project design, we will work with you and City staff to develop an appropriate subsurface exploration program.

In developing this scope, we assumed that:

- The City and/or Moffatt & Nichol would provide available subsurface and construction records for the marina area and
- The City would facilitate access to the marina for our site reconnaissance.

Task 3 – Engineering Analyses and Foundation Recommendations

Based on the subsurface conditions discovered during our data review, we will perform engineering analyses to provide recommendations for the marina foundations. Based on discussions with you, we anticipate that the foundations would likely consist of steel pipe piles. Our analyses would include:

- Evaluating pipe pile lateral and axial resistance; and
- Evaluating pipe pile drivability.

In developing this scope, we assumed that:

- The structural engineer would provide pile sizes and anticipated loads for use in our analyses; and
- Seismic design is not required for this project.

Task 4 – Reporting

We will document our analyses and recommendations in a geotechnical report. We will provide initial recommendations for 45% project design then update our report for 95% and final design. We will also prepare a document summarizing the geotechnical conditions at the site; this document would be included in the bid documents provided to prospective contractors.

Task 5 – Plans and Specifications Preparation and Review

We will review the geotechnical aspects of the project plans and specifications and prepare specifications for pile driving and testing. We assume that we would not prepare plan sheets for this project, or provide bid support.

ESTIMATED SCHEDULE AND FEE

We could begin on this project within one week of receiving your notice to proceed. Our progress would be based on the progress of the project team and their schedule, provided we are provided with sufficient information and time to plan and perform our work.

The estimated fee for our services is \$34,975. A detailed cost estimate is enclosed along with labor hours detailed by task. Our services will be performed on a time-and-expense basis, and the cost estimate includes our labor and expenses for the services described in this proposal.

CLOSURE

This proposal does not include observing construction or any environmental assessment or evaluation regarding the presence or absence hazardous or toxic materials in the soil, surface water, groundwater, or air on, below, or around this site. However, if these conditions are encountered, Shannon & Wilson maintains a staff of engineers, geologists, hydrogeologists, and scientists who are qualified and experienced in these areas.

This proposal provides our recommended scope of geotechnical services based on our project understanding. Shannon & Wilson has prepared the enclosed "Important

Mr. Bill Gerken, PE
Moffatt & Nichol
July 6, 2021
Page 4 of 4



Information About Your Geotechnical/Environmental Proposal" to assist you and others in understanding the use and limitations of our proposal.

Sincerely,

SHANNON & WILSON

Jeremy N. Butkovich, PE
Senior Associate/Project Manager
Geotechnical Engineer

JNB:MAA/jnb

Enc. Fee Estimate
 Labor Estimate
 Important Information About Your Geotechnical/Environmental Proposal

107170-P

Fee Estimate

Classification	Maximum Hourly Rate	Hours	Cost
Vice President	\$260.00	9.0	\$2,340.00
Senior Associate	\$215.00	69.0	\$14,835.00
Senior Engineer I	\$145.00	108.0	\$15,660.00
Senior Office Services	\$115.00	8.0	\$920.00
Senior Drafter	\$130.00	8.0	\$1,040.00
Total Labor		202.0	\$34,795.00
Total Reimbursables (see below)			\$180.70
Total Estimated Fee			\$34,975.70

Reimbursables	Quantity	Rate	Cost
Reproduction	-	-	\$100.00
Mileage (3 round trips)	120 miles	\$0.56/mile	\$67.20
Tolls (3 round trips)	6 trips	\$2.25/trip	\$13.50

Labor Estimate

Task	Vice President	Senior Associate	Senior Engineer I	Senior Office Services	Senior Drafter	Total
1.0 Project Management, Administration, and Meetings						
Project Management and Quality Control	2.0	8.0				10.0
Administration				8.0		8.0
Kick-off Meeting	0.5	5.0				5.5
Additional Meetings (assume six virtual meetings)		6.0				6.0
2.0 Subsurface Data Collection and Interpretation						
Collect and review subsurface data		1.0	12.0			13.0
Site reconnaissance		1.0	6.0			7.0
Collect and review construction data		2.0	12.0			14.0
3.0 Engineering Analyses and Foundation Recommendations						
Evaluate pipe pile drivability	0.5	4.0	16.0			20.5
Develop foundation recommendations	1.0	4.0	20.0			25.0
4.0 Reporting						
45 percent geotechnical report	2.0	4.0	16.0		4.0	26.0
95 percent geotechnical report	1.0	2.0	10.0		2.0	15.0
Final geotechnical report	1.0	2.0	8.0		2.0	13.0
Summary of geotechnical conditions	1.0	2.0	8.0			11.0
5.0 Plans and Specifications Preparation and Review						
Review geotechnical aspects of plans		8.0				8.0
Review geotechnical aspects of specifications		8.0				8.0
Prepare pile driving and testing specifications		12.0				12.0
Column Totals	9.0	69.0	108.0	8.0	8.0	202.0

10/1/0 P

Important Information About Your Geotechnical/Environmental Proposal

More construction problems are caused by site subsurface conditions than any other factor. The following suggestions and observations are offered to help you manage your risks.

HAVE REALISTIC EXPECTATIONS.

If you have never before dealt with geotechnical or environmental issues, you should recognize that site exploration identifies actual subsurface conditions at those points where samples are taken, at the time they are taken. The data derived are extrapolated by the consultant, who then applies judgment to render an opinion about overall subsurface conditions; their reaction to construction activity; appropriate design of foundations, slopes, impoundments, and recovery wells; and other construction and/or remediation elements. Even under optimal circumstances, actual conditions may differ from those inferred to exist, because no consultant, no matter how qualified, and no subsurface program, no matter how comprehensive, can reveal what is hidden by earth, rock, and time.

DEVELOP THE SUBSURFACE EXPLORATION PLAN WITH CARE.

The nature of subsurface explorations—the types, quantities, and locations of procedures used—in large measure determines the effectiveness of the geotechnical/environmental report and the design based upon it. The more comprehensive a subsurface exploration and testing program, the more information it provides to the consultant, helping to reduce the risk of unanticipated conditions and the attendant risk of costly delays and disputes. Even the cost of subsurface construction may be lowered.

Developing a proper subsurface exploration plan is a basic element of geotechnical/environmental design that should be accomplished jointly by the consultant and the client (or designated professional representatives). This helps the parties involved recognize mutual concerns and makes the client aware of the technical options available. Clients who develop a subsurface exploration plan without the involvement and concurrence of a consultant may be required to assume responsibility and liability for the plan's adequacy.

READ GENERAL CONDITIONS CAREFULLY.

Most consultants include standard general contract conditions in their proposals. One of the general conditions most commonly employed is to limit the consulting firm's liability. Known as a "risk allocation" or "limitation of liability," this approach helps prevent problems at the beginning and establishes a fair and reasonable framework for handling them should they arise.

Various other elements of general conditions delineate your consultant's responsibilities. These are used to help eliminate confusion and misunderstandings, thereby helping all parties recognize who is responsible for different tasks. In all cases, read your consultant's general conditions carefully and ask any questions you may have.

HAVE YOUR CONSULTANT WORK WITH OTHER DESIGN PROFESSIONALS.

Costly problems can occur when other design professionals develop their plans based on misinterpretations of a consultant's report. To help avoid misinterpretations, retain your consultant to work with other project design professionals who are affected by the geotechnical/environmental report. This allows a consultant to explain report implications to design professionals affected by them, and to review their plans and specifications so that issues can be dealt with adequately. Although some other design professionals may be familiar with geotechnical/environmental concerns, none knows as much about them as a competent consultant.

OBTAIN CONSTRUCTION MONITORING SERVICES.

Most experienced clients also retain their consultant to serve during the construction phase of their projects. Involvement during the construction phase is particularly important because this permits the consultant to be on hand quickly to evaluate unanticipated conditions, conduct additional tests if required, and when necessary, recommend alternative solutions to problems. The consultant can also monitor the geotechnical/environmental work performed by contractors. It is essential to recognize that the construction recommendations included in a report are preliminary, because they must be based on the assumption that conditions revealed through selective exploratory sampling are indicative of actual conditions throughout a site.

Because actual subsurface conditions can be discerned only during earthwork and/or drilling, design consultants need to observe those conditions in order to provide their recommendations. Only the consultant who prepares the report is fully familiar with the background information needed to determine whether or not the report's recommendations are valid. The consultant submitting the report cannot assume responsibility or liability for the adequacy of preliminary recommendations if another party is retained to observe construction.

REALIZE THAT ENVIRONMENTAL ISSUES MAY NOT HAVE BEEN ADDRESSED.

If you have requested only a geotechnical engineering proposal, it will not include services needed to evaluate the likelihood of contamination by hazardous materials or other pollutants. Given the liabilities involved, it is prudent practice to always have a site reviewed from an environmental viewpoint. A consultant cannot be responsible for failing to detect contaminants when the services needed to perform that function are not being provided.

ONE OF THE OBLIGATIONS OF YOUR CONSULTANT IS TO PROTECT THE SAFETY, PROPERTY, AND WELFARE OF THE PUBLIC.

A geotechnical/environmental investigation will sometimes disclose the existence of conditions that may endanger the safety, health, property, or welfare of the public. Your consultant may be obligated under rules of professional conduct, or statutory or common law, to notify you and others of these conditions.

RELY ON YOUR CONSULTANT FOR ADDITIONAL ASSISTANCE.

Your consulting firm is familiar with several techniques and approaches that can be used to help reduce risk exposure for all parties to a construction project, from design through construction. Ask your consultant, not only about geotechnical and environmental issues, but others as well, to learn about approaches that may be of genuine benefit.

**The preceding paragraphs are based on information
provided by the GBA, Silver Spring, Maryland**

ATTACHMENT F
WOOD HARBINGER



929 108th Ave NE, Suite 1000
Bellevue, WA 98004
425.628.6600
woodharbinger.com

CONSULTING SERVICES PROPOSAL

Client: Moffatt & Nichol
505 South 336th Street, Suite 510
Federal Way, WA 98003
Attention: Bill Gerken, P.E.
Project: Dock Replacements
Owner: City of Des Moines Marina
Proposal #: P21.87 Rev 2
Date: July 5, 2021

1) PROJECT UNDERSTANDING

The Des Moines Marina, continually in business for over 50 years, consists of 14 docks with moorage for boats ranging in size from 20 to 64 feet in length. The Marina offers both open (37%) and covered moorage (63%), with a total of 730 slips.

The Marina still has a strong customer base for moorage but some of the smaller docks have seasonal vacancies and all of the docks are nearing the end of their useful life. The City has made substantial investments in replacing sections of the original bulkhead, the entire water system and most of the electrical distribution system in the Marina and is now planning for replacement of the floating docks. The Des Moines Marina is planning to make substantial reinvestments into its waterside infrastructure in the coming years. In this process, the Marina will be reconfigured to accommodate an increased number of larger boats and fewer smaller boats, reducing the total number of slips to approximately 530. The amount and location of covered moorage is also likely to change, but the specifics have not been determined at this time. To facilitate larger boats, the removal of some docks will be necessary to accommodate wider fairways for boat maneuverability. It is envisioned that smaller boats will be moved to dry stack storage on the landside of the Marina.



A. SCOPE.

The first task will be to develop an overall plan for dock replacements consistent with the recommendations for mix of slip sizes and types as provided in the Waggoner Marina Services. The plan should show the reconfigured dock locations, and timing of replacements and/or dock removals.

Prepare a concept for the design of the docks that will provide continuity, both in quality and appearance as the docks are replaced in several phases.

Prepare a plan for obtaining the permits required to replace the docks. The plan should include a discussion of the challenges that the current configuration of the Marina presents to the goals of the state and federal agencies.

Provide a baseline cost for the type and quality of the docks specified in the plan and a discussion of how the costs should be escalated for planning purposes.

Prepare a conceptual staging and logistics plan for boat storage and moorage during dock reconstruction.

The second task will be to provide the design, engineering and permitting for the replacement of M and N Docks in the Marina. New shore-side infrastructure for these two docks, including new bulkhead, utilities, and access, were installed in 2010/11 as part of the first bulkhead replacement project. Bidding support and construction administration services are not included and to be negotiated in the future.



B. PROPOSAL BASIS.

This proposal is based on the following:

- Request for Qualification from the City of Des Moines Marina dated April 16, 2021 and per Scoping Meeting with City on June 9, 2021.
- Wood Harbinger will provide Mechanical Engineering and Electrical Engineering consulting services.
- The project delivery method will be Design-Bid-Build.
- This proposal includes Study for all the docks; and Construction Documents for Replacement of M & N Docks. Bidding Support, Construction Administration, and Post Construction phases to be negotiated separately in the future.
- This project is not pursuing LEED Certification.
- This project will not utilize 3D and Building Information Modeling (BIM).
- If a service or deliverable is not included in this Proposal, it is expressly excluded from the scope of this Proposal. Services and deliverables beyond the scope of this Proposal will be negotiated and authorized in writing before services commence.

C. SCHEDULE.

This Proposal is based on the following schedule:

- Estimated Notice-to-Proceed Date: September 2021
- Estimated Completion Date of Design:
 - Study: October 2021.
 - Design of M & N: December 2021.
- Estimated Completion Date of Construction: Fall 2023

Any changes to Project scope or schedule from what is defined in this Proposal may be subject to additional services.

Wood Harbinger #P21.87

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2) FEE.

Fixed Fee of \$76,460, broken down as follows:

Phase	Mechanical	Electrical
Study (Marina Replacement Plan)	\$6,500	\$7,510
Preliminary Design (0-45%)	\$8,065	\$12,295
Design (45-95%)	\$10,860	\$15,420
Final Design/Bid Documents	\$4,170	\$5,680
Design Meetings	\$2,730	\$2,730
Total	\$32,325	\$43,635

A. REIMBURSABLE EXPENSES:

The following direct costs relative to this Project shall be reimbursed at a multiple of 1.10 times the amount billed to Wood Harbinger, not to exceed \$500:

- Automobile mileage and travel expenses.
- Parking, road tolls.
- Deliveries.
- Prints/reproductions requested by the Owner, Architect, or other consultants.

Wood Harbinger #P21.87

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3) DESIGN DELIVERABLES.

A. STUDY:

- Field Investigation.
- Coordination with Client, Owner, Vendors, and Utilities.
- Opinion of Probable Cost by Square Footage.
- Energy Analysis.
- Load Analysis.
- Facility Analysis Report.
- Provide estimated lead times on general equipment procurement for overall project schedule development.
- Attendance at up to 4 conference call meetings. Typically, one person from WH will be representing both disciplines at each meeting.



B. DESIGN:

- Field Investigation.
- Coordination with Client, Owner, Vendors, and Utilities.
- Basis of Design Narrative.
- Opinion of Probable Cost by Square Footage.
- Attendance at up to 16 conference call meetings. Typically, one person from WH will be representing both disciplines at each meeting.
- Design Calculations for Potable Water and Piping, Standpipe for Fire Protection (no sprinkler design), Electrical Load, Fault Current and Lighting to show code compliance.
- Cut sheets for Potable Water and Piping materials, Standpipe Fire Protection equipment and materials, Electrical Panels and Transformers, Lighting, electrical wiring and conduit materials.
- Construction Document Division 21, 23, 26, 27, and 28 Specifications.
- Construction Document Drawings suitable for permit and bidding.
- Design Deliverables will be limited to one QC set and one submittal at each design milestone including: Study, Preliminary Design (0%–45%), Design (45%–95%) Construction Documents, and Final stamped Construction Documents.

C. BIDDING:

- No support. Will be negotiated in the future.

Wood Harbinger #P21.87

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D. CONSTRUCTION ADMINISTRATION:

- No support. Will be negotiated in the future.

4) DELIVERABLE FORMAT.

Drawings will be developed in AutoCad v2020.

Wood Harbinger will provide deliverables in digital PDF format for printing by Client.

5) APPROVAL.

If this proposal meets with your approval, please sign your acceptance and send it back to us along with written notice to proceed. Please note that our proposal is valid for sixty (60) days. If you are not yet ready to contract for the entire scope but you want Wood Harbinger to begin services, then let us know and we will send an Authorization to Proceed, which you may execute and Wood Harbinger can then begin services while we finalize the contract terms.

It is our primary goal that this project is of the highest success for the entire project team. We appreciate your consideration of this proposal. We welcome the opportunity to discuss our proposed effort with you so that our proposed scope of work aligns with your expectations.



Please do not hesitate to contact me at (425) 628-6059 with any questions.

Sincerely,

WOOD HARBINGER, INC.

By: Peter Lekhakul 7/5/2021
Peter Lekhakul, P.E. Date
Senior Electrical Engineer

MOFFATT & NICHOL

Accepted By: _____
Partner or Corporate Officer Date

Print Name and Title

Attachment(s): Standard Terms and Conditions
Task Hourly Fee Breakdown

NPL/MBL: SMB/NRB

Wood Harbinger #P21.87

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924 108th Ave NE, Suite 1000
Bellevue, WA 98004
425.628.6000
woodharbinger.com

STANDARD TERMS AND CONDITIONS

Prime Agreement. Wood Harbinger ("WH") must be provided a copy of the agreement between Client and Owner in advance of its proposal for this section to have effect. WH will provide its services in accordance with the provisions of the agreement between Client and Owner meeting the requirements of Owner for Client with respect to WH scope (scope as defined in this Agreement). If there is a conflict between the agreement between Client and Owner and this Agreement, this Agreement governs WH scope and the agreement between Client and Owner governs all other issues.

Client Responsibilities. Client is responsible to convey complete and accurate data to WH upon which WH will base its services. WH has the right to use any plans and related material provided to WH by Client. Client is responsible to perform design reviews and communicate decisions in a timely manner so that WH can deliver its services efficiently. Client will, or will have Owner, provide access to facilities for WH's performance of its services including labor and safety equipment as required by WH. Client will have Owner provide tests of equipment, machinery, pipelines, and other components of the Project facilities as may be required in connection with WH's services.

Standard of Care. That level of care practiced by similarly situated designers practicing in the same geographic location under similar circumstances.

Payment Terms. By the 5th of the current month, WH will submit invoices for all work performed during the preceding month. Client will pay invoices within ten days of receiving payment from Owner. If Client is not receiving payment from Owner due to Client's fault not contributed to by WH, then Client will pay invoices within 60 days of invoice date. Client must take exception in writing to any invoice with specific reasons

within ten business days of the date of the invoice or submit the invoice to Owner. Client agrees that invoice disputes that are not submitted to WH in writing within ten business days of the date of the invoice are waived and released. Monthly, the Client will provide a listing of Owner approved invoices, payments received from Owner and pending amounts released for payment by Client.

Finance Charges. A finance charge at the rate of 1% compounded monthly will be applied to outstanding invoices when Client has not met the Payment Terms. If any payment is past due or more than 90 days past invoice date, WH will provide five business days written notice to Client of intent to stop work and hold deliverables until payment of past due accounts is resolved. WH is not be responsible for any project delay if WH stops work under these circumstances.

Insurance. WH maintains the following insurance at the limits stated:

- PROFESSIONAL LIABILITY, \$5M PER CLAIM/\$5M ANNUAL AGGREGATE
- GENERAL LIABILITY, \$2,000,000
- AUTO (OWNED, NON-OWNED & HIRED), \$1,000,000
- EMPLOYERS' LIABILITY, \$1,000,000
- WORKERS' COMPENSATION, STATUTORY LIMITS

Scope Changes. WH will accommodate Client-initiated scope changes through an agreed upon written contract amendment. WH will provide Client with an Additional Services Request ("ASR") outlining additional scope of work and associated professional fees. WH will only proceed with additional scope after receiving written notice of acceptance of WH's ASR. If Client provides written notice of acceptance of WH's ASR without written



approval from Owner, then Client is obligated to pay the ASR regardless of payment by Owner.

Design Modifications. Modifications to the program, proposed systems, or overall space configurations that occur after 50% Design Development and that require additional design or redesign of previously agreed to building areas or systems are Additional Services and are treated as scope changes.

Opinions of Cost, Financial Considerations, and Schedules. In providing financial analyses or opinions of cost, economic feasibility, and scheduling for the Project, WH will use professional judgment. WH has no control over costs or prices of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; or other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, WH makes no promise that the Client's actual Project costs or schedules will not vary from WH's projections.

Contaminants. WH will notify Client if it becomes aware of a possibility that contaminants exist in the Project area. Client must hire, or cause Owner to hire, others to investigate and test suspect materials to determine the extent and nature of the contaminants and take appropriate measures for remediation.

Existing Conditions. The remodeling and/or rehabilitation of existing systems requires that assumptions be made regarding existing conditions. Some assumptions may not be verifiable without expending additional money or destroying otherwise adequate or serviceable portions of the facility. WH is not responsible when actual conditions are later discovered to deviate from assumed conditions.

3D and Building Information Modeling (BIM). All 3D and BIM provided by WH are for coordination and document production with Client and contractors, are not a tool for the construction phase, and may not reflect all of the components required to be present in the Deliverables. 3D and BIM models provided by WH do not supplement, modify or replace the Contract Documents.

Indemnity. The parties indemnify each other, their officers and employees from losses, including the other's, its officers' and employees' attorney fees and expenses, arising from claims by third parties but only to the extent those losses are caused by the negligence of the indemnifier, its employees and consultants. Defense of claims is not included but the indemnifier will reimburse defense costs to the degree they are incurred due to the indemnifier's, its employees' and consultants' negligence.

Copyright. WH grants to Client a nonexclusive copyright license to use WH's plans and specifications on the Project. This license will be broadened to the extent required to meet the requirements of Client's agreement with Owner. WH will obtain similar licenses from its consultants.

Entire Agreement. This Agreement constitutes the entire understanding of the parties concerning the Project and supersedes all prior negotiations and written agreements between them. Any representation made to induce the execution of this Agreement has been included in the Agreement or is no longer being relied upon. Any modification to this Agreement may only be made in writing, signed by both parties.

929 108th Ave NE, Suite 1000
Bellevue, WA 98004
425 629 6006 | woodharinger.com

Attachment B Consulting Services Task/Hour Breakdown

Project Title: City of Des Moines Marina Dock Replacements
Client: Moffatt & Nichols
Project Number: P21.87
Project Manager: Peter Lekhakul
Project PIC: Sean Rotten

WH Proposal #:	P21.87
By:	Peter Lekhakul
Date:	6/17/21
Rev 0:	Total \$76,460
Rev 1:	Date 6/21/21
Rev 2:	Date 7/5/21
Rev 3:	Date

Summary by Discipline

SUMMARY BY DISCIPLINE:	Basic Services Summary of Effort - Hours and Fee (By Discipline)												LABOR TOTAL
	Study	2.1 Pre-Design	2.2 45-95% Dgn		2.3 Final Dgn/Bid	Bidding	2.4 Dgn Meeting	Design Total	CA	Post Construction	CA Meetings	CA TOTAL	
Electrical Engineering													
Total Hours	42	71	92	0	32	0	14	253	0	0	0	0	253
Total Fee (\$)	\$7,510	\$12,295	\$15,420	\$0	\$5,680	\$0	\$2,730	\$43,635	\$0	\$0	\$0	\$0	\$43,635
Mechanical Engineering													
Total Hours	36	46	63	0	24	0	14	183	0	0	0	0	183
Total Fee (\$)	\$6,500	\$8,065	\$10,860	\$0	\$4,176	\$0	\$2,730	\$32,325	\$0	\$0	\$0	\$0	\$32,325

Design Labor Subtotal:	\$75,960	CA Labor Subtotal:	\$0	Optional Services Total:
Design Sub-Consultant Subtotal:	\$0	CA Sub-Consultant Subtotal:	\$0	
Design Reimbursable Expenses:	\$500	CA Reimbursable Expenses:	\$0	
Design Subtotal:	\$76,460	CA Subtotal:	\$0	

Sign-Offs:

PIC: _____ Date: _____
PM: _____ Date: _____

Electrical WBS, Schedule and Budget

Project Title: City of Des Moines Marina Dock Replacements
 Client: Moffatt & Nichols
 Project Number: P21.87
 Project Manager: Peter Lekhakul
 Project PIC: Sean Bollen
 P/F No.: P21.87

Phase and/or Task Code	Task Description	6		154		28		16		42	
		SMB		NPL		MLE		SBM		DW	
		Prof. VII	\$	Prof. V	\$	Prof. III	\$	Prof. III	\$	Prof. II	\$
		235.00	\$	195.00	\$	135.00	\$	135.00	\$	115.00	\$
	1.0 Study (Marina Replacement Plan)										
	Field Investigation			8							
	Master Plan Coordination			8							
	Master Plan Report			8		2				1	
	Load Calculations			4				4			
	Quality Control Review	1				1				1	
	Review/Respond to Comments			2		1				1	
	Subtotal Study Phase	1		30		4		4		3	
	2.1 Pre-Design (0%-45%)										
	Field Investigation			4							
	Coordination										
	Civil			2							
	Structural			2							
	Mechanical			2							
	Basis of Design Narrative			4		1					
	Cost Estimate			4		1					
	Load Calculations			4				2			
	Lighting Calculations			2				6			
	Outline Specifications			1		1					
	Cut Sheets			2		1					
	Drawings										
	Symbols, Abbreviations & Drawing Index			1						1	
	Electrical Site Plan			2						2	
	Electrical Equipment Layouts			4						2	
	Lighting Layouts			4						4	
	One-Line Diagrams			2						1	
	Submittal Document Preparation - 45% QC			1		1				1	
	Quality Control Review	2				1				1	
	Review/Respond to Comments			2		1				1	
	Submittal Document Preparation - 45%			1		1				1	
	Subtotal Pre-Design Phase	2		44		8		8		14	

Electrical WBS, Schedule and Budget

Project Title: City of Des Moines Marina Dock Replacements
Client: Moffatt & Nichols
Project Number: P21 87
Project Manager: Peter Lekhakul
Project PIC: Sean Bollen
P/F No.: P21 87

Phase and/or Task Code	Task Description	6		164		28		16		42	
		SMB		NPL		MLE		SBM		DW	
		Prof. VII		Prof. V		Prof. III		Prof. III		Prof. II	
		\$	235.00	\$	195.00	\$	135.00	\$	135.00	\$	115.00
	2.2 Design (45%-95%)										
	Field Investigation										
	Coordination										
	Civil			1							
	Structural			2							
	Mechanical			2							
	Basis of Design Narrative			2		1					
	Cost Estimate			2		1					
	Load Calculations			2				1			
	Lighting Calculations			2				3			
	Specifications										
	Division 26 - Electrical			8		2					
	Division 27 - Communications			2		1					
	Division 28 - Security			2		1					
	Drawings										
	Symbols & Abbreviations, General Notes			1							
	Electrical Site Plan			2						1	
	Demolition Plans			2						2	
	Power Plans			4						4	
	Lighting Plans			2						2	
	Low Voltage Plan			4						1	
	One-Line Diagrams			2						2	
	Electrical Details			4						4	
	Equipment Schedules			1						1	
	Panel Schedules			2						1	
	Discussion/Coord with Electrical Plan Reviewer/AHJ			1							
	Submittal Document Preparation - 95% QC			1		1				1	
	Quality Control Reviews - Internal		2			1				1	
	Review/Respond to Comments			2		1				1	
	Submittal Document Preparation - 95%			1		1				1	
	Subtotal Schematic Design Phase		2		64		10		4		22

Electrical WBS, Schedule and Budget

Project Title: City of Des Moines Marina Dock Replacements
Client: Moffatt & Nichols
Project Number: P21 87
Project Manager: Peter Lekhakul
Project PIC: Sean Bollen
P/F No.: P21 87

Phase and/or Task Code	Task Description	6		164		28		16		42	
		SMB		NPL		MLE		SBM		DW	
		Prof. VII		Prof. V		Prof. III		Prof. III		Prof. II	
		\$	235.00	\$	195.00	\$	135.00	\$	135.00	\$	115.00
	2.4 Construction Documents (95% - Final)										
	Field Investigation										
	Coordination			2							
	Civil										
	Structural										
	Mechanical										
	Door Hardware Coordination			1							
	Basis of Design Narrative			1		1					
	Cost Estimate			1							
	Load Calculations			1							
	Lighting Calculations			1							
	Specifications										
	Division 26 - Electrical			2		1					
	Division 27 - Communications			1							
	Division 28 - Security			1							
	Drawings										
	Symbols & Abbreviations, General Notes										
	Electrical Site Plan			1							
	Demolition Plans			1							
	Power Plans			1							
	Lighting Plans			1							
	Low Voltage Plan			1							
	One-Line Diagrams										
	Electrical Details			1							
	Equipment Schedules			1							
	Panel Schedules										
	Discussion/Coord with Electrical Plan Reviewer/AHJ			1							
	Submittal Document Preparation - Final QC				1	1					1
	Quality Control Reviews - Internal		1			1					1
	Review/Respond to Comments			1		1					
	Submittal Document Preparation - Final/Bid			1		1					1
	Subtotal Construction Documents Phase		1	22		6		-		3	
	2.5 Design Meetings										
	0.0 Kick-off			4							
	1.0 Study (Conf Call @ 1hr ea)			2							
	2.1 Pre-Design, 0%-45% (Conf Call @ 1hr ea)			3							
	2.2 Design, 45%-95% (Conf Call @ 1hr ea)			4							
	2.3 Final Dgn/Bid, 95%-Final (Conf Call @ 1hr ea)			1							
	Subtotal Design Meetings		-	14		-		-		-	
	Total		6	164		28		16		42	

Mechanical WBS, Schedule and Budget

Project Title: City of Des Moines Marina Dock Replacements
 Client: Moffatt & Nichols
 Project Number: P21.87
 Project Manager: Peter Lekhakul
 Project PIC: Sean Bollen
 PIF No.: P21.87

Phase and/or Task Code	Task Description	4 148 26		
		NRB	MBL	MLE
		Prof. VII \$ 235.00	Prof. V \$ 195.00	Prof. III \$ 135.00
	1.0 Study (Marina Replacement Plan)			
	Field Investigation		8	
	Master Plan Coordination		8	
	Master Plan Report		8	2
	Flow calculation (prelim)		2	
	Life Cycle Cost Analysis			
	Quality Control Review	1		
	Review/Respond to Comments		2	1
	Subtotal Study Phase	1	28	3
	2.1 Pre-Design (0%-45%)			
	Field Investigation		4	
	Coordination			
	Civil		2	
	Structural		2	
	Electrical		2	
	Basis of Design Narrative		4	1
	Cost Estimate		4	1
	Load Calculations		4	
	Outline Specifications		1	1
	Cut Sheets		1	1
	Drawings			
	Symbols, Abbreviations & Drawing Index		1	
	Mechanical Site Plan		2	
	Potable water layout		4	
	Standpipe layout		4	
	Discussion with SW Fire/AHJ		1	
	Submittal Document Preparation - 45% QC		1	1
	Quality Control Review	1		1
	Review/Respond to Comments		1	1
	Submittal Document Preparation - 45%		1	1
	Subtotal Pre-Design Phase	1	39	8

Mechanical WBS, Schedule and Budget

Project Title: City of Des Moines Marina Dock Replacements
 Client: Moffatt & Nichols
 Project Number: P21.87
 Project Manager: Peter Lekhakul
 Project PIC: Sean Bollen
 P/F No.: P21.87

Phase and/or Task Code	Task Description	4 148 26		
		NRB	MBL	MLE
		Prof. VII \$ 235.00	Prof. V \$ 195.00	Prof. III \$ 135.00
	2.2 Design (45%-95%)			
	Mobilization (PM plan, WBS, job setup)			
	Field Investigation		4	
	Record Drawing Review			
	Coordination			
	Civil		1	
	Structural		2	
	Electrical		2	
	Basis of Design Narrative		2	1
	Cost Estimate		2	
	Load Calculations		1	
	Energy Analysis (Preliminary)			
	Energy Code Calculations			
	Engineering Calculations		1	
	Equipment Selection			
	Specifications			
	Division 21 - Fire Protection		8	2
	Division 22 - Plumbing		8	2
	Drawings			
	Symbols & Abbreviations		1	
	Mechanical Site Plan		2	
	Demolition Plans		2	
	Piping Plans		4	
	Piping/Plumbing System Riser Diagrams		2	
	Piping/Plumbing Details		1	
	Mechanical Equipment Schedules		1	
	Fire Protection		4	
	Submittal Document Preparation - 95% QC		1	1
	Quality Control Reviews - Internal	1		1
	Review/Respond to Comments		2	1
	Submittal Document Preparation - 95%		1	1
	Subtotal Schematic Design Phase	1	52	9

Mechanical WBS, Schedule and Budget

Project Title: City of Des Moines Marina Dock Replacements
Client: Moffatt & Nichols
Project Number: P21.87
Project Manager: Peter Lekhakul
Project PIC: Sean Bollen
P/F No.: P21.87

Phase and/or Task Code	Task Description	4 148 26		
		NRB Prof. VII \$ 235.00	MBL Prof. V \$ 195.00	MLE Prof. III \$ 135.00
	2.4 Construction Documents (95% - Final)			
	Field Investigation			
	Coordination		2	
	Civil			
	Structural			
	Electrical			
	Basis of Design Narrative		1	1
	Cost Estimate		1	
	Engineering Calculations		1	
	Specifications			
	Division 21 - Fire Protection		1	
	Division 22 - Plumbing		1	
	Drafting Production Set-up			
	Drawings			
	Symbols & Abbreviations			
	Mechanical Site Plan		1	
	Demolition Plans		1	
	Piping Plans		1	
	Piping/Plumbing System Riser Diagrams			
	Piping/Plumbing Details			
	Mechanical Equipment Schedules			
	Fire Protection		1	1
	Submittal Document Preparation - Final QC		1	1
	Quality Control Reviews - Internal	1		1
	Review/Respond to Comments		2	1
	Submittal Document Preparation - Final/Bid		1	1
	Subtotal Construction Documents Phase	1	15	6
	2.5 Design Meetings			
	0.0 Kick-off		4	
	1.0 Study (Conf Call @ 1hr ea)		2	
	2.1 Pre-Design, 0%-45% (Conf Call @ 1hr ea)		3	
	2.2 Design, 45%-95% (Conf Call @ 1hr ea)		4	
	2.3 Final Dgn/Bid, 95%-Final (Conf Call @ 1hr ea)		1	
	Subtotal Design Meetings	-	14	-
	Total	4	148	26



CONTRACT AMENDMENT/ADDENDUM FORM
CONTRACT FOR CONSULTANT SERVICES BETWEEN
THE CITY OF DES MOINES AND MOFFATT & NICHOL, INC.

THIS AMENDMENT/ADDENDUM is entered into on this 21st day of November, 2023, pursuant to that certain Contract entered into on the 26th day of July, 2021, between the **CITY OF DES MOINES, WASHINGTON** (hereinafter "City"), and **Moffatt & Nichol, Inc.**, (hereinafter "Consultant"),.


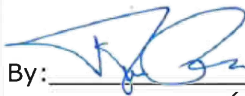
The parties herein agree that the Contract dated July 26, 2021, (hereinafter "Contract") shall remain in full force and effect, except for the amendments/addendums set forth as follows:

SECTION II of Contract is hereby amended to read as follows:

TIME OF COMPLETION. The parties agree that work will begin on the tasks described in Section I above immediately upon the effective date of this Contract. Upon the effective date of this Contract, Consultant shall complete the work described in Section I by December 31, 2027.

Except as modified hereby, all terms and conditions of Contract dated remain in full force and effect.

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

<p>Moffatt & Nichols:</p> <p>DocuSigned by:  A10AB8E3D5E0418...</p> <p>By: _____ (signature)</p> <p>Print Name: <u>Shane Phillips</u></p> <p>Its <u>Business Unit Lead</u> (Title)</p> <p>DATE: <u>11/21/2023</u></p>	<p>CITY OF DES MOINES:</p> <p> By: _____ (signature)</p> <p>Print Name: <u>Timothy George</u></p> <p>Its <u>Acting City Manager</u> (Title)</p> <p>DATE: <u>11/29/2023</u></p> <p>Approved as to form: <u>/s/ Matt Hutchins</u> Acting City Attorney</p> <p>DATE: <u>11/28/2023</u></p>
<p>NOTICES TO BE SENT TO:</p> <p>CONSULTANT:</p> <p>William Gerken Moffatt & Nichol 600 University St Suite 610 Seattle, WA 98101</p> <p>206-622-0222 (telephone) bgerken@moffattnichol.com (facsimile/email)</p>	<p>NOTICES TO BE SENT TO:</p> <p>CITY OF DES MOINES:</p> <p>Scott Wilkins, Harbormaster City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 206-824-5700 (telephone) swilkins@desmoineswa.gov (facsimile/email)</p>

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: North Hill Elementary Walkway
Improvements Project – Consultant
Contract Supplement #1

FOR AGENDA OF: May 8, 2025

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: April 28, 2025

ATTACHMENTS:

1. Parametrix Inc. Local Agency A&E
Professional Services Consultant
Agreement Supplement #1
2. 2025 – 2030 CIP Budget Worksheet

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *Katherine Coffey*

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval for a contract supplement with Parametrix (Attachment 1) to provide final design and right-of-way services related to the North Hill Elementary Walkway Improvements Project. The following motion will appear on the Consent Agenda:

Suggested Motion

Motion: “I move to approve Supplement #1 for Parametrix to provide final design and right-of-way services for the North Hill Elementary Walkway Improvements Project in the amount of \$129,112.00 and further authorize the City Manager to sign said contract amendment substantially in the form as submitted.”

Background

In November 2011, the City completed the City of Des Moines Safe Routes to School Project Report. This report provided a summary of priority Safe Route to School projects for the five public elementary schools in the City. These projects were selected to enhance safety for students and families walking to school. The North Hill Elementary Walkway Improvements Project was one of the highest ranking projects Citywide.

The City of Des Moines's Comprehensive Transportation Plan identifies South 200th Street as a high priority pedestrian corridor that requires special attention in the form of pedestrian facilities and safety measures, due to its lack of existing curbs and sidewalks.

Addressing traffic and pedestrian safety in school zones is of particular concern for the City of Des Moines. Given that there is a concentrated presence of children in school zones, which are typically located adjacent to an arterial roadway where traffic volumes and speeds are generally higher, the potential for an incident is increased. Child pedestrians are particularly vulnerable due to their lower awareness of risk and impulsive behavior.

The completion of the North Hill Elementary Walkway Improvements Project will connect existing pedestrian facilities west of 8th Avenue South and north of South 200th Street, located along the frontages of North Hill Elementary and Maritime High School, to the recently improved sidewalk facilities constructed at the intersection of Des Moines Memorial Drive and South 200th Street under a joint project by the Cities of Des Moines and City of SeaTac. The project will improve pedestrian safety, promote non-motorized modes of transportation, and facilitate better access to bus stops located along South 200th Street for all users.

The project proposes to construct approximately 800 linear feet of sidewalk, curb and gutter, ADA curb ramps, bike lanes, storm drainage, and illumination. Structural earth retaining walls and handrail will also be installed as required along the project length. The project will include radar driver feedback signs in both directions to reduce vehicular operating speeds. The completion of this project will greatly enhance non-motorized and pedestrian safety within the North Hill neighborhood. Pedestrian improvements from the project will also encourage students to utilize a safe walking route to and from school.

Historically during major storm events, due to aging existing stormwater infrastructure on South 200th Street, there is often standing water on South 200th Street between 9th Ave South and 10th Place South. New storm water infrastructure to be constructed on the North Hill Elementary Walkway Improvements Project will be designed to handle future major storm events and eliminate the existing standing water concerns on South 200th Street. This project is identified on the six-year Surface Water Capital Improvement Plan.

It was anticipated that the construction phase of the North Hill Elementary Walkway Improvements Project would begin in 2025. Staff began coordinating with our franchise utilities back in July 2024 but at this time, aerial utilities have not relocated their facilities to avoid conflicts with the City's proposed project. Rather than move the project into construction in the summer of 2025, staff will delay the project until all aerial facilities in conflict with the project has been relocated. Staff has been in discussion with Puget Sound Energy (PSE) and they have provided a timeline of July/August of 2025 for relocation of their facilities. It would then be expected the City could begin the construction phase of the North Hill Elementary Walkway Improvement Project in Spring 2026 to avoid any potential utility conflicts and further delays.

On October 19, 2023, the City Manager was authorized by Council to enter into a consultant agreement with Parametrix to provide engineering design and right-of-way acquisition services for the North Hill Elementary Walkway Improvements Project. At this meeting, the City Council also accepted the 2023-25 WSDOT Safe Routes to School Program grant for the Project in the amount of \$3,000,000. The grant provides funding support to complete design, right-of-way acquisition, and construction for the project.

Discussion

The project design and right-of-way acquisitions are nearly complete. To finalize the project design plans and prepare for construction, a supplement is needed to provide additional consultant support. This includes completing right-of-way acquisitions, coordinating with utility providers to resolve conflicts, and preparing final bidding documents.

During the design process, properties located along South 200th Street within the project limits were found to be on septic systems instead of sanitary sewer. Additional survey is needed to locate the septic systems and identify properties that may adversely impact the roadway design. In addition, additional design is necessary to refine and produce roadway alignment alternatives to mitigate impacts caused by extremely steep driveway grades. This effort will ultimately result in a potential cost savings of \$600,000 in additional right-of-way acquisitions.

To complete the right-of-way phase of the project, additional appraisals that were originally scoped as administrative offer summaries (AOSs) will be required. Six additional appraisals will be ordered and coordinated to complete the right-of-way acquisition process for the project.

Lastly, for utility coordination, additional consultant support is needed to identify potential conflicts and revise the design plans to accommodate utility relocations and minimize impacts to private property. This effort includes additional coordination, fieldwork and design documentation for utility and property impacts, revising the storm sewer design to reduce impacts to existing Highline Water District facilities, and investigating channelization alternatives on 8th Ave South to reduce impacts to the existing overhead utilities. This effort will prevent potential conflicts and schedule delays during the project construction phase.

Alternatives

The City Council may choose not to approve Supplement #1 for Parametrix, which provides final design and right-of-way services for the North Hill Elementary Walkway Improvements Project. The City lacks sufficient internal resources to complete the project design and right-of-way acquisitions, which would affect the overall design. This will delay the project schedule and potentially place the \$3,000,000 in WSDOT Safe Routes to School grant funds at risk.

Financial Impact

The City's adopted CIP Budget Worksheets (Attachment 2) include revenue to achieve full funding for this Supplement.

Recommendation

Staff recommends adoption of the motion.

Council Committee Review

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



Supplemental Agreement Number _____		Organization and Address	
Original Agreement Number		Phone:	
Project Number	Execution Date	Completion Date	
Project Title	New Maximum Amount Payable		
Description of Work			

The Local Agency of _____
desires to supplement the agreement entered in to with _____
and executed on _____ and identified as Agreement No. _____

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days for completion of the work to read: _____

III

Section V, PAYMENT, shall be amended as follows:

as set forth in the attached Exhibit A, and by this reference made a part of this supplement.

If you concur with this supplement and agree to the changes as stated above, please sign in the Appropriate spaces below and return to this office for final action.

By: _____ By: _____

Consultant Signature

Approving Authority Signature

Date

Exhibit "A"
Summary of Payments

	Basic Agreement	Supplement #1	Total
Direct Salary Cost			
Overhead (Including Payroll Additives)			
Direct Non-Salary Costs			
Fixed Fee			
Total			

AMENDMENT 1- SCOPE OF WORK

City of Des Moines
North Hill Elementary Walkway Improvements
South 200th Street - 8th Avenue S to 10th Place S

PROJECT UNDERSTANDING

The City of Des Moines has contracted with Parametrix for the design improvements along approximately 800 feet of S 200th Street, from 8th Avenue S to 10th Place S. This amendment provides necessary funding for additional work included in five change requests to complete acquisition of right of way, complete utility coordination and to prepare final bidding documents.

SCHEDULE

The budget estimate assumes the following schedule:

Begin Design	10/2023	
Environmental Documents Approved	06/2024	
Right-of-Way Approved	01/2025	07/2025
Estimated Contract Ad	02/2025	10/2025

TASK 01 – PROJECT MANAGEMENT AND QA/QC

Approach

Parametrix will provide additional project management beyond the original agreed schedule of completion.

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.
- Biweekly design team meetings with an issues list to document project design decisions, with meetings occurring more frequently as needed.
- 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.
- Coordination with Washington State Department of Transportation (WSDOT).

Internal review quality assurance/quality control (QA/QC) will be performed to ensure that design concepts are sound and cost effective, that design concepts have been incorporated, and that documents are accurate and consistent.

SCOPE OF WORK (continued)

Deliverables

Deliverables for this task are not changed.

Assumptions

Assumptions for this task include:

- Project duration is ~~17~~ **24** months from the notice to proceed.
- Budget assumes ~~40~~ **58** meetings.

Additional Project Management services are estimated at \$8,585.

CRP01 – STORY MAP SITE DEVELOPMENT

Change Request Proposal 01 added Task 13 to the project. Soon after starting the project the City was interested in creating a project website that included a “story map” component. **This change was estimated at \$9,800.**

CRP02 – STORY MAP SITE DEVELOPMENT

Change Request Proposal 02 added Task 14 to the project to add a subcontractor to locate onsite septic disposal systems on parcels that the City is acquiring ROW from. **This task added \$7,500.**

CRP03 – ADDITIONAL PRELIMINARY DESIGN

Change Request Proposal 03 addressed additional work requested by the City to research the potential impacts to onsite septic disposal systems and to prepare additional alignment alternatives to minimize impacts to existing driveways. The additional design was necessary to mitigate risk, minimize total project cost and reduce schedule delays to ensure the Right of Way acquisition process began on time (critical path). **The total estimated cost impact of this change was \$13,050.**

CRP04 – ADDITIONAL ROW ACQUISITION SERVICES

Change Request Proposal 04 was necessary to provide for additional work by Epic Land Solutions to provide additional appraisals and coordination on the project. Six additional appraisals were needed. **This change has an estimated cost of \$48,264.**

CRP05 – UTILITY COORDINATION

Change Request Proposal 05 is necessary to provide for additional design services to coordinate utilities on the project. The right of way is constrained and to avoid additional impacts and delays to the overall project schedule the City requested additional design services and updates to the 60% and 90% in progress deliverables. **The cost of this change is estimated at \$41,913.**

Copies of authorized change requests are attached.

The total request for additional funds to cover the additional work included above is \$129,112.

CHANGE REQUEST PROPOSAL (CRP)		
Date: 1/3/2024	Prepared By: Austin Fisher, PE	CRP Number: 01
Project Manager: Austin Fisher, PE		Client: City of Des Moines
Project Name: North Hill Elementary Walkway Improvements		Project No.: 214-1792-046
Contract Change Clause Language Inserted Here:		
Adding Task for Storymap Website Development. See attached scope of work.		
Change Description (describe what change is needed, what caused the change to occur, why the change is necessary, and the impact if the change is not approved):		
This change is needed to add a project website. Budget will be transferred from the management reserve task.		
<p>Has the client authorized this change to proceed before the project manager receives the contract amendment?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If yes, attach the client's authorization (i.e., e-mail from client or client signature on Record of Communication or CRP form). If the client gave authorization verbally, document the authorization on a CRP form. Have the Project Manager and Office Principal or Operations Manager sign the CRP and mail to the client immediately following verbal authorization.</p>		
Cost Impacts:		
Parametrix Fee Impact: <u>\$9,800</u> Follow-on Construction Contract (if applicable): <u>NA</u> Provide our range estimate for the Follow-on Construction Contract based on our opinion of the accuracy of the range as an order of magnitude (+50% to -30%), budgetary (+30% to -15%), or definitive (+15% to -5%) cost estimate.		
Select One: <input type="checkbox"/> Order of Magnitude <input type="checkbox"/> Budgetary <input type="checkbox"/> Definitive		
Schedule Impacts:		
1. Deliverable Plan Date: <u>NA</u> Change Date: _____ 2. Deliverable Plan Date: _____ Change Date: _____ 3. Deliverable Plan Date: _____ Change Date: _____		
Parametrix Change Endorsement:		
Austin Fisher, PE		
Name		
Name		
Name		
Name		Signature
Name		Signature
Name		Signature
Name		Signature
Authorization to Proceed with Change:		
Austin Fisher, PE, Parametrix		Khai Le, PE, City of Des Moines
1/3/2024		1/3/2024
Date		Date

SCOPE OF WORK

City of Des Moines
North Hill Elementary Walkway Improvements
South 200th Street - 8th Avenue S to 10th Place S

PROJECT UNDERSTANDING

The City of Des Moines has contracted with Parametrix for the design improvements along approximately 800 feet of S 200th Street, from 8th Avenue S to 10th Place S, and for improvements at the north school entrance on 8th Avenue S. Schedule

CHANGE REQUEST PROPOSAL 01 – STORYMAP WEBSITE DEVELOPMENT

Approach

Parametrix will develop a StoryMap website for use by the City for public outreach. Activities included in this change request are:

- Content development and StoryMap Outline
- Develop Draft StoryMap site and testing
- Revisions based on City input and review
- Final testing and launch

Budget


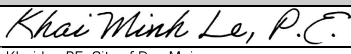
The budget estimate for this additional work is **\$9,800**.

Assumptions

Assumptions for this task include:

- Budget estimate includes initial content development, testing and launch of initial site. Additional updates may require additional funds.
- Budget estimate includes up to \$4,000 for a project rendering of the typical section. Additional renderings will require additional budget.

CHANGE REQUEST PROPOSAL (CRP)

Date: 3/27/2024	Prepared By: Austin Fisher, PE	CRP Number: 02
Project Manager: Austin Fisher, PE	Client: City of Des Moines	
Project Name: North Hill Elementary Walkway Improvements	Project No.: 214-1792-046	
Contract Change Clause Language Inserted Here:		
Adding Task for septic system locating by Nordvind Company. Scope will be to locate the systems located at 801, 817, 1001, and 1017 S 200 th Street, Des Moines, WA. Systems will be located and marked in the field. City staff will be required to restore landscaping and lawn areas to existing or better condition. City will be required to get right of entry from property owners. Traffic control is not included in this scope of work. Nordvind Company will call for underground locates prior to digging but is not responsible for un-marked utilities that are impacted. This scope of work does not include repair, repair design or other restoration that may be required to mitigate impacts to existing systems found within the project limits.		
Change Description (describe what change is needed, what caused the change to occur, why the change is necessary, and the impact if the change is not approved):		
This change is needed to locate septic systems that, based on available County records, may be impacted by the roadway and utility improvements.		
Has the client authorized this change to proceed before the project manager receives the contract amendment? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If yes, attach the client's authorization (i.e., e-mail from client or client signature on Record of Communication or CRP form). If the client gave authorization verbally, document the authorization on a CRP form. Have the Project Manager and Office Principal or Operations Manager sign the CRP and mail to the client immediately following verbal authorization.		
Cost Impacts:		
Parametrix Fee Impact: <u>\$7,500.00</u> Follow-on Construction Contract (if applicable): <u>N/A</u>		
Provide our range estimate for the Follow-on Construction Contract based on our opinion of the accuracy of the range as an order of magnitude (+50% to -30%), budgetary (+30% to -15%), or definitive (+15% to -5%) cost estimate.		
Select One: <input type="checkbox"/> Order of Magnitude <input type="checkbox"/> Budgetary <input type="checkbox"/> Definitive		
Schedule Impacts:		
1. Deliverable Plan Date: <u>N/A</u> Change Date: _____		
2. Deliverable Plan Date: _____ Change Date: _____		
3. Deliverable Plan Date: _____ Change Date: _____		
Parametrix Change Endorsement:		
Austin Fisher, PE Name _____ Signature _____		
_____ Name _____ Signature _____		
_____ Name _____ Signature _____		
_____ Name _____ Signature _____		
Authorization to Proceed with Change:		
 Austin Fisher, PE, Parametrix Darby Watson, Senior Vice President		
 Khai Le, PE, City of Des Moines		
4/2/2024 Date		
3/27/2024 Date		
3/28/24		



**SUBCONSULTANT AGREEMENT
FOR PROFESSIONAL SERVICES**

Summary of Terms

A. SUBCONSULTANT NAME:	<u>Nordvind Company</u>
Office Address:	<u>43112 248th Ave SE, Enumclaw, WA 98022</u>
B. PROJECT NAME:	<u>North Hill Elementary Walkway Improvements</u>
C. PROJECT NUMBER:	<u>214-1792-046</u>
D. CLIENT NAME:	<u>City of Des Moines</u>
E. PARAMETRIX, INC.:	
Office Address:	<u>1019 39th Avenue SE, Suite 100, Puyallup, WA 98374</u>
F. EXECUTION DATE:	<u>See date of latest signature by Parties on page 6.</u>
G. TERM OF AGREEMENT:	<u>From Executed Date through March 31, 2025.</u>

H. COMPENSATION (check one) (See Section 2 of the Terms and Conditions for descriptions):			
1. Lump Sum (LS)	<input type="checkbox"/>	Lump Sum Amount:	\$ _____
2. Cost Plus to a Maximum Budget (CPM) (time-and-materials projects) (select one)			
▪ Negotiated Billing Rates	<input checked="" type="checkbox"/>	Total Compensation Amount:	\$ 7,500
▪ Salary Multiplier _____	<input type="checkbox"/>	Total Compensation Amount:	\$ _____
3. Cost Plus Fixed Fee (CPFF) (typically for government projects)	<input type="checkbox"/>	Total Compensation Amount:	\$ _____
4. Other: _____	<input type="checkbox"/>	Total Compensation Amount:	\$ _____

I. NOTICES (see Section 17.2 of the Terms and Conditions for description):			
If to Subconsultant:		If to Parametrix:	
Address:	<u>43112 248th Ave SE</u> <u>Enumclaw, WA 98022</u>	Address:	<u>1019 39th Ave SE</u> <u>Puyallup, WA 98374</u>
Attention:	<u>Eric Peterson</u> <small>(name of designated representative)</small>	Attention:	<u>Darby Watson</u> <small>(name of Parametrix signatory, page 6)</small>
Phone:	<u>360-825-5704</u>	Phone:	<u>206-838-3999</u>
Fax:	<u>N/A</u>	Fax:	<u>855-542-6353</u>
E-mail:	<u>nordvindsewer@outlook.com</u>	E-mail:	<u>dwatson@parametrix.com</u>

SUBCONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES

Terms and Conditions

Parametrix, Inc. ("Parametrix") has entered into a written consulting agreement ("Prime Agreement") dated October 25, 2023 with City of Des Moines ("Client") for providing engineering design, environmental research, right-of-way acquisition, and geotechnical engineering services for the North Hill Elementary Walkway Improvements Project ("Project") as described in the Prime Agreement (attached as Exhibit A).

This Subconsultant Agreement for Professional Services ("Agreement") is entered into by and between Parametrix and Nordvind Company ("Sub") as of the Execution Date referred to in the Summary of Terms (page 1 of this Agreement). (Parametrix and Sub are each referred to herein as a "Party" and collectively as the "Parties.") The Summary of Terms shall be incorporated as part of this Agreement by reference.

The Services covered by this Agreement will be performed in accordance with the Terms and Conditions set forth below, the Terms and Conditions or Provisions of the Prime Agreement in which Sub shall perform and be bound to that same extent that Parametrix is bound to the Client in the Prime Agreement, and any Exhibits and Schedules made a part of this Agreement or the Prime Agreement. To the extent that any provision of the Prime Agreement is inconsistent with the terms of this Agreement, then the terms of this Agreement shall supersede such inconsistent terms of the Prime Agreement as between Parametrix and Sub.

1. Authorization to Proceed

Unless otherwise provided in this Agreement, execution of this Agreement by Parametrix will be authorization for Sub to proceed with the Services outlined in the Scope of Work ("Services") attached as Exhibit B.

2. Compensation

2.1 Sub's compensation under this Agreement shall be as set forth in the Summary of Terms and is based on one of the following descriptions (also see Exhibit C, Compensation):

(a) **Lump Sum.** Under this compensation structure, Sub charges Parametrix a fixed lump sum amount for the Services to be performed for the Project; Sub shall be responsible for all wages or salaries of its employees and costs of subconsultants. The lump sum amount shall include all direct labor costs, indirect costs (overhead), direct expenses, and profit.

(b) **Cost Plus to a Maximum Budget** (time-and-materials projects)

Negotiated Billing Rates. Under this compensation structure, Sub charges Parametrix on the basis of negotiated rates (hourly, daily, etc.) for work performed on the Project by Sub employees of the indicated classifications. These rates may be adjusted no more than once in any 12-month period, beginning with the "Execution Date" of this Agreement, unless otherwise provided. These negotiated rates include all allowances for salary, indirect costs (overhead), and profit. Total compensation is the maximum amount payable for the defined Services, including direct expenses as identified under paragraph 2.2. Any adjustment of rates as provided for above shall not be justification for adjustment of the Total Compensation Amount authorized under this Agreement.

Salary Multiplier. Under this compensation structure, Sub charges Parametrix rates equal to the direct wages or salaries Sub pays to its employees for work performed directly on the Project, multiplied by a

negotiated multiplier as shown in Section H of the Summary of Terms to cover payroll-related taxes, payments, premiums, benefits, other indirect costs (overhead), and profit. Total Compensation is the maximum amount payable for the defined Services, including direct expenses as identified under paragraph 2.2.

(c) **Cost Plus Fixed Fee** (typically government work). Sub charges Parametrix based on cost (direct wages) and a negotiated overhead rate plus a fixed fee (profit). The fee is billed based on the percent complete of the project. Direct expenses are billed according to paragraph 2.2 (below).

2.2 As part of the fee structures set forth in 2.1(b) and (c), Sub may charge Parametrix for direct expenses. "**Direct Expenses**" include those costs incurred on or directly for the Project, including, but not limited to, necessary transportation costs, including current rates for Sub vehicles; meals and lodging; laboratory tests and analyses; computer services; word processing services; telephone; printing, binding, and reproduction charges; all costs associated with outside consultants, and other outside services and facilities; and other similar costs. Reimbursement for Direct expenses will be on the basis of actual charges when furnished by commercial sources and on the basis of current rates when furnished by Sub.

3. Payment to Sub

Sub will issue invoices to Parametrix for the compensation due as a result of Services provided under this Agreement to that time, less Services previously billed. Sub shall follow normal and customary timekeeping and accounting practices as described in Exhibit G. Sub acknowledges that Parametrix bills Client on a 4-4-5 accounting schedule and that Sub's invoices for any given month must be received by Parametrix no later than the date set forth in the Invoice Schedule (attached as Exhibit D), which is updated from time to time, at a minimum annually, in order to be billed to Client in that month. Parametrix shall pay Sub promptly [and in any event no later than fifteen (15) days] after receipt of payment from Client for Sub's Services. In the event that any portion of an invoice is disputed, payment will be made for the non-disputed amounts. Although Parametrix will use its commercially

reasonable best efforts to collect payments from the Client under the Prime Agreement, Parametrix does not guarantee payment by the Client. Sub acknowledges and agrees that it bears the risk of non-payment by Client (for whatever reason) for Services rendered.

4. Standard of Care

Sub shall perform the Services in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Sub will reperform any Services not meeting this standard without additional compensation. If such deficiencies are not corrected in a timely manner, Parametrix may cause the same to be corrected, and deduct from Sub's compensation the cost incurred by Parametrix for such corrective work.

5. Term and Termination

5.1 Term. The term of the Agreement shall be as set forth in Item G of the Summary of Terms. If a term is not specified in the Summary of Terms, Sub's obligation to render the Services under this Agreement will be for a period that may reasonably be required for the completion of the Services.

5.2 Termination for Cause. This Agreement may be terminated by (a) either Party if 1) the "Other Party" fails to perform substantially in accordance with this Agreement, provided there is no fault of the "Party" and, the "Other Party" does not commence correction of such failure within ten (10) days after written notice thereof and diligently completes the correction promptly thereafter, or 2) the performance of the Services pursuant to this Agreement is delayed or suspended for more than ninety (90) days for reasons beyond Sub's control; or (b) Sub, upon seven (7) days' written notice if Sub believes that Parametrix is requesting it to furnish or perform Services contrary to Sub's responsibilities as a professional.

5.3 For Convenience. Either Party may terminate this Agreement for any reason, or for no reason, upon thirty (30) days' written notice to the non-terminating Party.

5.4 Payment upon Termination. After termination, Parametrix shall promptly (and in any event no later than thirty (30) days after receipt of payment from Client) forward to Sub payment for all authorized work performed up to the termination date.

6. Indemnification

Parametrix and Sub mutually agree, to the fullest extent permitted by law, to indemnify each other from any and all damage, liability, or cost arising from their own negligent acts, errors, or omissions in the performance of their services under this Agreement, to the extent that each party is responsible for such damages, liabilities, and costs on a comparative basis of fault.

Notwithstanding the foregoing, in the event that Client brings a claim against Parametrix pursuant to the Prime Agreement that is based in whole or in part on the Services provided by Sub, Sub will defend, indemnify, and hold harmless the Client to the same extent Parametrix is required to defend, indemnify, and hold harmless the Client in the Prime Agreement.

7. Insurance

Sub will maintain throughout the term of this Agreement the following insurance and will submit certificates verifying such to Parametrix promptly after execution of this Agreement and upon request thereafter:

- (a) Worker's compensation and employer's liability insurance as required by the state or province where the work is performed.
- (b) Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.
- (c) Comprehensive general liability insurance covering claims for injuries arising out of any negligent act or omission of the Sub or of any of its employees, agents, or subcontractors, with \$1,000,000 combined single limits.
- (d) Professional liability insurance of \$1,000,000.

Parametrix shall be named as an additional insured on the policies listed in subsections (b) and (c) above and Sub waives subrogation against Client and Parametrix with respect to such policies.

Sub shall ensure that current Certificates of Insurance are on file with Parametrix. Parametrix may withhold payment to Sub at any time that Insurance Certificates have not been provided indicating that insurance coverage is current.

All insurance certificates shall provide that the insurance carrier will give Parametrix at least thirty (30) days' notice of any cancellation of the policies.

8. Confidentiality

8.1 Definition of Confidential Information. "Confidential Information" means all nonpublic information, in whatever form (including without limitation orally disclosed information), that either Party to this Agreement (each a "Disclosing Party") designates as confidential at the time of disclosure to the Party that receives such information (each a "Receiving Party") or that, based on the nature of the information or circumstances surrounding its disclosure by or on behalf of Disclosing Party, Receiving Party should in good faith treat as confidential. Confidential Information includes without limitation, practices, procedures, specifications, drawings, sketches, models, samples, data, plans, computer programs, records, documentation, or other technical or business information. Except as otherwise indicated, the term "Receiving Party" also includes all affiliates of the Receiving Party. If information is disclosed in intangible form without being designated as confidential, Disclosing Party may still designate it as confidential by providing Receiving Party with written notice stating that designation and providing Receiving Party with a written summary of the confidential information, within twenty (20) days of initial disclosure.

8.2 Exclusion. Confidential Information does not include information that Receiving Party can document: (a) was generally known to the public at the time it was disclosed by Disclosing Party; (b) became generally known to the public other than through a breach of this Agreement by Receiving Party after the time of disclosure to Receiving Party by Disclosing Party; or

- (c) was independently developed by Receiving Party without reference to or use of Confidential Information.
- 8.3 **Receiving Party Obligations.** Receiving Party will not use or disclose any Confidential Information except in furtherance of the Parties' mutually agreed business relationship. Receiving Party will not disclose, give access to, or distribute any Confidential Information to any third party, except upon Disclosing Party's prior, written authorization. Receiving Party will take reasonable security precautions to keep Confidential Information confidential, which precautions shall be at least as protective as the precautions Receiving Party takes to preserve its own Confidential Information of a similar nature.
9. **Ownership**
- 9.1 **Work Deliverables.** "Work Deliverables" shall mean the final plans, designs, reports, and/or other documents prepared by Sub for delivery or presentation to Parametrix as called for in Exhibit B (Scope of Work) and Exhibit E (Work Completion Schedule). All Work Deliverables produced by Sub for or at the direction of Parametrix hereunder shall be the property of Parametrix and, to the extent subject to copyright protection, shall be deemed "work for hire" as such term is defined under U.S. copyright law; provided, however, that Sub may retain copies of all such Work Deliverables in accordance with Section 11 of this Agreement.
- 9.2 **Project Documents.** All Project Documents shall be the sole property of Sub. "Project Documents" shall mean all studies, reports, evaluations, designs, drawings, procedures, field data, notes, specifications, plans, and all other documentation, including all documents on electronic media that are produced or acquired by Sub for or at the direction of Parametrix pursuant to this Agreement, other than Work Deliverables.
10. **Electronic Files and Data**
- Subject to the provisions of Section 8, Sub will provide certain information to Parametrix, including drawings, reports, and other electronic formatted data files, for Parametrix's use and reference, all as identified under Exhibit B of this Agreement. When providing electronic files, Sub shall endeavor to provide uncorrupted files, free from viruses, bugs, or other destructive programs. Parametrix acknowledges and agrees that Parametrix shall be solely responsible for inspection and testing of electronic file(s) provided by Sub to verify the content is free from bugs, viruses, or other destructive programs, before accessing or using the Sub-provided files. The original files containing the information and data and maintained by Sub shall be considered Confidential Information under the terms of Section 8.
11. **Document Retention**
- 11.1 **Work Deliverables.** Work Deliverables are the property of Parametrix and will be delivered to Parametrix at Parametrix's request. Notwithstanding the foregoing, Parametrix acknowledges and agrees that unless Parametrix specifically requests that such documents be delivered, all Work Deliverables left in Sub's possession after ten (10) years following the completion of the Project, regardless of whether this Agreement may still be in effect, may be retained or destroyed by Sub at its sole discretion.

- 11.2 **Project Documents.** All Project Documents shall be retained by Sub for a period of no less than ten (10) years. After ten (10) years, at its sole discretion, Sub may retain or destroy the Project Documents.

12. **Compliance with Laws**

Sub will: (a) comply with federal, state, and local laws, ordinances, regulations, and orders in effect as of the Execution Date with respect to its performance of the Services pursuant to this Agreement, (b) file all required reports and pay all filing fees and federal, state, and local taxes applicable to Sub's business as the same shall become due, and (c) pay all amounts required under local, state, and federal workers' compensation acts, disability benefit acts, un-employment insurance acts, and other employee benefit acts when due.

13. **Use of Subcontractors**

Sub shall have the right to subcontract and otherwise permit third persons to perform the Services only with the specific prior written consent of Parametrix, which shall not be unreasonably withheld. Any such consent shall be conditioned on the execution by such subcontractor of subcontracting and confidentiality agreements consistent with this Agreement, reasonably satisfactory to Parametrix, and sufficient to protect the interests of Parametrix. In no event shall any subcontractor perform any Services before Sub executes such an agreement.

14. **Independent Contractor**

Sub shall be deemed to be an independent contractor in the performance of this Agreement and shall not be considered or permitted to be an agent, servant, joint venturer, or partner of Parametrix or its affiliates. All persons furnished, used, retained, or hired by or on behalf of Sub shall be considered to be solely the employees, personnel, or contractors of Sub, and Sub at all times shall maintain such supervision and control over its employees, personnel, and contractors as is necessary to preserve its independent contractor status. Sub shall be responsible for payment of any and all unemployment, social security, withholding, and other payroll taxes for its employees, as applicable, including any related assessments or contributions required by law.

15. **Dispute Resolution**

All disputes arising between the Parties relating to the making or performance of the Services shall be resolved in the following order of preference:

- (a) By good faith negotiation between representatives of Sub and Parametrix who have authority to resolve the dispute fully and finally. The existence and substance of any negotiations pursuant to this Section shall be considered Confidential Information under this Agreement, shall be treated as compromise and settlement negotiations for purposes of Federal Rule of Evidence 408 and any comparable provision and shall not be used by any Party in any court, agency, or tribunal in any country for any reason.

- (b) In the event that the negotiations provided by Section 15(a) fail to resolve the dispute, the Parties shall endeavor to resolve the dispute by non-binding mediation under the Commercial Mediation rules of the American Arbitration Association ("AAA") using a neutral mediator mutually acceptable to the Parties and with the costs therefore shared equally. All proceedings pursuant to this Section 15(b) shall be considered Confidential Information under this Agreement, shall be treated as compromise and settlement negotiations for purposes of Federal Rule of Evidence 408 and any comparable provision, and shall not be used by any Party in any court, agency, or tribunal in any country for any reason.
- (c) In the event that the mediation provided by Section 15(b) fails to resolve the dispute, the dispute shall be resolved pursuant to Section 17.1.
- (d) Notwithstanding anything to the contrary contained in this Section, the Parties reserve the right to seek equitable remedies with respect to the enforcement of any provision of this Agreement.

16. Equal Opportunity and Affirmative Action

Sub shall read and commit to follow Parametrix's "Equal Employment Opportunity and Affirmative Action Program" which can be found at: https://www.parametrix.com/wp-content/uploads/2023/09/eeoprogram_updated201782900dd1d9e46a9dbaacf0000cb96be.pdf.

17. General Provisions

- 17.1 Governing Law; Venue; Attorneys' Fees. This Agreement will be governed by the laws of the state of Washington, excluding conflict of laws provisions. The Parties hereby irrevocably consent to the nonexclusive jurisdiction and venue of both the state and federal courts sitting in Pierce County, Washington, and the courts specified in the Prime Agreement's venue provisions, and waive any argument of *forum non conveniens* in connection therewith. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the primarily prevailing Party will be entitled to recover its costs, including reasonable attorneys' fees.
- 17.2 Notices. Any notice required under this Agreement shall be in writing, addressed to the appropriate Party at the address provided in the Summary of Terms, and given personally, or by registered or certified mail, postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt. The addresses, phone numbers, facsimile numbers, and e-mail addresses for the Parties provided in the Summary of Terms may be changed by means of a written notice given to the other Party.
- 17.3 Assignment. Neither Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that either Party may assign this Agreement to an Affiliate without the other Party's prior written consent. If such an attempted assignment occurs, the nonassigning Party will have the right to terminate this Agreement upon written notice to the assigning Party. This Agreement will be binding upon, enforceable by, and inure to the

benefit of the Parties and their respective successors and assignees to the extent permitted by this Section. "**Affiliate**" means, with respect to any legally recognizable entity, any other such entity directly or indirectly controlling, controlled by, or under common control with such entity.

- 17.4 Third-Party Beneficiaries. This Agreement gives no rights or benefits to anyone other than Parametrix and Sub and has no third-party beneficiaries.
- 17.5 Survival. All express representations, covenants, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination (for any reason) for a period of three (3) years, provided, however, that the confidentiality provisions of Section 8 shall survive indefinitely.
- 17.6 Non-Waiver. No waiver of any provision of this Agreement will be effective unless it is in writing, signed by an authorized executive of the waiving Party, and labeled as a "**Waiver**," and no such waiver will constitute a waiver of any other provision(s) or of the same provision on another occasion. Non-enforcement of any provision of this Agreement by either Party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- 17.7 Severability. If a court of competent jurisdiction holds any term, covenant, or restriction of this Agreement to be illegal, invalid, or unenforceable, in whole or in part, the remaining terms, covenants, and provisions will remain in full force and effect and will in no way be affected, impaired, or invalidated. If any provision in this Agreement is determined to be unenforceable in equity, then the court making that determination will have the power to reduce or limit such provision, and such provision will be then enforceable in equity in its reduced or limited form.
- 17.8 Headings. The headings used in this Agreement are inserted for convenience only and shall not be used in the interpretation or construction of the terms hereof.
- 17.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.
- 17.10 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications with respect to that subject matter.

18. Exhibits and Schedules

The following exhibits and schedules are hereby made a part of this Agreement:

Exhibit A – Prime Agreement
Exhibit B – Scope of Work
Exhibit C – Compensation
Exhibit D – Invoice Schedule
Exhibit E – Work Completion Schedule
Exhibit F – Federal Labor Certification (to be signed)
Exhibit G – Normal and Customary Accounting Practices (to be signed)

Signature Page – Subconsultant Agreement

The Parties have caused this Agreement to be executed by their duly authorized representatives. The Agreement is effective as of the latest execution date shown below.

PARAMETRIX, INC.

SUBCONSULTANT

By: _____
(Signature)

By: _____
(Signature)

Name: Darby Watson
(Authorized Parametrix, Inc. Signatory)

Name: _____
(Please Print)

Title: Senior Vice President

Title: _____

Date: _____

Date: _____

Exhibit A

Prime Agreement

The Prime Agreement is provided on the following pages less exhibits/attachments not applicable to Sub.

Pricing information is marked out or omitted.

Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement

Agreement Number:

Firm/Organization Legal Name (do not use dba's): Parametrix, Inc.	
Address 1019 39th Avenue SE, Suite 100, Puyallup, WA 98374	Federal Aid Number N/A
UBI Number 600 135 349	Federal TIN 91-0914810
Execution Date	Completion Date 3/31/2025
1099 Form Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Federal Participation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Project Title North Hill Elementary Walkway Improvements	
Description of Work Parametrix will design improvements along approximately 800 ft. of South 200th Street from 8th Avenue South to 10th Place South and will design enhancements to a pedestrian crossing on 8th Avenue South near North Hill Elementary. Included with the engineering design will be coordination with Washington State Department of Transportation, environmental research, right-of-way acquisition, and geotechnical engineering.	
<input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No DBE Participation <input checked="" type="checkbox"/> No MBE Participation <input checked="" type="checkbox"/> No WBE Participation <input checked="" type="checkbox"/> No SBE Participation
Maximum Amount Payable [REDACTED]	

Index of Exhibits

Exhibit A	Scope of Work
Exhibit B	DBE Participation
Exhibit C	Preparation and Delivery of Electronic Engineering and Other Data
Exhibit D	Prime Consultant Cost Computations
Exhibit E	Sub-consultant Cost Computations
Exhibit F	Title VI Assurances
Exhibit G	Certification Documents
Exhibit H	Liability Insurance Increase
Exhibit I	Alleged Consultant Design Error Procedures
Exhibit J	Consultant Claim Procedures

THIS AGREEMENT, made and entered into as shown in the "Execution Date" box on page one (1) of this AGREEMENT, between the City of Des Moines, hereinafter called the "AGENCY," and the "Firm / Organization Name" referenced on page one (1) of this AGREEMENT, hereinafter called the "CONSULTANT."

WHEREAS, the AGENCY desires to accomplish the work referenced in "Description of Work" on page one (1) of this AGREEMENT and hereafter called the "SERVICES;" and does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary SERVICES; and

WHEREAS, the CONSULTANT represents that they comply with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the AGENCY.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I. General Description of Work

The work under this AGREEMENT shall consist of the above-described SERVICES as herein defined, and necessary to accomplish the completed work for this project. The CONSULTANT shall furnish all services, labor, and related equipment and, if applicable, sub-consultants and subcontractors necessary to conduct and complete the SERVICES as designated elsewhere in this AGREEMENT.

II. General Scope of Work

The Scope of Work and projected level of effort required for these SERVICES is described in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT. The General Scope of Work was developed utilizing performance based contracting methodologies.

III. General Requirements

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress, and presentation meetings with the AGENCY and/or such State, Federal, Community, City, or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days' notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit "A."

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the SERVICES in sufficient detail so that the progress of the SERVICES can easily be evaluated.

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations, and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

Participation for Disadvantaged Business Enterprises (DBE) or Small Business Enterprises (SBE), if required, per 49 CFR Part 26, shall be shown on the heading of this AGREEMENT. If DBE firms are utilized at the commencement of this AGREEMENT, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made part of this AGREEMENT. If the Prime CONSULTANT is, a DBE certified firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY's "DBE Program Participation Plan" and perform a minimum of 30% of the total amount of this AGREEMENT. It is recommended, but not required, that non-DBE Prime CONSULTANTS perform a minimum of 30% of the total amount of this AGREEMENT.

In the absence of a mandatory DBE goal, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall develop a SBE Participation Plan prior to commencing work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

The CONSULTANT, on a monthly basis, shall enter the amounts paid to all firms (including Prime) involved with this AGREEMENT into the wsdot.diversitycompliance.com program. Payment information shall identify any DBE Participation.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit "C – Preparation and Delivery of Electronic Engineering and other Data."

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for these SERVICES, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring, as a part of this SERVICE, shall be without liability or legal exposure to the CONSULTANT.

Any and all notices or requests required under this AGREEMENT shall be made in writing and sent to the other party by (i) certified mail, return receipt requested, or (ii) by email or facsimile, to the address set forth below:

If to AGENCY:

Name: Khai Le, PE
Agency: City of Des Moines
Address: 21650 11th Avenue South
City: Des Moines State: WA Zip: 98198
Email: kle@desmoineswa.gov
Phone: 206-870-6537 or Direct: 206-321-6343
Facsimile:

If to CONSULTANT:

Name: Darby Watson
Agency: Parametrix, Inc.
Address: 1019 39th Avenue SE, Suite 100
City: Puyallup State: WA Zip: 98374
Email: dwatson@parametrix.com
Phone: 206-376-2322
Facsimile: 855-542-6353

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall conform to the criteria agreed upon detailed in the AGREEMENT documents. These SERVICES must be completed by the date shown in the heading of this AGREEMENT titled "Completion Date."

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD, governmental actions, or other conditions beyond the control of the CONSULTANT. A prior supplemental AGREEMENT issued by the AGENCY is required to extend the established completion time.

V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov).

- A. Hourly Rates: Hourly rates are comprised of the following elements - Direct (Raw) Labor, Indirect Cost Rate, and Fee (Profit). The CONSULTANT shall be paid by the AGENCY for work done, based upon the negotiated hourly rates shown in Exhibits "D" and "E" attached hereto and by reference made part of this AGREEMENT. These negotiated hourly rates will be accepted based on a review of the CONSULTANT's direct labor rates and indirect cost rate computations and agreed upon fee. The accepted negotiated rates shall be memorialized in a final written acknowledgment between the parties. Such final written acknowledgment shall be incorporated into, and become a part of, this AGREEMENT. The initially accepted negotiated rates shall be applicable from the approval date, as memorialized in a final written acknowledgment, to 180 days following the CONSULTANT's fiscal year end (FYE) date.

The direct (raw) labor rates and classifications, as shown on Exhibits "D" and "E" shall be subject to renegotiations for each subsequent twelve (12) month period (180 days following FYE date to 180 days following FYE date) upon written request of the CONSULTANT or the AGENCY. The written request must be made to the other party within ninety (90) days following the CONSULTANT's FYE date. If no such written request is made, the current direct (raw) labor rates and classifications as shown on Exhibits "D" and "E" will remain in effect for the twelve (12) month period.

Conversely, if a timely request is made in the manner set forth above, the parties will commence negotiations to determine the new direct (raw) labor rates and classifications that will be applicable for the twelve (12) month period. Any agreed to renegotiated rates shall be memorialized in a final written acknowledgment between the parties. Such final written acknowledgment shall be incorporated into, and become a part of, this AGREEMENT. If requested, the CONSULTANT shall provide current payroll register and classifications to aid in negotiations. If the parties cannot reach an agreement on the direct (raw) labor rates and classifications, the AGENCY shall perform an audit of the CONSULTANT's books and records to determine the CONSULTANT's actual costs. The audit findings will establish the direct (raw) labor rates and classifications that will be applicable for the twelve (12) month period.

The fee as identified in Exhibits "D" and "E" shall represent a value to be applied throughout the life of the AGREEMENT.

The CONSULTANT shall submit annually to the AGENCY an updated indirect cost rate within 180 days of the close of its fiscal year. An approved updated indirect cost rate shall be included in the current fiscal year rate under this AGREEMENT, even if/when other components of the hourly rate are not renegotiated. These rates will be applicable for the twelve (12) month period. At the AGENCY's option, a provisional and/or conditional indirect cost rate may be negotiated. This provisional or conditional indirect rate shall remain in effect until the updated indirect cost rate is completed and approved. Indirect cost rate costs incurred during the provisional or conditional period will not be adjusted. The CONSULTANT may request an extension of the last approved indirect cost rate for the twelve (12) month period. These requests for provisional indirect cost rate and/or extension will be considered on a case-by-case basis, and if granted, will be memorialized in a final written acknowledgment.

The CONSULTANT shall maintain and have accessible support data for verification of the components of the hourly rates, i.e., direct (raw) labor, indirect cost rate, and fee (profit) percentage. The CONSULTANT shall bill each employee's actual classification, and actual salary plus indirect cost rate plus fee.

- A. **Direct Non-Salary Costs:** Direct Non-Salary Costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of sub-consultants. Air or train travel will be reimbursed only to lowest price available, unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the WSDOT's Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and all revisions thereto. Air, train, and rental card costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for Direct Non-salary Costs shall include an itemized listing of the charges directly identifiable with these SERVICES. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the SERVICES provided under this AGREEMENT.
- B. **Maximum Amount Payable:** The Maximum Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT on page one (1.) The Maximum Amount Payable does not include payment for extra work as stipulated in section XIII, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- C. **Monthly Progress Payments:** Progress payments may be claimed on a monthly basis for all costs authorized in A and B. above. Detailed statements shall support the monthly billings for hours expended at the rates established in Exhibit "D," including names and classifications of all employees, and billings for all direct non-salary expenses. To provide a means of verifying the billed salary costs for the CONSULTANT's employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the SERVICES at the time of the interview.
- D. **Final Payment:** Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the SERVICES under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data, and other related documents, which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. Per WSDOT's "Audit Guide for Consultants," Chapter 23 "Resolution Procedures," the CONSULTANT has twenty (20) working days after receipt of the final Post Audit to begin the appeal process to the AGENCY for audit findings

E. **Inspection of Cost Records:** The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of six (6) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this AGREEMENT is initiated before the expiration of the six (6) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed. An interim or post audit may be performed on this AGREEMENT. The audit, if any, will be performed by the State Auditor, WSDOT's Internal Audit Office and /or at the request of the AGENCY's Project Manager.

VI. Sub-Contracting

The AGENCY permits subcontracts for those items of SERVICES as shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any SERVICE under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and sub-consultant, any contract or any other relationship.

Compensation for this sub-consultant SERVICES shall be based on the cost factors shown on Exhibit "E" attached hereto and by this reference made part of this AGREEMENT.

The SERVICES of the sub-consultant shall not exceed its maximum amount payable identified in each sub consultant cost estimate unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, indirect cost rate, direct non-salary costs and fee costs for the sub-consultant shall be negotiated and substantiated in accordance with section V "Payment Provisions" herein and shall be memorialized in a final written acknowledgment between the parties

All subcontracts shall contain all applicable provisions of this AGREEMENT, and the CONSULTANT shall require each sub-consultant or subcontractor, of any tier, to abide by the terms and conditions of this AGREEMENT. With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the STATE's Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT, sub-recipient, or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the recipient deems appropriate.

VII. Employment and Organizational Conflict of Interest

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from this AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of the United States Department of Transportation or the AGENCY, except regularly retired employees, without written consent of the public employer of such person if he/she will be working on this AGREEMENT for the CONSULTANT.

Agreement Number:

VIII. Nondiscrimination

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, sub-consultants, subcontractors and successors in interest, agrees to comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. Chapter 21 Subchapter V § 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973 (23 U.S.C. Chapter 3 § 324)
- Rehabilitation Act of 1973 (29 U.S.C. Chapter 16 Subchapter V § 794)
- Age Discrimination Act of 1975 (42 U.S.C. Chapter 76 § 6101 *et. seq.*)
- Civil Rights Restoration Act of 1987 (Public Law 100-259)
- American with Disabilities Act of 1990 (42 U.S.C. Chapter 126 § 12101 *et. seq.*)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "F" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "F" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX. Termination of Agreement

The right is reserved by the AGENCY to terminate this AGREEMENT at any time with or without cause upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY, other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT, plus any direct non-salary costs incurred up to the time of termination of this AGREEMENT.

No payment shall be made for any SERVICES completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth in paragraph two (2) of this section, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In the event of a termination for default, the amount to be paid to the CONSULTANT shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing SERVICES to the date of termination, the amount of SERVICES originally required which was satisfactorily completed to date of termination, whether that SERVICE is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the SERVICES required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the SERVICES performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in paragraph two (2) of this section.

If it is determined for any reason, that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or its employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

The CONSULTANT shall, within 15 days, notify the AGENCY in writing, in the event of the death of any member, partner, or officer of the CONSULTANT or the death or change of any of the CONSULTANT's supervisory and/or other key personnel assigned to the project or disaffiliation of any principally involved CONSULTANT employee.

The CONSULTANT shall also notify the AGENCY, in writing, in the event of the sale or transfer of 50% or more of the beneficial ownership of the CONSULTANT within 15 days of such sale or transfer occurring. The CONSULTANT shall continue to be obligated to complete the SERVICES under the terms of this AGREEMENT unless the AGENCY chooses to terminate this AGREEMENT for convenience or chooses to renegotiate any term(s) of this AGREEMENT. If termination for convenience occurs, final payment will be made to the CONSULTANT as set forth in the second and third paragraphs of this section.

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY.

Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X. Changes of Work

The CONSULTANT shall make such changes and revisions in the completed work of this AGREEMENT as necessary to correct errors appearing therein, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed SERVICES or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under section XIII "Extra Work."

XI. Disputes

Any disputed issue not resolved pursuant to the terms of this AGREEMENT shall be submitted in writing within 10 days to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J". In the event that either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this AGREEMENT, this action shall be initiated in the Superior Court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in the county in which the AGENCY is located.

XII. Legal Relations

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall defend, indemnify, and hold the State of Washington (STATE) and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT

to defend or indemnify the STATE and the AGENCY and their officers and employees against and hold harmless the STATE and the AGENCY and their officers and employees from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this AGREEMENT by the STATE and the AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the STATE and /or the AGENCY may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT is legally liable, and (b) the STATE and/or AGENCY, their agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE and/or AGENCY may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable. This provision shall be included in any AGREEMENT between CONSULTANT and any sub-consultant, subcontractor and vendor, of any tier.

The CONSULTANT shall also defend, indemnify, and hold the STATE and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable, in performance of the Work under this AGREEMENT or arising out of any use in connection with the AGREEMENT of methods, processes, designs, information or other items furnished or communicated to STATE and/or the AGENCY, their agents, officers and employees pursuant to the AGREEMENT; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from STATE and/or AGENCY's, their agents', officers and employees' failure to comply with specific written instructions regarding use provided to STATE and/or AGENCY, their agents, officers and employees by the CONSULTANT, its agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

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

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees or its agents against the STATE and/or the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. The Parties have mutually negotiated this waiver.

Unless otherwise specified in this AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of a new sole source, or an acceptable supplemental AGREEMENT, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of this AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate for each policy period.
- C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any "Auto" (Symbol 1) used in an amount not less than a one million dollar (\$1,000,000.00) combined single limit for each occurrence.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance, the STATE and AGENCY, their officers, employees, and agents will be named on all policies of CONSULTANT and any sub-consultant and/or subcontractor as an additional insured (the "AIs"), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The CONSULTANT's and the sub-consultant's and/or subcontractor's insurer shall waive any and all rights of subrogation against the AIs. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Name: Khai Le, PE
Agency: City of Des Moines
Address: 21650 11th Avenue South
City: Des Moines State: WA Zip: 98198
Email: kle@desmoineswa.gov
Phone: 206-870-6537 or Direct: 206-321-6343
Facsimile:

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY, including that which may arise in reference to section IX "Termination of Agreement" of this AGREEMENT, shall be limited to the accumulative amount of the authorized AGREEMENT or one million dollars (\$1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The parties enter into this AGREEMENT for the sole benefit of the parties, and to the exclusion of any third party, and no third party beneficiary is intended or created by the execution of this AGREEMENT.

The AGENCY will pay no progress payments under section V "Payment Provisions" until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIII. Extra Work

- A. The AGENCY may at any time, by written order, make changes within the general scope of this AGREEMENT in the SERVICES to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the SERVICES under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the AGENCY shall make an equitable adjustment in the: (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment," hereafter referred to as "CLAIM," under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of this AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the section XI "Disputes" clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A.) and (B.) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XIV. Endorsement of Plans

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

XV. Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the SERVICES in progress.

XVI. Certification of the Consultant and the Agency

Attached hereto as Exhibit "G-1(a and b)" are the Certifications of the CONSULTANT and the AGENCY, Exhibit "G-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "G-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "G-4" Certificate of Current Cost or Pricing Data. Exhibit "G-3" is required only in AGREEMENTS over one hundred thousand dollars (\$100,000.00) and Exhibit "G-4" is required only in AGREEMENTS over five hundred thousand dollars (\$500,000.00.) These Exhibits must be executed by the CONSULTANT, and submitted with the master AGREEMENT, and returned to the AGENCY at the address listed in section III "General Requirements" prior to its performance of any SERVICES under this AGREEMENT.

XVII. Complete Agreement

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as a supplement to this AGREEMENT.

XVIII. Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and AGREEMENT's contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept this AGREEMENT and agrees to all of the terms and conditions thereof.

XIX. Protection of Confidential Information

The CONSULTANT acknowledges that some of the material and information that may come into its possession or knowledge in connection with this AGREEMENT or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other local, state, or federal statutes ("State's Confidential Information"). The "State's Confidential Information" includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles credit card information, driver's license numbers, medical data, law enforcement records (or any other information identifiable to an individual), STATE and AGENCY source code or object code, STATE and AGENCY security data, non-public Specifications, STATE and AGENCY non-publicly available data, proprietary software, STATE and AGENCY security data, or information which may jeopardize any part of the project that relates to any of these types of information. The CONSULTANT agrees to hold the State's Confidential Information in strictest confidence and not to make use of the State's Confidential Information for any purpose other than the performance of this AGREEMENT, to release it only to authorized employees, sub-consultants or subcontractors requiring such information for the purposes of carrying out this AGREEMENT, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without the AGENCY's express written consent or as provided by law. The CONSULTANT agrees to release such information or material only to employees, sub-consultants or subcontractors who have signed a nondisclosure AGREEMENT, the terms of which have been previously approved by the AGENCY. The CONSULTANT agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to the State's Confidential Information.

Immediately upon expiration or termination of this AGREEMENT, the CONSULTANT shall, at the AGENCY's option: (i) certify to the AGENCY that the CONSULTANT has destroyed all of the State's Confidential Information; or (ii) returned all of the State's Confidential Information to the AGENCY; or (iii) take whatever other steps the AGENCY requires of the CONSULTANT to protect the State's Confidential Information.

As required under Executive Order 00-03, the CONSULTANT shall maintain a log documenting the following: the State's Confidential Information received in the performance of this AGREEMENT; the purpose(s) for which the State's Confidential Information was received; who received, maintained, and used the State's Confidential Information; and the final disposition of the State's Confidential Information. The CONSULTANT's records shall be subject to inspection, review, or audit upon reasonable notice from the AGENCY.

The AGENCY reserves the right to monitor, audit, or investigate the use of the State's Confidential Information collected, used, or acquired by the CONSULTANT through this AGREEMENT. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by the CONSULTANT or its sub-consultants or subcontractors may result in termination of this AGREEMENT and demand for return of all State's Confidential Information, monetary damages, or penalties

It is understood and acknowledged that the CONSULTANT may provide the AGENCY with information, which is proprietary and/or confidential during the term of this AGREEMENT. The parties agree to maintain the confidentiality of such information during the term of this AGREEMENT and afterwards. All materials containing such proprietary and/or confidential information shall be clearly identified and marked as "Confidential" and shall be returned to the disclosing party at the conclusion of the SERVICES under this AGREEMENT.

The CONSULTANT shall provide the AGENCY with a list of all information and materials it considers confidential and/or proprietary in nature: (a) at the commencement of the term of this AGREEMENT, or (b) as soon as such confidential or proprietary material is developed. "Proprietary and/or confidential information" is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

The parties also acknowledge that the AGENCY is subject to Washington State and federal public disclosure laws. As such, the AGENCY shall maintain the confidentiality of all such information marked proprietary and or confidential or otherwise exempt, unless such disclosure is required under applicable state or federal law. If a public disclosure request is made to view materials identified as "Proprietary and/or confidential information" or otherwise exempt information, the AGENCY will notify the CONSULTANT of the request and of the date that such records will be released to the requester unless the CONSULTANT obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the CONSULTANT fails to obtain the court order enjoining disclosure, the AGENCY will release the requested information on the date specified.

The CONSULTANT agrees to notify the sub-consultant of any AGENCY communication regarding disclosure that may include a sub-consultant's proprietary and/or confidential information. The CONSULTANT notification to the sub-consultant will include the date that such records will be released by the AGENCY to the requester and state that unless the sub-consultant obtains a court order from a court of competent jurisdiction enjoining that disclosure the AGENCY will release the requested information. If the CONSULTANT and/or sub-consultant fail to obtain a court order or other judicial relief enjoining the AGENCY by the release date, the CONSULTANT shall waive and release and shall hold harmless and indemnify the AGENCY from all claims of actual or alleged damages, liabilities, or costs associated with the AGENCY's said disclosure of sub-consultants' information.

XX. Records Maintenance

During the progress of the Work and SERVICES provided hereunder and for a period of not less than six (6) years from the date of final payment to the CONSULTANT, the CONSULTANT shall keep, retain, and maintain all "documents" pertaining to the SERVICES provided pursuant to this AGREEMENT. Copies of all "documents" pertaining to the SERVICES provided hereunder shall be made available for review at the CONSULTANT's place of business during normal working hours. If any litigation, claim, or audit is commenced, the CONSULTANT shall cooperate with AGENCY and assist in the production of all such documents. "Documents" shall be retained until all litigation, claims or audit findings have been resolved even though such litigation, claim, or audit continues past the six (6) year retention period.

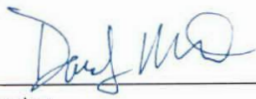
For purposes of this AGREEMENT, "documents" means every writing or record of every type and description, including electronically stored information ("ESI"), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, AGREEMENTS, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbles, recordings, visual displays, photographs, minutes of meetings, tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of the CONSULTANT, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

For purposes of this AGREEMENT, "ESI" means any and all computer data or electronic recorded media of any kind, including "Native Files", that are stored in any medium from which it can be retrieved and examined, either directly or after translation into a reasonably useable form. ESI may include information and/or documentation stored in various software programs such as Email, Outlook, Word, Excel, Access, Publisher, PowerPoint, Adobe Acrobat, SQL databases, or any other software or electronic communication programs or databases that the CONSULTANT may use in the performance of its operations. ESI may be located on network servers, backup tapes, smart phones, thumb drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops, or any other electronic device that CONSULTANT uses in the performance of its Work or SERVICES hereunder, including any personal devices used by the CONSULTANT or any sub-consultant at home.

"Native files" are a subset of ESI and refer to the electronic format of the application in which such ESI is normally created, viewed, and /or modified

The CONSULTANT shall include this section XX "Records Maintenance" in every subcontract it enters into in relation to this AGREEMENT and bind the sub-consultant to its terms, unless expressly agreed to otherwise in writing by the AGENCY prior to the execution of such subcontract.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.



Signature

9/27/2023

Date



Signature

10/25/2023 Note: City did not date.
This is the date it was emailed to us.

Date

Any modification, change, or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

Approved as to Form:
/s/ Tim George
City Attorney
10/24/2023

Exhibit A
Scope of Work

Project No.

See Scope of Work on the following pages.

SCOPE OF WORK

City of Des Moines
North Hill Elementary Walkway Improvements
South 200th Street - 8th Avenue S to 10th Place S

PROJECT UNDERSTANDING

The City of Des Moines has requested that Parametrix prepare this scope of services for the design improvements along approximately 800 feet of S 200th Street, from 8th Avenue S to 10th Place S. This corridor has a speed limit of 25 mph outside the school zone and 20 mph within the school zone. The proposed roadway sections will have two 10-foot-wide vehicular lanes and 5-foot-wide bike lanes. Improvements include:

1. At the intersection of S 200th Street and 8th Avenue S:
 - a. Three ADA-compliant curb ramps.
 - b. Marked crossings.
 - c. Illumination for marked crossings.
2. Along S 200th Street, from 8th Avenue S to 10th Place S:
 - a. 6-foot sidewalk with curb and gutter along both sides.
 - b. 32 ADA-compliant curb ramps (3 intersection curb ramps and 29 driveway/ sidewalk ramps).
 - c. Marked bike lanes.
 - d. Two speed feedback signs, on either side of S 200th Street, near 10th Place S.
3. At the intersection of 8th Avenue S and north school entrance driveway:
 - a. Two rectangular rapid flashing beacons (RRFBs) on each side of 8th Avenue S.
 - b. Curb ramps, median refuge island and restriping lane configurations.
 - c. Marked crossings.
 - d. Illumination for marked crossings.

SCHEDULE

The budget estimate assumes the following schedule:

Begin Design	10/2023
Environmental Documents Approved	06/2024
Right-of-Way Approved	01/2025
Estimated Contract Ad	02/2025

TASK 01 – PROJECT MANAGEMENT AND QA/QC

Approach

Parametrix will be responsible for continuous tracking and contract administration of this project, including coordination of work efforts with the City's project manager and coordination with subconsultants.

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.
- Biweekly design team meetings with an issues list to document project design decisions, with meetings occurring more frequently as needed.
- 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.
- Coordination with Washington State Department of Transportation (WSDOT).

Internal review quality assurance/quality control (QA/QC) will be performed to ensure that design concepts are sound and cost effective, that design concepts have been incorporated, and that documents are accurate and consistent.

Deliverables

Deliverables for this task include:

- Contractual documents for signature by the City.
- Project schedule.
- Miscellaneous correspondence to document project management issues.
- Monthly progress reports enclosed with invoices.

Assumptions

Assumptions for this task include:

- Project duration is 17 months from the notice to proceed.
- Budget assumes 40 meetings.
- Review comments will be for internal use, with documentation available to City staff upon request.

TASK 02 – MAPPING

Approach

Parametrix will provide topographic mapping and right of way determination and prepare an AutoCAD Civil 3D format base map identifying existing conditions and improvements to support design efforts. Parametrix will map the following limits as shown on Exhibit A (located on page 5):

- Beginning 100 feet west of the intersection of S 200th Street and 8th Avenue S, and ending 100 feet east of the intersection of S 200th Street and 10th Place S; approximately 1,000 linear feet
- 730 linear feet north of the intersection of S 200th Street and 8th Avenue S
- 100 linear feet south of the intersection of S 200th and 8th Avenue S
- 100 linear feet north along 9th Avenue S
- 100 linear feet north along 10th Place S
- Northerly driveway of the North Hill Elementary School and the northerly driveway of Southminster Presbyterian Church.
- Roadway channelization extending 100 linear feet north of the north driveway of North Hill Elementary School (No topography will be included other than channelization in this area).
- The sidewalk, curb, and gutter on the north side of S 200th Street between 10th Place S and Des Moines Memorial Drive, including all adjacent utilities.
- Parametrix will map the adjacent residential property driveway limits to the face of structure or back of driveway (18 total driveways)

TOPOGRAPHIC ELEMENTS

Topographic elements consist of information shown on a map which depicts the horizontal and vertical positions of natural and/or fabricated features and existing terrain surfaces. The topographic mapping will include evidence of, including but not limited to, the following improvements:

- | | | |
|--------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| • Buildings | • Storm drainage and storm drain structures | • Meters or utility connects to existing buildings |
| • Curbs | • Sanitary sewer manholes and/or septic tank/drain field areas as identified to our field survey crew by the City | • Water valve boxes |
| • Sidewalks/paths | • Electrical power vaults and associated surface features | • Fire hydrants |
| • Driveways/curb cuts | • Overhead wires, guy wires | • Telephone pedestals |
| • Pavement delineation between concrete and asphalt | • Natural gas | • Signage |
| • Retaining walls, bulkheads, and fences – materials and heights | • Cable or fiber optic pedestals | • Ponds |
| • Underground utility location paint marks set by others, if visible at time of the field survey | | • Street lighting |
| | | • All trees with drip lines |

SCOPE OF WORK (continued)

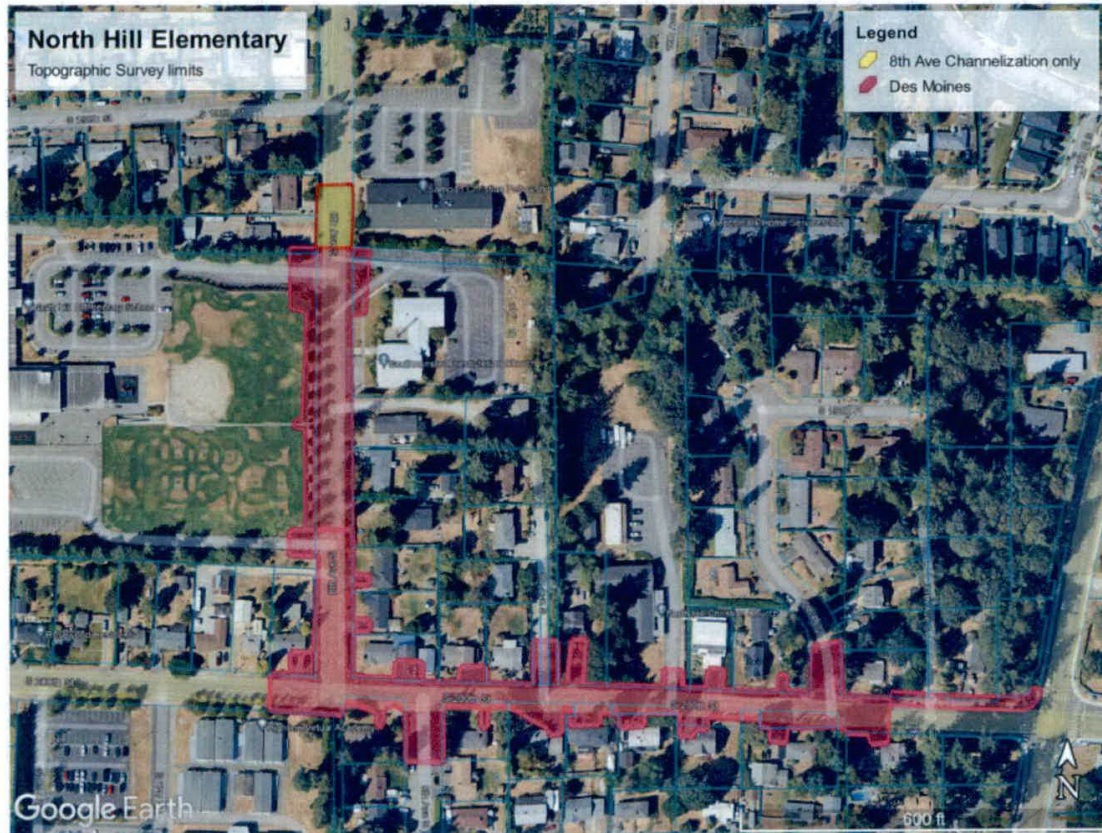
Assumptions

- Parametrix will be provided reasonable access to all areas requiring surveys.
- Parametrix will be provided right of entry on location of private property.
- Parametrix field crews may need to perform minor brushing with machetes to conduct this survey, and we have the City's permission to do so.
- Horizontal datum shall be North American Datum (NAD) 83/11 Washington Coordinate System, North Zone, and vertical datum shall be North American Vertical Datum of 1988 (NAVD 88).
- Base map will be developed using Parametrix Survey Mapping Standards.
- Right of entry will not be necessary to survey driveway lengths. The City will provide contact information to the survey crew, who can distribute the information to the property owners should they inquire about the survey effort. It is assumed that the survey crew will have unrestricted access to make measurements.
- The setting of any survey monuments at any of the right-of-way points of the subject properties has not been included in this proposal. The right-of-way of the property will be merged into the topographic mapping, as appropriate, and shown for graphical purposes only. This service can be provided if required at a later date; however, any setting of property corners, and filing of a record of survey (if required) will be considered Additional Services and billed separately as described below in Task MR.
- For safety reasons, our survey crews are not allowed to enter subsurface vaults. Our work will be conducted from the surface, using measure-down techniques. Crews will also not open any structure covers in excess of 80 pounds.

Deliverables

- Base map, in Civil 3D 2022 drawing file format of the right-of-way and topographic survey at a 1":40' scale unless otherwise directed.

Exhibit A



TASK 03 – RIGHT-OF-WAY ACQUISITION

Subtask 03.1 – Right-of-Way Acquisition (Epic, Inc.)

Approach

See scope of work prepared by Epic, Inc. in Exhibit E of the Local Agency Agreement.

Assumptions

See scope of work prepared by Epic, Inc. in Exhibit E of the Local Agency Agreement.

Deliverable

See scope of work prepared by Epic, Inc. in Exhibit E of the Local Agency Agreement.

SCOPE OF WORK (continued)

Subtask 03.2 – Right-of-Way Acquisition (Parametrix)

Approach

Parametrix will assist Epic, Inc. with the acquisition of temporary construction easements (TCEs) for 18 parcels. Parametrix will prepare a right-of-way map and up to 18 figures showing TCE lines, proposed project design features, and existing surveyed base map features for affected properties.

Assumptions

- TCEs are to be recorded at the City's discretion and, therefore, will require legal descriptions and exhibits.
- One iteration of right-of-way plan redline/comments are included in this proposal.

Deliverable

- Right-of-way plan and up to 18 figures showing property impacts.

Subtask 03.3 – Right-of-Way Plans

Approach

Parametrix will prepare right-of-way plans that depict the partial acquisition and TCE boundaries needed to construct the project. The plans will include parcel number and areas of both acquisition and TCEs. The right-of-way plans will be used by Epic, Inc., for the project funding estimate and may be used during property negotiations.

Assumptions

- Right-of-way plans will be half-size (11 by 17 inches) plans delivered in electronic format (PDF).
- One iteration of redlines/comments included in this proposal.

Deliverable

- Right-of-way plans and up to 18 figures showing property impacts in electronic format (PDF).

Subtask 03.4 – Legal Descriptions and Exhibits

Approach

Parametrix will prepare legal descriptions for the partial acquisitions and exhibits that depict both the partial acquisitions and TCE areas suitable for recording by the City.

Assumptions

- Legal descriptions and easements will be letter size (8.5"x11").
- Up to 18 legal descriptions and associated exhibits will be provided in electronic format (PDF).

SCOPE OF WORK (continued)

TASK 04 – GEOTECHNICAL

Approach

See scope of work prepared by PanGEO, Inc. in Exhibit E of the Local Agency Agreement.

Assumptions

See scope of work prepared by PanGEO, Inc. in Exhibit E of the Local Agency Agreement.

Deliverable

See scope of work prepared by PanGEO, Inc. in Exhibit E of the Local Agency Agreement.

TASK 05 – UTILITY COORDINATION

Approach

Parametrix will prepare a utility conflict map showing anticipated and/or potential conflicts between utilities as located in the field and proposed improvements.

Assumptions

- The City will schedule and facilitate all utility coordination meetings.
- The City will coordinate with Puget Sound Energy (PSE) on roadway illumination lighting.

Deliverable

- Utility conflict plans in electronic format (PDF).

TASK 06 – CONCEPTUAL DESIGN (15%)

Approach

Parametrix will prepare a preliminary conceptual plan to the 15% design level. The concepts will include different roadway centerline alignments based on limiting the project footprint while providing a maneuverable and safe corridor.

Assumptions

- This work will be completed once the survey base mapping is complete to ensure vertical tie-in accuracy.
- Up to three conceptual designs will be provided.

Deliverable

- Up to three conceptual designs in electronic format (PDF).
- Preliminary opinion of cost in electronic format (PDF).

TASK 07 – 30% DESIGN

Approach

Parametrix will prepare preliminary plans to the 30% design level. The design will establish the footprint of the project to ensure the project can be constructed within the existing right-of-way. This footprint will provide a basis for an opinion of cost. The following design aspects will be included as part of this submittal:

- Cover, Vicinity Map, and Sheet Index.
- Legend and Symbols.
- Existing Conditions/Horizontal Control Plan.
- Typical Roadway Sections.
- Demolition and temporary erosion and sediment control (TESC).
- Roadway Plan and Profile.
- Storm Drain Plan and Profile.
- Channelization and Signing Plan.
- Illumination Plan and Details.
- WSDOT/City Standard Details.
- Enhanced Crossing, Details.
- Retaining Wall Plan and Profile.

Assumptions

- Documents and figures will be prepared using Parametrix's internal company production standards.
- Plans will be prepared in AutoCAD Civil 3D, version 2022.
- The following design aspects will not be included as part of this submittal:
 - Intersection grading.
 - Curb ramp details.
 - Driveway details.
 - Traffic control plans.
 - Miscellaneous details, such as for retaining walls and RRFBs.
 - Specifications.
- Solar radar feedback signs will be used.
- Lighting at 8th Avenue S and School Entrance/S 200th Street will be from the existing service at S 200th Street and 8th Avenue S.
- Lighting at 10th Place S and S 200th will be from the existing service at S 200th Street and Des Moines Memorial Drive.
- Pole and fixtures will not be decorative.

SCOPE OF WORK (continued)

Deliverable

- Half-size (11 by 17 inches) preliminary plans in electronic format (PDF).
- Preliminary opinion of cost in Microsoft Excel format (.xlsx).

TASK 08 – 60% DESIGN

Approach

Parametrix will incorporate 30% review comments and prepare plans to the 60% design level.

Assumptions

- Documents and figures will be prepared using Parametrix's internal company production standards.
- Plans will be prepared in AutoCAD Civil 3D, version 2022.
- Up to 18 driveway profiles are anticipated for this project.

Deliverable

- Half-size (11 by 17 inches) plans in electronic format (PDF).
- Preliminary opinion of cost in Microsoft Excel format (.xlsx).
- Draft Stormwater Technical Information Report (TIR) in electronic format (PDF).

TASK 09 – 90% DESIGN

Approach

Parametrix will incorporate comments from the 60% review submittal and prepare plans to the 90% design level. Right-of-way plans will be included as part of this design level. Additionally, a field walk with the City will be included to assess any additional impacts and property considerations.

Assumptions

- 60% submittal City comments will be reviewed and discussed in one coordination meeting.
- City will provide standard legal documents as adopted by the City for reference and inclusion in the specification.
- Contract documents will be prepared using the 2024 WSDOT Standard Specifications.
- Parametrix will provide stormwater pollution and prevention plan (SWPPP) documentation for permitting and contractor use.

Deliverable

- Half-size (11 by 17 inches) plans in electronic format (PDF).
- Preliminary opinion of Cost in Microsoft Excel format (.xlsx).
- Updated Draft Stormwater TIR and SWPPP documentation for contractor use in electronic format (PDF).
- Right-of-way plans in electronic format (PDF).

SCOPE OF WORK (continued)

- Responses to review comments on the 60% submittal in electronic format (PDF).
- Specifications in electronic format (PDF).

TASK 10 – FINAL DESIGN AND CONTRACT DOCUMENTS

Approach

Parametrix will incorporate comments from the 90% review submittal and prepare plans to the final design level.

Assumptions

- 90% submittal City comments will be reviewed and discussed in one coordination meeting.

Deliverable

- Final bidding documents will include five sets of contract documents, including contract specifications and half size (11 by 17 inches) plans and an electronic (PDF) copy of the same for use by the online bidding center.
- Final opinion of cost in Microsoft Excel format (.xlsx).
- Final Stormwater TIR in electronic format (PDF).
- Responses to review comments on the 90% submittal in electronic format (PDF).

TASK 11 – BIDDING ASSISTANCE

Approach

Parametrix will assist the City during project bidding on an as-requested basis.

Assumptions

- 32 hours of engineering time and 12 hours of project manager time have been budgeted.
- Should requests go beyond the estimated hours, Parametrix will notify the City and additional budget could be utilized under the Management Reserve task.

TASK MR – MANAGEMENT RESERVE

Approach

Parametrix will assist the City with additional services on an as-need basis for unanticipated/out of scope work items.

Assumptions

- Parametrix will not proceed with work under this task until the City reviews the proposal for the additional work, authorizes the work, and has issued Parametrix a notice to proceed with the work.

SCOPE OF WORK (continued)

SHEET INDEX

Sheet Index	Sheets
Cover, Vicinity Map, and Sheet Index	2
Legend and Symbols	1
Existing Conditions/Horizontal Control Plan	2
Typical Roadway Sections	1
Demolition and TESC (aka Site Prep)	2
Roadway Plan and Profile	2
Storm Drain Plan and Profile	2
Channelization and Signing Plan	4
Intersection Grading Plan	4
Curb Ramp Details	4
Driveway Details	18
Illumination and Speed Sign Plan and Details	4
Details	2
WSDOT/City Standard Details	12
Enhanced Crossings (RRFB) and Details	2
Retaining Wall Plan and Profile	7
Traffic Control Plans	<u>5</u>
Total:	74

Exhibit B
DBE Participation Plan

In the absents of a mandatory DBE goal, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall develop a SBE Participation Plan prior to commencing work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

Not applicable.

Exhibit C

Preparation and Delivery of Electronic Engineering and Other Data

In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following:

I. Surveying, Roadway Design & Plans Preparation Section

A. Survey Data

Hard copy field books, all raw data, collection files, and text point files (comma delineated), AutoCAD, and Civil 3D

B. Roadway Design Files

AutoCAD and Civil 3D

C. Computer Aided Drafting Files

AutoCAD and Civil 3D

D. Specify the Agency's Right to Review Product with the Consultant

The Agency retains ownership of all electronic files created.

E. Specify the Electronic Deliverables to Be Provided to the Agency

AutoCAD, Civil 3D drawings, and signed and sealed PDFs

F. Specify What Agency Furnished Services and Information Is to Be Provided

Record drawings, GIS information, aerial and LiDAR

II. Any Other Electronic Files to Be Provided

As deemed necessary by agreement of the Agency and Consultant.

III. Methods to Electronically Exchange Data

FTP, email, and MS Teams

A. Agency Software Suite

AutoCAD and Civil 3D

B. Electronic Messaging System

Email and MS Teams

C. File Transfers Format

Standard formats for software noted above

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, (*Federal Highway Administration*), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21. *[Include Washington State Department of Transportation specific program requirements.]*
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin. *[Include Washington State Department of Transportation specific program requirements.]*
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the (*Federal Highway Administration*) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the (*Federal Highway Administration*), as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the (*Federal Highway Administration*) may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the (*Federal Highway Administration*) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

Exhibit G ***Certification Document***

- Exhibit G-1(a) Certification of Consultant
- Exhibit G-1(b) Certification of Agency
- Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions
- Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying
- Exhibit G-4 Certificate of Current Cost or Pricing Data

Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the and duly authorized representative of the firm of
Parametrix, Inc.

whose address is

1019 39th Avenue SE, Suite 100, Puyallup, WA 98374

and that neither the above firm nor I have

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this AGREEMENT;
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be furnished to the Washington State Department of Transportation

and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Parametrix, Inc.

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

9/27/2023

Date

Exhibit G-1(b) Certification of Agency

I hereby certify that I am the:

☐

☐ Other

of the City of Des Moines, and Parametrix, Inc.

or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this AGREEMENT to:

- a) Employ or retain, or agree to employ to retain, any firm or person; or
- b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Washington State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.



Signature

Date

Exhibit G-2 Certification Regarding Debarment Suspension and Other Responsibility Matters - Primary Covered Transactions

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - B. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (I)(b) of this certification; an
 - D. Have not within a three (3) year period preceding this application / proposal had one or more public transactions (Federal, State and local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification such prospective participant shall attach an explanation to this proposal.

Parametrix, Inc.

Consultant (Firm Name)


Signature (Authorized Official of Consultant)

9/27/2023

Date

Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

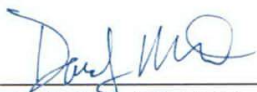
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative AGREEMENT, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00, and not more than \$100,000.00 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier sub-contracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Parametrix, Inc.

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

9/27/2023

Date

Exhibit G-4 Certification of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of North Hill Elementary Walkway Improvements * are accurate, complete, and current as of September 26, 2023 **.

This certification includes the cost or pricing data supporting any advance AGREEMENT's and forward pricing rate AGREEMENT's between the offer or and the Government that are part of the proposal.

Firm: Parametrix, Inc.



Signature

Senior Vice President

Title

Date of Execution 9/27/2023 ***:

*Identify the proposal, quotation, request for pricing adjustment, or other submission involved, giving the appropriate identifying number (e.g. project title.)

**Insert the day, month, and year, when price negotiations were concluded and price AGREEMENT was reached.

***Insert the day, month, and year, of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

*Local Agency A&E Professional Services
Negotiated Hourly Rate Consultant Agreement*

Revised 07/30/2021

Agreement Number _____

Not Applicable

Exhibit H ***Liability Insurance Increase***

To Be Used Only If Insurance Requirements Are Increased

The professional liability limit of the CONSULTANT to the AGENCY identified in Section XII, Legal Relations and Insurance of this Agreement is amended to \$ N/A.

The CONSULTANT shall provide Professional Liability insurance with minimum per occurrence limits in the amount of \$ N/A.

Such insurance coverage shall be evidenced by one of the following methods:

- Certificate of Insurance
- Self-insurance through an irrevocable Letter of Credit from a qualified financial institution

Self-insurance through documentation of a separate fund established exclusively for the payment of professional liability claims, including claim amounts already reserved against the fund, safeguards established for payment from the fund, a copy of the latest annual financial statements, and disclosure of the investment portfolio for those funds.

Should the minimum Professional Liability insurance limit required by the AGENCY as specified above exceed \$1 million per occurrence or the value of the contract, whichever is greater, then justification shall be submitted to the Federal Highway Administration (FHWA) for approval to increase the minimum insurance limit.

If FHWA approval is obtained, the AGENCY may, at its own cost, reimburse the CONSULTANT for the additional professional liability insurance required.

Notes: Cost of added insurance requirements: \$ N/A.

- Include all costs, fee increase, premiums.
- This cost shall not be billed against an FHWA funded project.
- For final contracts, include this exhibit

N/A

Exhibit I

Alleged Consultant Design Error Procedures

The purpose of this exhibit is to establish a procedure to determine if a consultant has alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

Step 1 Potential Consultant Design Error(s) is Identified by Agency's Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

Step 2 Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer's concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include all decisions and descriptions of work, photographs, records of labor, materials, and equipment.

Step 3 Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

Step 4 Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant's agreement with the agency for the services on the project in which the design error took place. The agency is to provide LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.
- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

Step 5 Forward Documents to Local Programs

For federally funded projects, all available information, including costs, should be forwarded through the Region Local Programs Engineer to LP for their review and consultation with the FHWA. LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, LP will request assistance from the Attorney General's Office for legal interpretation. LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

Exhibit J

Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) total a \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

Step 2 Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will meet with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

Step 3 Preparation of Support Documentation Regarding Consultant's Claim(s)

If the Agency does not agree with the consultant's claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency's summation of hours by classification for each firm that should be included in the claim
- Any correspondence that directed the consultant to perform the additional work;
- Agency's summary of direct labor dollars, overhead costs, profit and reimbursable costs associate with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

Step 4 Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

Step 5 Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

Step 6 Preparation of Supplement or New Agreement for the Consultant's Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit

Exhibit B

Scope of Work

The Scope of Work is provided below or on the following page(s):

See the Scope of Work included in the Nordvind Company, Proposal dated March 26, 2024, provided on the following pages.

Nordvind Co.

43112 248th Ave SE

Enumclaw, Wa 98022

360.825.5704

WA State Contractor: NORDVSS850C7

PROPOSAL 3/26/2024

Parametrix

Austin Fisher, PE

Vice President

Below is a description of proposed work. All work will be performed as stated below. Any variance to the work as described will require a change order and approval by the customer listed above.

Description of work: Budget est.

801, 817, 1001, 1017 S 200th St Des Moines, Wa

Locate (4)ea septic systems at the above mentioned addresses: \$250/hour with a 10 hour Minimum NTE \$7500.

Proposed amount: NTE \$7,500.00

Sales Tax Excluded

Down Payment Required: 50%

Additional Options.

Installation Permit

☐ Yes ☐ No 1100.00

O&M Agreement (first 2 inspections after installation)

\$580 Prepaid

☐ Yes ☐ No Initial _____

Import/export of materials

Cost +20% - receipts provided

☐ Yes ☐ No _____

Design

Cost +20% - receipts provided

☐ Yes ☐ No _____

Electrical

Cost +20% - receipts provided

☐ Yes ☐ No _____

Clearing

\$170/hour port to port

☐ Yes ☐ No _____

Down payment due upon return of signed document. Payment of final invoice is due in full at final inspection less 10% retainage until backfill is completed unless other payment arrangements need to be made, documentation of agreed upon payment plan will need to be filed before work begins.

Exhibit C

Compensation

Compensation is provided below or on the following page(s):

Compensation is for the amount of \$7,500. This amount includes reimbursable expenses and shall not be exceeded without prior written approval from Parametrix. See Nordvind Company Proposal dated March 26, 2024, under Exhibit B.

Exhibit D

Invoice Schedule

PARAMETRIX 2024 FINANCIAL PERIOD CALENDAR

Sub Calendar

JANUARY 20241/6 - 2/2							FEBRUARY 20242/3 - 3/1							MARCH 20243/2 - 4/5									
S	S	M	T	W	T	F	Week #	S	S	M	T	W	T	F	Week #	S	S	M	T	W	T	F	Week #
JAN								FEB								MAR							
6	7	8	9	10	11	12	1	3	4	5	6	7	8	9	5	2	3	4	5	6	7	8	9
13	14	15	16	17	18	19	2	10	11	12	13	14	15	16	6	9	10	11	12	13	14	15	10
20	21	22	23	24	25	26	3	17	18	19	20	21	22	23	7	16	17	18	19	20	21	22	11
27	28	29	30	31	1	2	4	24	25	26	27	28	29	1	8	23	24	25	26	27	28	29	12
20 Work Days								20 Work Days								25 Work Days							
FEB																APR							



SUBCONSULTANT INVOICES DUE TO PARAMETRIX

Exhibit E

Work Completion Schedule

The Work Completion Schedule is provided below or on the following page(s):

Work shall be completed by March 31, 2025.

Exhibit F

Federal Labor Certification

Federal Labor Certification is provided below:

Pursuant to Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and 38 USC 4212, the Vietnam Era Veterans Re-adjustment Assistance Act of 1974, as amended; and the rules and regulations promulgated thereunder, we, as federal government contractor and purchaser from you, as seller, are required to have the following provisions included in any applicable contract between you, as seller, and ourselves, as buyer:

1. Equal Opportunity Clause
(Applicable to all contracts or purchase orders in excess of \$10,000)

The equal opportunity clause and regulations (as amended from time to time) promulgated by the Secretary of Labor, or his/her designee, and to implement Executive Order 11246, as amended, and found in Part 60-1.4(a) of Title 41 of the Code of Federal Regulations, are hereby incorporated by reference and made a part hereof. Seller shall be bound by and agrees to comply with the EEO clause as contained in Executive Order 11246, as amended, at Subpart B, Section 202, and the implementing regulations at 41 CFR 60-1.4(a) to the extent applicable.

2. Certification of Non-segregated Facilities

The seller certifies that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, sex, age, religion, national origin, handicap, or veterans status cannot result. Your company may neither require such segregated use by written or oral policies, nor tolerate such use by employee custom. This obligation extends to ensuring that employees are not assigned to perform their services at any location, under your control, where facilities are segregated.

3. Employment of Individuals with Disabilities

The equal employment clause and regulations (as amended from time to time) promulgated by the Secretary of Labor, or his/her designee, and to implement Section 503 of the Rehabilitation Act of 1973, as amended (P.L. 93-112, as amended); and as contained in Part 60-741 of Title 41 of the Code of Federal Regulations, are incorporated by reference and made a part hereof. The seller agrees to comply with the equal employment clause, as contained in 41 CFR 60-741.4, and the regulations at 41 CFR 60-741 to the extent applicable.

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities (60-741.5[d]).

4. Disabled Veterans, Recently Separated Veterans, and Other Protected Veterans

The equal employment clause and regulations (as amended from time to time) promulgated by the Secretary of Labor, his/her designee, to implement 38 USC 4212, the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (P.L. 93-508, as amended), and found in Parts 60-250 and 60-300 of Title 41 of the Code of Federal Regulations, are incorporated by reference and made a part hereof. Seller agrees to comply with the equal employment clause, as contained in 41 CFR 60-250.5 and 41 CFR 60-300.5, and the regulations at 41CFR60-250 and 41 CFR 60-300 to the extent applicable.

This contractor and subcontractor shall abide by the requirements of 41 CFF 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans (41 CFF 300.5[d]).

5. Employer Information Report (EEO-1, Standard Form 100)

If seller has 50 or more employees and is required under Part 60-1.7(a) to file Employer Information Report, EEO-1 (Standard Form 100), seller hereby certifies that it has done so or if not, agrees that it will file such report in accordance with the applicable instructions and will continue to file such report unless or until seller is not required by law or regulation to so file.

6. Affirmative Action Compliance Program

If the seller has 50 or more employees and the contracts of sale amount to \$50,000 or more, seller may be required under Parts 60-1.40, 60-741.40, and 60-250.40 of Title 41 of the Code of Federal Regulations to develop a written Affirmative Action Program. If the seller is so required, it agrees to do so no later than 120 days after the effectiveness of the first of the contracts of sale and maintain such program until such time as it is no longer required by law or regulations.

7. Federal Contractor Veterans' Employment Report (VETS 100A)

If the contracts of sale amounts to \$100,000 or more and the seller is required under Part 61-300 of Title 41 of the Code of Federal Regulations to file a Federal Contractors Veterans' Employment Report (VETS-100A), seller hereby certifies that it has done so, or if not agrees that it will file such report as required under Part 61-300 of Title 41 of the Federal Regulations. Such report may be obtained from:

The U.S. Department of Labor on their web site at:
<http://www.dol.gov/vets/vets100-filing.htm>

Subconsultant: Nordvind Company

Parametrix Project No.: 214-1792-046

By:

Signature

Typed or Printed Name

Date

Exhibit G

Normal and Customary Accounting Practices

Sub shall maintain adequate cost accounting system consisting of the following elements:

- Meets Generally Accepted Account Principals and sound accounting practices:
 - Accrual basis.
 - Accumulation of costs in various subaccounts under general ledger control.
 - Interim (e.g., monthly) determination of costs charged to a contract through routine posting to books of account.
 - Periodic reconciliation of accounts.
- Defined and segregated direct and indirect costs:
 - Identification and accumulation of direct costs by contract, project, task, or cost objective.
 - Ability to capture pre-contract and direct marketing costs separately.
- Adequate timekeeping system:
 - Adequate record control (electronic or manual system).
 - Daily recording of actual time worked.
 - Recording all hours worked to originating direct or indirect project number or code.
 - Employee signature and supervisor timecard approval required.
 - Documented correction procedures.
 - Periodic (at least annual) employee training of timekeeping policies.
- Adequate labor distribution and accounts payable systems:
 - Audit trail of labor and expense (hours and dollars) to direct and indirect accounts.
 - Periodic reconciliation.
- Ability to segregate allowable and unallowable costs:
 - Exclusion of unallowable costs per Federal Acquisition Regulation, Part 31 or under contract provision.
 - Application of Federal travel regulations.
- Logical and consistent method for allocating indirect costs:
 - Homogenous indirect cost pools.
 - Indirect cost rate calculation.

Please contact Parametrix Finance at 253-269-1300 for questions or assistance. Additional helpful resources can be found at the following governmental web sites: FAR, GSA, AASHTO, WSDOT, ITD, ODOT.

Sub acknowledges that Exhibit G is merely a guideline of normal and customary timekeeping and accounting practices, and that rules and procedures of the Client and other government agencies are subject to change without notice, and following Exhibit G does not guarantee favorable results in a client mandated audit.

Subconsultant: Nordvind Company

Parametrix Project No.: 214-1792-046

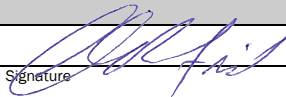

By:

Signature

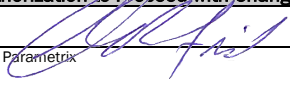

Typed or Printed Name

Date

CHANGE REQUEST PROPOSAL (CRP)

Date: 4/10/24	Prepared By: John Betzvog	CRP Number: 03
Project Manager: Austin Fisher, PE		Client: City of Des Moines
Project Name: North Hill Elementary Walkway Improvements		Project No.: 214-1792-046
Contract Change Clause Language Inserted Here:		
Additional work for researching and drafting septic systems impacting roadway design as well as expanding roadway alternatives from 3 to 6 due to unforeseen driveway design challenges.		
Change Description (describe what change is needed, what caused the change to occur, why the change is necessary, and the impact if the change is not approved):		
The change is needed to fund additional work to keep the project schedule on track and not delay critical path ROW process. After determining parcels within the 200 th corridor were not connected to sewer and instead utilize septic systems, the septic research and drafting was needed to locate and identify parcels that may adversely impact the roadway design. This resulted in \$2,850 of effort to research available record drawing ("as-built") online and then schematically update the base map. In addition, additional work was necessary to refine and produce multiple design alternative horizontal and vertical alignments to mitigate impacts by an extremely steep driveway grade (Driveway M). This effort resulted in the development of 3 additional alternatives for review by the City. The additional work resulted in a small schedule delay of 1 week, with a potential cost savings of \$600K in additional right-of-way acquisition. Total effort for this change was \$10,200..		
Has the client authorized this change to proceed before the project manager receives the contract amendment? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, attach the client's authorization (i.e., e-mail from client or client signature on Record of Communication or CRP form). If the client gave authorization verbally, document the authorization on a CRP form. Have the Project Manager and Office Principal or Operations Manager sign the CRP and mail to the client immediately following verbal authorization.		
Cost Impacts:		
Parametrix Fee Impact: <u>\$13,050</u> Follow-on Construction Contract (if applicable): <u>N/A</u>		
Provide our range estimate for the Follow-on Construction Contract based on our opinion of the accuracy of the range as an order of magnitude (+50% to -30%), budgetary (+30% to -15%), or definitive (+15% to -5%) cost estimate.		
Select One: <input type="checkbox"/> Order of Magnitude <input type="checkbox"/> Budgetary <input checked="" type="checkbox"/> Definitive		
Schedule Impacts:		
1. Deliverable Plan Date: <u>4/12/2024</u> Change Date: <u>4/12/2024</u>		
2. Deliverable Plan Date: _____ Change Date: _____		
3. Deliverable Plan Date: _____ Change Date: _____		
Parametrix Change Endorsement:		
Austin Fisher Name _____ Signature 		
_____ Name _____ Signature _____		
_____ Name _____ Signature _____		
_____ Name _____ Signature _____		
Authorization to Proceed with Change:		
Austin Fisher Parametrix 		
_____ Client <u>Khair Le P.E.</u>		
<u>04/12/2024</u> Date <u>04/15/2024</u>		
_____ Date _____		

CHANGE REQUEST PROPOSAL (CRP)

Date: 10/8/24	Prepared By: Austin Fisher	CRP Number: 04
Project Manager: Austin Fisher, PE		Client: City of Des Moines
Project Name: North Hill Elementary Walkway Improvements		Project No.: 214-1792-046
Contract Change Clause Language Inserted Here:		
Additional work by Epic Land Solutions, Inc. to provide additional appraisals and coordination on the project that were originally scoped as administrative offer summaries (AOSs). Six (6) appraisals will be ordered and coordinated by Epic. This change will reallocate \$48,264 as described below from services provided by Parametrix to services provided by Epic.		
Change Description (describe what change is needed, what caused the change to occur, why the change is necessary, and the impact if the change is not approved):		
<p>The change is needed to provide appraisals for acquisitions that exceed the limits of AOSs and to comply with State Law. See attached Fee proposal from Epic in the amount of \$48,264.</p> <p>In order to fund this change funds will be transferred from other tasks as follows:</p> <p>01.02 - \$21,500, will be transferred and survey will be considered complete. No further field survey services (staking or mapping) will be provided unless approved via change order.</p> <p>01.02APS - \$780 will be transferred from APS budget, no further utility locate services will be provided unless approved via change order.</p> <p>01.10 - \$25,984 will be transferred from Final Design and Contract Documents, these services will be provided upon approval of a future change order by the City.</p>		
<p>Has the client authorized this change to proceed before the project manager receives the contract amendment?</p> <p style="text-align: center;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, attach the client's authorization (i.e., e-mail from client or client signature on Record of Communication or CRP form). If the client gave authorization verbally, document the authorization on a CRP form. Have the Project Manager and Office Principal or Operations Manager sign the CRP and mail to the client immediately following verbal authorization.</p>		
Cost Impacts:		
Parametrix Fee Impact: (\$48,264) Follow-on Construction Contract (if applicable): <u>N/A</u>		
Provide our range estimate for the Follow-on Construction Contract based on our opinion of the accuracy of the range as an order of magnitude (+50% to -30%), budgetary (+30% to -15%), or definitive (+15% to -5%) cost estimate.		
Select One: <input type="checkbox"/> Order of Magnitude <input checked="" type="checkbox"/> Budgetary <input type="checkbox"/> Definitive		
Schedule Impacts:		
1. Deliverable Plan Date:	<u>No Change</u>	Change Date: _____
2. Deliverable Plan Date:	_____	Change Date: _____
3. Deliverable Plan Date:	_____	Change Date: _____
Authorization to Proceed with Change:		
 Parametrix		 Client
10/8/2024 Date		10/17/24 Date



Puget Sound Regional Office
1950 Black Lake Blvd SW, Suite B
Olympia, WA 98512
epicland.com

September 23, 2024

Austin Fisher, PE
Vice President
Parametrix

Via Email: afisher@parametrix.com

RE: Right of Way Scope of Work/Fee Amendment #1
North Hill Elementary Safe Routes to Schools Project

Dear Austin,

Epic Land Solutions, Inc. ("Epic"), is pleased to continue providing right of way services for The City of Des Moines' ("City") North Hill Elementary Safe Routes to Schools Project (Project). This amendment request is to add scope and fee for the needed appraisals on the project that were not originally scoped for appraisals.

ADDITIONAL SCOPE OF WORK

Epic will add six appraisal reports, appraisal reviews, and coordination to the scope of this project.

STAFF CLASSIFICATIONS	Principal in Charge	Advisory Manager	Project Manager	Senior R/W Agent	R/W Agent	Budget & Financial Controls	Project Support
FULLY LOADED HOURLY RATES	\$ 273.62	\$ 232.17	\$ 197.94	\$ 155.44	\$ 111.31	\$ 163.33	\$ 93.15

RIGHT OF WAY SERVICES	1	5				1	5	TOTAL HOURS	FEES PER TASK
Phase 1000: Acquisition and Negotiation (Appraisal Coordination)								12	\$2,064
								0	\$0
TOTAL LABOR	1	5	0	0	0	1	5	12	\$2,064
	\$273.62	\$1,160.87	\$0.00	\$0.00	\$0.00	\$163.33	\$465.74		

OTHER DIRECT COSTS	
Appraisal Services - 6 Reports @ \$6k each	\$ 36,000.00
Appraisal Services - 6 Reviews @ \$1,700 each	\$ 10,200.00
TOTAL ODCs	\$ 46,200
TOTAL LABOR AND ODCs	\$ 48,264

Original Budget: \$167,262
Additional Budget Request: \$48,264
Total New Budget: **\$215,526**



If you have any questions, please do not hesitate to contact Jessica Niella at (360) 233-7666 or jniella@epicland.com. We look forward to working with Parametrix on this and future opportunities.

Sincerely,

Christine Nickerson

Christine Nickerson, SR/WA
Vice President Northwest Right of Way Services
Epic Land Solutions, Inc.

CHANGE REQUEST PROPOSAL (CRP)

Date: 3/18/25	Prepared By: Austin Fisher	CRP Number: 05
Project Manager: Austin Fisher, PE		Client: City of Des Moines
Project Name: North Hill Elementary Walkway Improvements		Project No.: 214-1792-046
Contract Change Clause Language Inserted Here:		
Additional work by Parametrix to revise the 60% and 90% in progress deliverables to accommodate utility relocations and to minimize impacts to private property.		
Change Description (describe what change is needed, what caused the change to occur, why the change is necessary, and the impact if the change is not approved):		
<p>The change is needed to accommodate utility relocations. Specific analysis and revisions include:</p> <ul style="list-style-type: none"> Channelization alternatives on 8th to reduce impacts to the overhead power lines Additional fieldwork and design documentation for utility and property impacts Prelim Highline water design as part of all the highline water conflict work Revise storm sewer design to reduce impacts to Highline water main Additional driveway design to minimize property impacts Additional design for retaining wall, driveway, and property grading for Driveway M Updating the school crossing due to channelization changes completed to limit impacts to overhead utilities Additional coordination w/ PSE Additional coordination w/ Lumen 		
<p>Has the client authorized this change to proceed before the project manager receives the contract amendment?</p> <p style="text-align: center;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, attach the client's authorization (i.e., e-mail from client or client signature on Record of Communication or CRP form). If the client gave authorization verbally, document the authorization on a CRP form. Have the Project Manager and Office Principal or Operations Manager sign the CRP and mail to the client immediately following verbal authorization.</p>		
Cost Impacts:		
Parametrix Fee Impact: <u>\$41,913</u> Follow-on Construction Contract (if applicable): <u>N/A</u>		
Provide our range estimate for the Follow-on Construction Contract based on our opinion of the accuracy of the range as an order of magnitude (+50% to -30%), budgetary (+30% to -15%), or definitive (+15% to -5%) cost estimate.		
Select One: <input type="checkbox"/> Order of Magnitude <input checked="" type="checkbox"/> Budgetary <input type="checkbox"/> Definitive		
Schedule Impacts:		
1. Deliverable Plan Date: <u>No Change</u>	Change Date: _____	
2. Deliverable Plan Date: _____	Change Date: _____	
3. Deliverable Plan Date: _____	Change Date: _____	
Authorization to Proceed with Change:		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">  Parametrix 3/18/2025 Date </div> <div style="width: 45%;">  Client 4/8/25 Date </div> </div>		

CITY OF DES MOINES
2025-2030 CAPITAL IMPROVEMENT PLAN
(Amount in Thousands)

S. 200th St. & S. 199th St. Improvements (Segment 1)	Project #	TRCIP0021
- Previous Project #		319.620

CIP Category: Transportation - Capital Projects

Managing Department: Plan, Build & PW Admin

Summary Project Description:
Installation of approximately 800 linear feet of curbs, gutter, sidewalks, ADA curb ramps, bike lane, storm drainage, retaining walls and driver radar feedback signs on both sides of South 200th St from 8th Avenue South to 10th Place South.

Justification/Benefits: The proposed walkway improvements support the City's non-motorized priority identified within the City's Comprehensive Transportation Plan and Safe Routes to School Project Report. South 200th Street is a high pedestrian corridor serving the North Hill Public Schools.

PROJECT SCOPE			
Expenditures	Current Budget	Requested Change	Total Budget
Design	667	-	667
Land & Right of Way	480	150	630
Construction	2,844	-	2,844
Contingency	364	-	364
Total Expenditures	4,355	150	4,505

ANNUAL ALLOCATION							
Project to Date 12/31/23	Scheduled Year 2024	Plan Year 2025	Plan Year 2026	Plan Year 2027	Plan Year 2028	Plan Year 2029	Plan Year 2030
27	640	-	-	-	-	-	-
-	630	-	-	-	-	-	-
-	-	2,844	-	-	-	-	-
-	-	364	-	-	-	-	-
27	1,270	3,208	-	-	-	-	-

Funding Sources	Current Budget	Requested Change	Total Budget
Surface Water Utility - Project 451.844 Cost Reimbu	500	-	500
ASE (Automated Speed Enforcement) Transfer	205	-	205
REET 1	250	-	250
Arterial Pavement Fund	400	-	400
Redondo Speed Enforcement	-	150	150
WA State Grants - Safe Routes to Schools (Secured)	3,000	-	3,000
Total Funding	4,355	150	4,505
Funding Shortfall/Excess	-	-	-

Project to Date 12/31/23	Scheduled Year 2024	Plan Year 2025	Plan Year 2026	Plan Year 2027	Plan Year 2028	Plan Year 2029	Plan Year 2030
-	-	500	-	-	-	-	-
25	60	120	-	-	-	-	-
-	-	250	-	-	-	-	-
1	-	399	-	-	-	-	-
-	150	-	-	-	-	-	-
-	1,062	1,938	-	-	-	-	-
26	1,272	3,207	-	-	-	-	-

OPERATING IMPACT			
Operating Impact	6 Year Total		
Revenue	-	-	-
Expenses	-	-	-
Net Impact	-	-	-

ANNUAL OPERATING IMPACT							
12/31/23	2024	2025	2026	2027	2028	2029	2030
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: 2025 Des Moines Farmers Market Agreement

FOR AGENDA OF: May 8, 2025

DEPT. OF ORIGIN: Events and Facilities

ATTACHMENTS:

DATE SUBMITTED: April 29, 2025

1. Agreement for the 2025 Farmers Market Season
2. Request for fee waiver

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: Katherine Coffey

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval of the 2025 Agreement between the City of Des Moines and Des Moines Farmers Market for the 2025 Waterfront Farmers Market Season.

Suggested Motion

Motion 1: "I move to approve the Agreement with the Des Moines Farmers Market for the 2025 Des Moines Waterfront Farmers Market to be held at the Des Moines Marina, and authorize the City Manager to execute the Agreement substantially in the form as attached."

Background

The Des Moines Farmers Market has operated a seasonal Farmers Market in the Marina since 2006. The Market is open every Saturday from June through the last Saturday in September and offers fresh and tasty seasonal crops direct from the growers, an appetizing array of food vendors, a veritable collection of local crafts people, and live musical offerings. A variety of special events also add to the diversity of the Farmers Market. On any given Saturday, people from within Des Moines or visitors from out of town, gather together to buy a variety of fruits and vegetables not found in grocery stores, visit with friends and neighbors in a lively environment, enjoy lunch or dinner on the lush lawn overlooking the Marina, and experience concerts from local blues, rock, and country music bands. Situated right next to the fishing pier, beach, and walking trails, the Market is a special experience for children, couples, and friends.

Discussion

The Market was formed in 2006 as a non-profit entity requiring all of its farmers to meet a basic set of environmental stewardship principles that ensure that their practice protects the environment and sustains long-term viability of farmland. The Market continues to provide Des Moines and surrounding communities with a variety of vegetables, fruit, honey, cheeses, crafts, flowers, meats, and fish, ready-to-eat foods, education, information, and entertainment. The Market also provides a gathering place and is a positive asset for the City of Des Moines. The Market receives its operating costs from sponsors, donation, grants, and vendor application and stall fees. The attendance and sales have grown consistently since the beginning.

For a typical Saturday, the Farmers Market sets up in the Center Lot of the Marina. The Market uses the two compass rose areas and the promenade between them for an outdoor cafe and entertainment. Market patrons will park in the North and South Lot. Through this Agreement the City will provide 2 hour free parking vouchers to market patrons on Saturdays.

Financial Impact

The draft agreement includes a waiver of all rental fees for the entire season. The Market pays for its own garbage and recycling. The Marina provides restroom supplies and clean-up, sink, hot water, and parking for the food vendors, and electricity. Public Works provides candlestick cones. Events and Facilities provides waiver of rental fees and damage deposit, shuttle program and operational staff upon availability, and blue barriers. Additionally, 2 hour parking vouchers will be provided to Market patrons. This waiver provides the Farmers Market a total reduction of approximately \$50,000 in rental fees and services from the City of Des Moines.

In recognition of the waiver of the facility rental fees that the City of Des Moines is providing to the Des Moines Farmers Market, the Des Moines Farmers Market will recognize the City of Des Moines as a sponsor in the amount of the reduced rental rate of approximately \$50,000. The Des Moines Farmers Market will provide booth space weekly for City staff to utilize for community outreach and program and event promotions.

The City receives an unquantifiable public benefit from hosting the Farmers Market on City property, including increased patrons to Des Moines businesses, and an increased sense of community among attendees and vendors.

Recommendation

Approve the Agreement for the 2025 Market.

AGREEMENT
between
THE CITY OF DES MOINES
and
DES MOINES FARMERS MARKET
for the
2025 DES MOINES FARMERS MARKET

THIS AGREEMENT is entered into by and between the CITY OF DES MOINES, WASHINGTON (hereinafter “City”), a municipal corporation of the State of Washington, and **DES MOINES FARMERS MARKET** (hereinafter “DES MOINES FARMERS MARKET”), a Washington non-profit corporation, regarding the 2025 Des Moines Farmers Market.

WHEREAS, the City Council finds that the Des Moines Farmers Market enhances the quality of life for residents of the City of Des Moines and wishes to permit it to operate at the Des Moines Marina property on Saturdays from June through September, including the Holiday Market in the Des Moines Beach Park on November 8, 2025, and other market days throughout the year as may be approved by the City Manager, and

WHEREAS, Des Moines Farmers Market, a 501(c)(4) non-profit organization, was created to operate the Des Moines Farmers Market, and

WHEREAS, the City receives an unquantifiable public benefit from hosting the Farmers Market on City property, including increased patrons in the City’s pay parking lot, increased patrons to Des Moines businesses, and an increased sense of community among attendees and vendors, and

WHEREAS, the City Council wishes to have Des Moines Farmers Market manage the Des Moines Farmers Market pursuant to certain terms and conditions; now therefore,

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

(1) Des Moines Farmers Market agrees as follows:

(a) Des Moines Farmers Market shall conduct the 2025 Des Moines Farmers Market in compliance with the conditions outlined in this agreement and the attached Facility Rental Policies and Procedures (Exhibit 1), and will comply with all federal, state, and local statutes, ordinances, and regulations.

(b) The prime leadership of all Des Moines Farmers Market activities shall be non-City personnel and it is clearly understood that assistance by City personnel is advisory to Des Moines Farmers Market.

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

(d) Des Moines Farmers Market will provide for expenses such as the Market Manager, portable sanitary facilities, advertising and/or promotional banners associated with the event. Des Moines Farmers Market shall provide adequate paid and/or volunteer staff, trained in courteous, efficient service to patrons of the Farmers Market. Des Moines Farmers Market shall ensure that persons handling and vending food and beverage products shall comply with all necessary health regulations.

(e) The rental fee for use of Des Moines Marina Lot and facilities for the 2025 season of the Des Moines Farmers Market will be waived. This waiver also includes the use of all necessary power and water.

(f) Des Moines Farmers Market will provide and pay for its own garbage utility service.

(g) Des Moines Farmers Market will be allowed to have associated retail sales of food or merchandise as identified in the Des Moines Farmers Market 2025 Application Requirements and Seattle King County Health Department requirements. Des Moines Farmers Market shall not use the Des Moines Farmers Market premises for any purpose other than herein specifically designated without prior written consent of the City.

(h) Des Moines Farmers Market will obtain a City of Des Moines Business License prior to conducting business at the Farmers Market. The Farmers Market business license will allow all individual Market vendors to conduct business during approved Market hours at the approved Market location. A separate Des Moines business license will be required for any vendor who conducts business in Des Moines outside of approved Farmers Market events.

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

Des Moines Farmers Market shall also work with their insurance provider to confirm that any motorized vehicle used by the Market, including the two City owned shuttle carts, are fully insured in an amount similar to the general liability insurance required above. The Market will provide proof of insurance to the City prior to use of the City owned carts.

(j) Des Moines Farmers Market will be permitted to erect such special signage as is appropriate and in compliance with the Des Moines Municipal Code in the thirty (30) days prior to and during the event. All such signage shall be removed within ten (10) days after the event.

(k) Des Moines Farmers Market will be allowed to solicit booth fees, a percentage of sales and/or charge an admission fee to vendors of the Des Moines Farmers Market to recover the cost of the community event. Des Moines Farmers Market shall bear responsibility for all collection, accounting, and reporting of any funds collected. The City grants this privilege based upon the promoter's agreement that any funds collected in amounts greater than the cost of the event, including, but not limited to costs associated with overhead, staff, promotion and security, will be reinvested, as Des Moines Farmers Market deems fit, in the Des Moines Farmers Market for the benefit of the Des Moines community. Des Moines Farmers Market shall maintain an accounting system meeting the City's approval and agrees to permit the City and its agents and representatives at reasonable intervals at any and all times during usual business hours, to inspect all books, records and accounts of the Des Moines Farmers Market showing gross sales and inventories.

(l) Des Moines Farmers Market agrees to take whatever reasonable measures are necessary to prevent damage to the Marina facility and to be responsible for any damage that may occur as a result of Des Moines Farmers Market's or its vendors' action taken in the conduct of the Des Moines Farmers Market.

(m) A Des Moines Police Department command officer and/or the Fire Marshall of South King Fire District will have the authority to close the Des Moines Farmers Market down at any time should it be necessary, following assessment of any security issue.

(n) Farmer's Market shall pay the City in full any amounts billed within 30 days of receipt.

(o) In recognition of the waiver of the facility rental fees that the City of Des Moines is providing to the Des Moines Farmers Market, the Des Moines Farmers Market will recognize the City of Des Moines as a sponsor in the amount of the reduced rental rate of approximately \$50,000. The Des Moines Farmers Market will provide booth space weekly for City staff to utilize for community outreach and program and event promotions.

(2) The CITY agrees as follows:

(a) Upon execution of this Agreement, the City Manager is authorized to grant permission to Des Moines Farmers Market to use and occupy, for the purpose of the Des Moines Farmers Market in 2025, City facilities and property at the Des Moines Marina.

(b) The City Manager is authorized, at her discretion, to grant permission to utilize City promotional tools such as the *City Currents*, City Web Page and Channel 21 to inform and educate the public about the event. Any City marketing costs will be paid to the City of Des Moines by Des Moines Farmers Market.

(c) The City Manager is authorized to provide City assistance to the Des Moines Farmers Market, which may include all necessary power and water utilities; services by the Police, Public Works, Parks, and Marina departments for the purpose of logistics coordination, Marina area traffic control, parking lot management and pedestrian safety. The City will inform the Farmers Market of any City operational costs of the City and those costs will be paid to the City of Des Moines by Des Moines Farmers Market.

(d) The City retains the right from time to time during the term hereof to change the location or use of areas designated for the Des Moines Farmers Market. If such relocations or adjustments are required, the parties shall cooperate so that such changes shall not unnecessarily interrupt the quality and quantity of services rendered by the Farmers Market.

(e) The City will provide the Market with a mutually agreeable storage area for Market supplies at the reduced rate of \$90 per month plus leasehold tax.

(3) **Parking.** For Saturday Markets, the City will provide to the Market parking coupons entitling the Market customer to two hours of free parking the days the Market is held. The City will provide these coupons as needed to the Market and the Market will limit coupon availability to paying customers.

(4) **Independent Accounting.** A true accounting of all receipts and disbursements shall be maintained by Des Moines Farmers Market and shall be made available for review and audit by the City at the discretion and expense of the City. Records of gross sales and receipts are to be kept for each revenue source and Des Moines Farmers Market is responsible for submittal of all taxes due in the ordinary course of operating the Des Moines Farmers Market.

(5) **Duration of Agreement.** The term of this Agreement shall be for one (1) year upon final execution of this Agreement.

(6) **Termination.** Either party may terminate this Agreement with or without cause with ninety (90) days prior written notice.

The terminating party shall be liable for its share of financial obligations entered into on its behalf prior to termination, including but not limited to, printing costs and media buys.

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

(8) **Assignment.** This Agreement may not be assigned by Des Moines Farmers Market except with written approval of the City to another non-profit organization with similar goals and purposes. Des Moines Farmers Market will provide prior written notice to the City of any assignment of this Agreement to another non-profit organization. Upon assignment, the assignee will be bound by the terms and conditions of this Agreement as Des Moines Farmers Market was.

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

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

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

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

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

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

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

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

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

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

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

CITY OF DES MOINES

**DES MOINES FARMERS
MARKET**

Katherine Caffrey
City Manager

By Travis Denevers
Its President

Date _____

Date _____

Approved as to Form:

City Attorney



FACILITY RENTAL POLICIES & PROCEDURES

Facility Use Application:

Renters are responsible for the conduct of all members of their party. Disorderly conduct, intoxicated persons, or disturbance of the public peace will result in being required to vacate the premises, as well as forfeiture of damage deposit and rental fees. Reservations are accepted up to two years in advance. The following are required to book a facility:

- A damage deposit, signed Facility Use Agreement and signed Policies and Procedures. We do not hold facilities without a damage deposit on file.
- One additional adult may be listed on the Facility Use Agreement as Alternate Contact Person.
- Renter and Alternate Contact (if any) must be at least 21 years of age and at least one MUST be present during the entire event unless approved 30 days prior to the event date.
- Only Renter or Alternate Contact are authorized to sign rental checklists or make changes to your booking.
 - If neither Renter nor Alternate Contact will be available to sign the Rental Inspection Checklist at the end of the night, please indicate who the responsible party is 30 days prior.
 - Rental clients that do not sign the Rental Inspection Checklist forfeit their damage deposit in full.

Please call 206-870-9370, or visit us in the Events & Facilities Office located in the Marina at 22307 Dock Ave South Des Moines, WA 98198 to begin an application.

Damage Deposits:

- 100% of the Damage Deposit is due at time of submitting the Facility Use Application to secure a facility and reserve a date.
- DAMAGE DEPOSITS INCLUDE A NON-REFUNDABLE \$175.00 BOOKING AND MAINTENANCE FEE (\$30.00 Booking and Maintenance fee for Picnic Shelters)
- Refunds are contingent upon the condition of the building following your event.
- Rentals forfeit all deposits if a disturbance of the peace is determined.
- Refunds will be processed within 14 business days of your rental. Please note that it can take up to 6 weeks for a check to arrive or a credit to show on a Credit Card Statement.
- Payment methods accepted are: Visa/MasterCard, Cash, Check or Money Order

** Note: City of Des Moines reserves the right to adjust deposit amounts based on party size and activities.*

Rental Fees:

- Rental fees must be paid in full thirty (30) days prior to the event.
- Rental fees not paid by due date are subject to a \$25 late fee per business day. Failure to pay rental fees in full by the due date may also be deemed cancellation by Renter, at the option of the City.
- Payment methods accepted are: Visa/MasterCard, Cash, Check or Money Order.
- Bookings made less than 30 days prior must pay ALL FEES in full at the time of booking.
- You are required to have one staff member on site for every 100 guests attending your event.
 - All facility rentals come with one attendant. Additional attendants will be billed at a rate of \$175.00 per event and are present for the full event.
 - Additional Staff and/or security may be required for groups that are serving alcohol in our facilities. See 'Security Policy.'
- Cancellation/Change of Date Policy and Fees:

In the unfortunate situation that an event cancels, the renter agrees and understands that the facility has been turned down to other prospective renters. For this reason, the below cancellation fee schedule will apply

 - Cancellations made 91 or more days before the reservation date will be charged a \$500 cancellation fee (\$100.00 Cancellation fee for Picnic Shelters.)
 - Cancellations made 90 days or less before the reservation date will be charged 50% of the rental fee plus forfeit of all deposits.

- Change of event date's made within ninety-one (91) days or more of your rental date will be charged a \$100 fee. Change of event date made within ninety (90) days or less of your event date will be charged a \$500 fee.
- In the event that the event is cancelled as a result of a Force Majeure, renter shall not be liable for cancellation fees or forfeit of deposit. Renter agrees that the City shall not be liable for direct or consequential damages resulting from lack of performance due as a result of Force Majeure. "Force Majeure" shall mean a significant event which renders the rental facilities unsafe or unsuitable for occupation and which is beyond the control of either party, such as fire, earthquake, flood, act of God, riots or civil commotions, terrorism and/or terroristic threats, war or other act of any foreign nation. "Force Majeure" shall not mean foul or inclement weather not giving rise to an official disaster declaration.

Day of Details:

Please review your event permit in detail to ensure that all times, rental requests, and services needed are expressed thirty (30) days prior to your event. To help answer your questions, here are some general expectations and housekeeping items.

What We Do:

- Provide one on-site staff person for the duration of your event.
- Ensure all Social Distancing requirements are in place for guests, staff and vendors. This includes proper food & beverage set up, handwashing & sanitizing stations, signage, and all who enter the building are wearing a mask per the State guidelines
- Walk through of the facility to show the areas and supplies you have access to.
- Provide tables and chairs at each facility – call or email for current inventory.
- Assist in answering questions and troubleshooting during your event.
- Guide your clean up and walk through the building to inspect prior to your departure.
- Maintain main room restrooms and ensure they are stocked and clean throughout the event
 - Our staff will not handle large spills, broken glass or hazardous materials
- Empty city owned garbage and recycling cans
- Monitor the parking lot to ensure all cars are parked legally.
 - Please note if there is more than one event taking place in the Beach Park then it will be festival style/first come, first served parking for guest of events taking place.
- Ensure that alcohol is only consumed at events with proper permits and ensure that all alcohol stays within the facility. NO ALCOHOL IS ALLOWED OUTSIDE IN OUR PARKS OR LOTS.

You should expect to:

- Arrive at your scheduled start time. We do not allow early drop off or set up.
- Ensure all Social Distancing requirements are in place for guests, staff and vendors. This includes proper food & beverage set up, handwashing & sanitizing stations, signage, and all who enter the building are wearing a mask per the State guidelines
- Set up all tables, chairs and other supplies as needed for your event.
- Bring all your own extension cords, tape and ladders. We do not provide any of these items.
- You will need to provide all items required for food storage, service and prep.
- Tear down all tables, chairs and other supplies following your event.
- Kitchen cleaning is NOT included in Tear down Fee. Renter/Caterer MUST clean kitchen as needed.
- Go through a Rental Inspection Checklist with Facility Attendant before and after event.
- Remove all guests and personal items by your contracted end time.

Set up and Tear down fee:

The Beach Park Event Center offers optional Set Up and Tear Down fees. Prices vary based on facility, contact our office for current rates. When the Set Up fee is paid our staff will work with you to sketch out a rough plan of how you would like the venue laid out. Once approved, we will set City owned items. We will also place your base linen on the tables if provided at least three (3) days before your event. Any third party rental items or personal items will be the renter's responsibility. Any modifications you want made after we have set the space will be left to you and your party. Floor plans must be received at least thirty (30) days before your event date. Or within one (1) week upon booking if booked less than thirty (30) days out.

When the Tear Down fee is paid, our staff will be responsible for taking down City owned items as well as cleaning the facility (sweeping, mopping, vacuuming and restrooms). This will be done outside of your rental time. You are still responsible for disposal of garbage and recycle that is not in provided containers, as well as any personal or third party items. Any excessive cleaning that needs to be done by staff is subject to additional fees and is at the discretion of staff. If a cleaning fee is assessed, you will be provided photos to help you understand why a fee was charged.

Meadow Rental:

The Meadow can be rented in conjunction with the Beach Park Auditorium, Dining Hall or Founders Lodge between May 1 and September 30th, for a minimum of two hours. Any facility rented in conjunction with the Meadow/Promontory, must be able to accommodate the entire capacity of the rental group. If not rented it is first come, first served.

Chairs are not included in the Meadow rental. There is no power source in the Meadow. Any decorations or arbors set up in the Meadow for a ceremony need to be removed by the end of your Meadow contracted end time.

Please note, as a City Park, we are unable to keep citizens out. When the Meadow is rented our staff will encourage park patrons to use the side paths and avoid the grass and paved walk way behind the ceremony.

Facility Attendants:

Groups greater than 100, parties estimating 100 or more guests, or parties open to the public (regardless of size), will require additional staff and/or police supervision at an additional cost. Security and staff are assigned at the discretion of the City. Applications are reviewed by the Des Moines Police Department. Officers are assigned per the Chief of Police. Call for current rates.

Alcohol Policy:

If you plan to host a party with alcohol in a City building, please note the following:

- No Alcohol is allowed at ANY event that is in celebration of a minor. For example, High School Graduation, Christening, Birthday Party for any person under the age of 21.
- Any group misrepresenting their event as something other than what it is in an effort to bypass the above rule will forfeit their entire damage deposit as penalty.
- Provide a Certificate of Insurance naming the City of Des Moines as additional insured
- Purchase of an appropriate State Liquor permit to display at your event. Please provide either:
 - A Banquet Permit (to serve alcohol can be obtained at <https://lcb.wa.gov/licensing/banquet-permits>)
 - Special Occasion Liquor Permit (to sell alcohol)
- Alcohol is not permitted outside, in parking lots, parks or similar at any time.
- Underage drinking is NOT permitted and will result in termination of the rental agreement.
- If an event is booked as a non-alcohol event and improperly serves alcohol, the rental will be terminated and all damage deposits will be surrendered.

Insurance Requirements:

All events are required to have Event Insurance for a minimum policy of \$1,000,000.00 with the City of Des Moines listed as the additional insured (including Picnic Shelter rentals). You must use the address for the Facility you are renting on your insurance.

The required insurance policy is: Commercial General Liability insurance and/or Host Liquor Liability Insurance with limits of \$1 million each, combined single limits per occurrence naming the City of Des Moines as an additional insured.

- Events serving alcohol must also acquire Host Liquor Liability Coverage for a minimum of \$1,000,000.00 with the City of Des Moines listed as the additional insured.

**Note: Bounce houses must be rented from an accredited company, require proper insurance and must be staffed by the rental company when inflated.*

Renters may obtain insurance by contacting their own agency or through the Washington Cities Insurance Authority (WCIA) carrier at: <https://tulip.intactspecialty.com/e/tulip/apply.aspx>
The site will prompt you to input a building code for the facility you have booked.

Codes for City of Des Moines facilities are:

Des Moines Activity Center: 0465-039
Des Moines Field House: 0465-044
Founders Lodge: 0465-047
Auditorium: 0465-040

Dining Hall: 0465-043
Beach Park Picnic Shelter: 0465-609
Field House Picnic Shelter: 0465-046
Wootton Park Gazebo: 0465-611

Safe Gatherings Agreement:

Due to the global COVID-19 outbreak, emergency proclamations have been issued by the State of Washington, King County, the City of Des Moines, and other jurisdictions authorizing extraordinary measures to respond to and recover from the outbreak. Measures taken to date include restriction on public gatherings in the State of Washington. More restrictive measures are likely in the future. Any facility reservation made during then should be made with the knowledge that there is a significant risk of cancellation due to measures taken to minimize transmission of the virus. A cancellation due to the COVID-19 outbreak shall be considered "force majeure" event.

Renter shall submit a safe gathering agreement no later than 30 days prior to the event unless otherwise determined by the Events and Facilities Office. This agreement will describe what measures will be taken at the event to ensure that all social distancing and hygiene requirements and recommendations issued by the Governor, by health authorities, and other best practices for preventing spread of the disease. The event shall not occur prior to the City's review of the plan. Failure to implement and strictly enforce social distancing measures, to comply with the approved safe gathering plan, or to comply with additional requirements directed by the City will be grounds for immediate cancellation of the event and expulsion from the premises. Additional measures may include, but are not limited to: sanitizing and handwash facilities, symptom screening, and mandatory mask wearing.

Rental Rules and Regulations:

Misuse of any City facility or the failure to comply with these regulations will be sufficient reason for forfeiture of damage and/or denial of further reservations.

- Rental hours are between 7am-12am depending on availability. All cleaning must conclude by 12am.
- Expulsion from a City facility, for any reason, results in forfeiture of all fees and deposits with no refund.
- For every 15 minutes the facility is occupied by a rental group outside of contracted hours, the renter will be charged based on the hourly rate.
- Rental hours must include time for delivery of supplies, set-up, tear down, cleaning, and exit of all guests.
- We do not allow the following:
 - Confetti
 - Glitter
 - Uncontained sand
 - Fog machines inside buildings
 - Throwing rice, birdseed, or faux flower petals
 - Helium balloons inside
 - Sparklers
 - Sky (wishing) lanterns
 - Flames (That includes any type of candle or incense. We will allow for sterno cans for warming food only.)
- All garbage/recycling must be placed in provided receptacles, any garbage/recycling left outside of receptacles is the responsibility of the renter or designated party and must be taken to the

- dumpster on site
- All City owned equipment made available and used by the rental group must be thoroughly cleaned. This includes tables, chairs, kitchen facilities, floors, sinks, restrooms, and hallways.
- If additional facility cleaning is required by City or custodial staff, it will be deducted from the damage deposit.
- Decorations on walls or windows are allowed with non-marring tape. No tacks, staples, glue or similar.
- Décor cannot be hung on pipes, life safety systems, or electrical wires
- Use of drugs, smoking, or gambling is not permitted in any City facilities.
- Smoking is NOT permitted within 25 feet of City buildings. Renters are responsible for picking up refuse.
- All minors on the premises must have adult supervision at all times.
- Event participants must park in designated parking areas only. Please do not park illegally or in fire lanes.
- Please be aware that fires are not allowed in City of Des Moines parks per Des Moines Municipal Code Chapter 19.08 CITY PARK USE REGULATIONS, Section 19.08.030 Regulations and prohibited activities (16) No person shall build fires in a park except in areas designated by the division. BBQ's are permitted with the rental of a facility however, ALL BBQ's must be gas grills as we do not have a receptacle for the disposal of charcoal and are only allowed at facilities not at picnic shelters or lawn/meadow areas and will require a Class K fire extinguisher; one per every unit.
- The City of Des Moines cannot be responsible for accident, injury, or loss of property. Lost & Found items are held 30 days and then donated to charity or disposed of.
- The City of Des Moines scheduled events will take precedence over non-City events.
- Music played at any indoor facility or outdoor picnic shelter area must not be audible from 20 feet away.
- Amplified sound (band, DJ, etc.) is not allowed in parks without City approval.
- Whole roasted pigs are NOT allowed in buildings. They must be carved outside of the rental space and then brought in. All remains must be removed from the facility and NOT disposed in the dumpster as it attracts vermin.
- Cooking is only allowed inside the kitchen of a rented facility. Cooking is not allowed in any facility that does not have a fully functioning kitchen. Deep frying is prohibited in all facilities and parks.
- Items with metal or wood feet must be placed on felt or carpet square to avoid damage to flooring.
- Candles are NOT permitted on any property
- Any item stored in ice must be kept off floors. Please bring absorbent material for underneath to avoid puddles as these are a slipping hazard.

Parking:

The City of Des Moines has implemented Paid Parking in both the Beach Park and Marina lots. Current parking regulations can be found on the City of Des Moines website, www.desmoineswa.gov, under Municipal Code 15.12. Current rates are available on the homepage of the Des Moines Marina website, www.desmoinesmarina.com.

Please note, parking is NOT included in facility rental prices. Guests will be responsible for paying for parking during their event. Clients have the option of pre purchasing parking vouchers to distribute to their guests, so they can park free of charge. Pre-purchased parking vouchers will not guarantee a space for your guests. Refund of unused vouchers will be issued only in the event unused vouchers are returned to the Facility Attendant on duty at the end of your event.

I certify that I am 18 years old or older and have the authority to enter into this agreement on behalf of the "Organization/Renter." I agree to defend, indemnify and hold harmless the City of Des Moines from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the use of the Facilities or from any activity, work or thing done, permitted, or suffered by Organization/Renter in or about the Facilities, except only such injury or damage as shall have been occasioned by the sole negligence of the City of Des Moines. I hereby acknowledge that I have received, read and understand the Policies and Procedures for Rental Facilities for the City of Des Moines and by signing below I am agreeing to the terms and conditions of the Policies and Procedures as written above.

Renter's Signature

Date

Events & Facilities Representative Signature

Date

Bonnie Wilkins

From: T <travis.denevers@gmail.com>
Sent: Tuesday, April 29, 2025 1:20 PM
To: Bonnie Wilkins
Subject: Request for fee to be waved

External sender <travis.denevers@gmail.com>
Make sure you trust this sender before taking any actions.

Hello Bonnie,

The Des Moines Waterfront Farmers Market will be in operations at the Marina for its 2024 season from June 7, 2025, to September 27, 2025, with a special holiday market happening on November 8, 2025, at the Des Moines Beach Park building.

We are looking forward to a great season of bringing fresh produce, educational programs, and artisan food & crafts to the community throughout the summer.

We would like to formally request a waiver of the rental fee for the Marina space. In addition, we would like to ask for parking vouchers to pay for up to two hours of parking for guest who make a purchase at the market. As always, thank you, and the City of Des Moines for your support in making the Des Moines Waterfront Farmers Market a success.

Warmly,

Travis De Nevers
Des Moines Waterfront Farmers Market
Board Presiden

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Lakehaven Utility District Franchise
Update and Extension

FOR AGENDA OF: May 8, 2025

DEPT. OF ORIGIN: Legal

ATTACHMENTS:

1. Draft Ordinance 25-037

DATE SUBMITTED: April 29, 2025

CLEARANCES:

- ☐ City Clerk _____
- ☐ Community Development _____
- ☐ Courts _____
- ☒ Finance *[Signature]*
- ☐ Human Resources _____
- ☒ Legal */s/ TG*
- ☐ Marina _____
- ☐ Police _____
- ☐ Parks, Recreation & Senior Services _____
- ☒ Public Works *[Signature]*

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is to introduce to the Council for a first reading Draft Ordinance no. 25-037 which updates and extends the existing franchise agreement with Lakehaven Water and Sewer District granted in Ordinance no. 1515. This new franchise agreement largely mirrors other franchised utilities' agreements and includes a 6% franchise payment in lieu of paying a utility tax.

Suggested Motion

Motion 1: "I move to pass Draft Ordinance 25-037 to a second reading on the next available regular City Council agenda."

Background

There are five water/sewer utilities that service the City of Des Moines. In 2016, the City Council approved franchise agreements with three of them (Highline Water District, Southwest Suburban Sewer District and Midway Sewer District) that authorized a franchise payment of 6% of total revenue in lieu of the imposition of a utility tax. In exchange for this franchise payment, the City agreed during the term of the franchise to not impose a utility tax and also worked with the Districts to update language on relocation and other items to promote cooperation and planning.

Lakehaven Water and Sewer Utility District renewed their franchise with the City in 2011 for a 20 year term, about 5 years before the City began negotiations with the other utilities for franchise payments. The existing agreement with Lakehaven has no franchise payment and also waives the City's ability to impose a utility tax. This was all done at a time when there were legal questions about who was responsible for fire suppression facilities and whether a City had the authority to impose a utility tax on a special purpose district. The existing franchise expires in 2031.

The City approached Lakehaven in late 2024 about the possibility of updating their franchise agreement to mirror existing agreements the City has with other utility providers. Lakehaven was open to the discussion and over the last several months negotiations have taken place that resulted in draft ordinance 25-037 being prepared.

Discussion

Since franchise agreements with utility districts that serve the City were negotiated at different times and when legal questions were unanswered, our franchise agreements contained varied terms. This ad hoc situation created a lack of uniformity among utility rate payers in the City. In an effort to address this issue, the City recently amended Water District 54's franchise agreement to include a 6% franchise payment. Lakehaven is the only remaining utility that does not have a 6% franchise payment in their agreement.

If approved, Draft Ordinance 25-037 includes a 6% franchise payment on the revenue of the District subject to the same exclusions contained in the franchise agreements held by the other utilities. In exchange, the City agrees to exempt the District from any utility tax the City may impose during the term of the franchise and updates the franchise agreement to have terms that mirror the other utilities in the City. The following provisions are included in the agreement:

1. **Franchise Term:** The term of the Agreements is for 10 years plus the remaining 6 years on the existing franchise for a total of 16 years. The 16 year term provides certainty with regards to operations and revenue income for the City. A common length for a utility franchise agreement can be in the neighborhood of 20-25 years.
2. **Relocation:** The Agreement requires the City to pay a portion of some relocations under certain circumstances. If the age of the District Facility is 10 years old or less, the City and the District split the cost of the relocation, except that if the District Facility is considered a Major Facility (as defined in the Agreement), then the City and the District split the cost regardless of the age of the facility. There are some conditions when the cost sharing would not apply including relocations required by a State or Federal Agency, declarations of emergency, and District Facilities located on bridges, or on, over, and under stream culverts. Additionally, the Agreements require collaboration amongst the parties in order to avoid the necessity of relocation whenever possible.

3. **Right of Way Management, Planning, and District Operations:** The proposed language reflects current practice and provides more definitive expectations on right-of-way use permit application review times.
4. **Indemnification and Insurance:** The Agreement provides that each party is responsible for their own actions. The District is required to maintain \$5,000,000 in insurance coverage. The indemnification and insurance language has been reviewed and approved by the City's insurance provider (Washington Cities Insurance Authority).
5. **Franchise Fee:** The District will pay the City a one-time franchise fee of \$5,000. This flat fee is consistent with RCW 35.31.860 which requires that a franchise fee be limited to the actual administrative expenses incurred by the City in the negotiation of the franchise. This amount will reimburse the City for the staff costs of the negotiations over the last several months.
6. **Franchise Payment:** The Agreement requires the District to make bi-monthly Franchise Payments in the amount of 6% of the Districts "revenue" during the term of the franchise. This payment is in consideration of the rights and benefits the District receives under the Agreement. The definition of "revenue" is limited to income received from the sale of metered water or sewer services to customers within the City. It does not include fees, costs, or charges outside of the sale of water/sewer services.

In consideration of the payment, the City has agreed not to impose a utility tax on the District during the term of the Agreements as well as to not assume the District.

7. **Abandonment:** The Parties have agreed that the standard practice will be to abandon underground District facilities in-place whenever practical, however the City has the ultimate discretion to require their removal. The proposed language is an accurate reflection of current practice and also protects the City's authority to require their removal if needed.
8. **Vacation** – The proposed language is an accurate reflection of current practice and does not restrict the City's authority to vacate a right of way. The Agreement requires the City to notify the District of a vacation so that the District can obtain an easement if one is needed.
9. **Additional Terms** – The majority of the remainder of the Agreement is boilerplate legal language. All language and terms have been thoroughly reviewed and negotiated and the City's interests are protected throughout these Agreements.

Alternatives

The Council may:

1. Pass the draft ordinance to a second reading
2. Decline to pass the draft ordinance to a second reading.

State law forbids a franchise agreement from being adopted on first reading.

Financial Impact

Staff estimates that the franchise payment would provide additional revenue of approximately \$70,000 in 2026 with slight increases each year thereafter. This amounts to roughly 1.2 million dollars over the term of the franchise. Without this update the City would not collect any franchise payment from the District.

Recommendation

Staff recommends the Council pass Draft Ordinance 25-037 to a second reading.

Council Committee Review

N/A

CITY ATTORNEY'S FIRST DRAFT 04/28/2025

DRAFT ORDINANCE NO. 25-037

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, granting Lakehaven Water and Sewer District a non-exclusive franchise to construct, maintain, operate, replace and repair a water and sewer system within public rights-of-way of the City of Des Moines, Washington, fixing a time when the same shall become effective and superseding Ordinance no. 1515.

WHEREAS, Lakehaven Water and Sewer District, a Washington special purpose municipal corporation ("District"), owns water and sewer facilities ("Facilities") located in the City of Des Moines, a Washington non-charter municipal code city ("City"), and a portion of such Facilities are located within the City's right-of-way as hereinafter defined, and

WHEREAS, RCW 57.08.005 authorizes the District to conduct water and sewer throughout the District and any city and town therein, and construct and lay facilities along and upon public highways, roads and streets within and without the District, and

WHEREAS, RCW 35A.47.040 authorizes the City to grant non-exclusive franchises for the use of the public streets above or below the surface of the ground by publicly owned and operated water and sewer facilities, and

WHEREAS, the City and the District have prepared a Franchise Agreement to provide for the operation of District Facilities within the City's right-of-way; now, therefore,

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

Sec. 1. Definitions. Where used in this Franchise (the "Franchise") these terms have the following meanings:

"City" means the City of Des Moines, a Washington municipal corporation, and its respective successors and assigns.

"Director" means the Director of the City's Public Works Department, or the Director's designee.

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"District" means the Lakehaven Water and Sewer District, a Washington municipal corporation, and its respective successors and assigns.

"Facility" or "Facilities" means tanks, reservoirs, water and wastewater treatment facilities, meters, pipes, mains, services, valves, blow offs, vaults, fire suppression water facilities, risers, generators, electrical control panels, power meters, telephone and communication connections, pressure reducing valves ("PRVs"), pump stations, meter stations, lines, service lines located in the Franchise Area as defined below, and all other necessary or convenient facilities and appurtenances thereto for the purpose of operating a water and sewer utility system, whether the same be located over, on or underground.

"Franchise Area" means every and all of the public roads, streets, avenues, alleys, highways and rights-of-way of the City as now or hereafter laid out, platted, dedicated or improved; and any and all public City roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved in the District's service area within the present corporate boundaries of the City (as depicted in Exhibit "B", attached hereto, which is by this reference incorporated as if fully set forth herein), and as such corporate boundaries may be extended within District's service area by annexation or otherwise, but shall not include private roads, streets, avenues and alleys. The Franchise Area shall not include or convey any right to the District to install facilities on, or to otherwise use, City owned or leased properties.

"Ordinance" means this Ordinance No. ____, which sets forth the terms and conditions of this Franchise.

"Party" or "Parties" means the City or the District individually, or collectively as addressed in this Franchise.

"Revenue" means income received by the District from the sale of metered water and sewer service rates to direct retail customers whose properties receiving such service from the District's water and sewer system are located within the City.

Revenue shall not include: late fees; shut-off and reconnect fees; delinquent service charge collection costs and expenses; surcharges; impact or mitigation fees; permit fees and costs; any type of connection charges, general facilities charges, or local facilities charges; local improvement district and utility local improvement district assessments and payments; grants; contributed assets (contributions in aid of construction); income to recover the cost of fire suppression facilities and to pay for the provision of fire suppression services; loans; income from legal settlements not related to water and sewer sales to District customers; income from telecommunication leases or licenses; income from real property or from real property sales; income from the sale of surplus equipment, tools or vehicles; interest income; penalties; hydraulic modeling fees; water and sewer system extension agreement fees and charges; income from street lights; labor, equipment and materials charges; or any other fees and charges.

Sec. 2. Franchise.

(1) In addition to the authority granted by State law to the District to locate, operate and maintain its Facilities in public roads and streets, the City does hereby grant to District the right, privilege, authority and franchise to construct, install, lay, support, attach, maintain, repair, renew, replace, remove, enlarge, operate and use Facilities in, upon, over, under, along, through and across the Franchise Area for purposes of its water and sewer utility functions as defined in Title 57 RCW beginning on the Effective Date of this Franchise; provided the City's grant of the right to use the Franchise Area to the District as provided herein for its Facilities shall not be construed to require the District to provide such Facilities to the City.

(2) Nothing contained in this Ordinance is to be construed as granting permission to District to go upon any other public place other than those types of public places specifically designated as the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case-by-case basis from the City.

(3) In addition to the rights granted to the District to undertake and perform activities within the Franchise Area as provided herein, District shall have the right to discharge District water supply to and into the City's storm water system while performing water system flushing and other District activities, provided any District water to be discharged to the City's storm water system must comply with all applicable federal and state water quality standards and the City's NPDES permit relating to the City's storm water system.

(4) At all times during the term of this Franchise, District shall fully comply with all applicable federal and state laws and regulations and required permits, including, but not limited to, RCW 39.04.180 for construction trench safety systems, chapter 19.122 RCW for utility damage prevention, the State Environmental Policy Act, the State of Washington Pollution Control Law, and the Federal Clean Water Act.

Sec. 3. Non-interference of Facilities.

(1) District's Facilities shall be located, relocated and maintained within the Franchise Area so as not to unreasonably interfere with the free and safe passage of pedestrian, bicycle, and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington, and the ordinances, resolutions, rules and regulations of the City of Des Moines. Nothing herein shall preclude District from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided District receives prior City approval, which shall not be unreasonably withheld, and, provided further, District shall have the right to effect temporary road closures in the event of emergencies to maintain, repair and replace its Facilities without prior City approval but the District shall obtain City approval of such road closures as soon as reasonably possible.

(2) Whenever it is necessary for District, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, District shall, upon completion of such excavation, restore the surface of the Franchise Area to City standards, as issued by the City's Public Works Department, as

nearly as reasonably possible to its condition prior to any such excavation, installation, construction, relocation, maintenance or repair, at no expense to the City; PROVIDED, HOWEVER, that no such work shall be done prior to the obtaining of a permit therefor issued by the Director, which permit shall set forth conditions pertaining to the work to be done and specifications for the restoration of the streets and rights-of-ways.

(3) If the City determines that the District has failed to restore the right-of-way in accordance with the conditions set forth in this Franchise, the City shall provide the District with written notice, which shall include a description of actions the City believes necessary to restore the right-of-way. If the right-of-way is not restored in accordance with the City's notice within thirty (30) days of that notice, or such longer period as may be specified in the notice, the City, or its authorized agent, may restore the right-of-way and District shall be responsible for all reasonable costs and expenses incurred by the City in restoring the right-of-way in accordance with this section. The rights granted to the City under this section shall be in addition to those otherwise provided by this Franchise.

(4) The District shall, at no expense to the City, expeditiously repair all existing Facilities that it owns, operates and maintains within the Franchise Area, including any damage caused directly or indirectly by its Facilities. The District shall also coordinate and manage the repair of service lines in the Franchise Area connecting its system to users.

(5) Survey monuments shall not be removed or destroyed without the District first obtaining the required Department of Natural Resources (DNR) permit in accordance with RCW 58.09.130 and WAC 332-120-030, and as such statute and regulation may be modified and amended. A Professional Land Surveyor (PLS) shall be responsible for perpetuating and documenting existing monuments in compliance with the Application Permit to Remove or Destroy a Survey Monument in accordance with WAC 332-120. Following approval by the Public Land Survey Office, copies of the approved permits shall be forwarded to the City. All survey monuments, which have been distributed or displaced by such work, shall be restored pursuant to all federal, state and local standards and

specifications. District agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole expense.

Sec. 4. Relocation of Facilities.

(1) Whenever the City causes the grading or widening of the Franchise Area or undertakes construction of City-owned utilities, storm drainage lines, lighting, signalization, sidewalk improvements, pedestrian and bicycle amenities, or other public street improvements and such project requires the relocation of the District's then-existing Facilities within such Franchise Area, the City shall:

(a) Pursuant to RCW 35.21.905, or as amended, consult with the District in the predesign phase of any such project in order to coordinate the project's design with District Facilities within such project's area; and

(b) Provide the District, at least three hundred sixty (360) days prior to the advertisement for bid of construction of such project, written notice that a project is expected to require the relocation of District Facilities, together with reasonably accurate and specific plans and specifications for such grading, widening, or construction and a proposed new location within the Franchise Area for the District's Facilities; and

(c) Coordinate and work diligently with the District to minimize conflicts between existing Facilities and the project improvements where possible, and to avoid having the District relocate their facilities, whenever possible. The District acknowledges that there may be situations and circumstances where no other feasible alternatives are available.

(2) After receipt of such notice and such plans and specifications, District shall relocate such Facilities within the Franchise Area so as to accommodate such street and city utility improvement project; provided, however, District may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocations. The City shall within a reasonable time evaluate

such alternatives and advise the District in writing whether one or more of the alternatives is suitable to accommodate work that would otherwise necessitate relocation of the Facilities. If so requested by the City, District shall submit such additional information as is reasonably necessary to assist the City in making such evaluation. The City shall give each alternative full and fair consideration. If the City reasonably determines that there is no other feasible alternative, the City shall provide the District with further written notice to that effect, and the District shall then relocate its Facilities by its own forces, by separate public works contract or by participating in the City's public works project in accordance with section 4(7). The City shall cooperate with the District to designate a substitute location for its Facilities within the Franchise Area. The City will establish a date by which Facilities will be relocated, which date will be not less than one hundred eighty (180) days after further written notice to the District as to the Facility to be relocated. District must finish relocation of each such Facility by the date so established.

(3) The cost of relocating such Facilities existing within the Franchise Area shall be paid as follows:

(a) If the relocation occurs within ten (10) years after the District or a third party on the District's behalf constructed such Facility, then the City shall pay fifty percent (50%) of the cost of such relocation and the District shall pay the remaining fifty percent (50%).

(b) If the relocation occurs more than ten (10) years after the District or a third party on the District's behalf constructed such Facility, then the relocation shall be at the District's sole cost.

(c) However, if the City requires the relocation of Major Facilities defined as water and sewer mains of twelve (12) inch diameter or greater (excluding asbestos cement water and sewer mains), supply stations, pump stations or vault structures ("Major Facilities" or "Major Facility") to accommodate the completion of or as a result of a City project, where such facility cannot reasonably be supported, disconnected, relocated or removed, then

the City shall pay fifty percent (50%) of the cost of the relocation of the Major Facility and the District shall pay the remaining fifty percent (50%) without limitation on the age of the facility; provided, the City and District agree to give full and fair consideration to any lower-cost alternatives to relocating the Major Facility meeting the minimum operational requirements of the Parties, and the City and the District shall each pay fifty percent (50%) of the lower-cost alternative.

(d) For the purposes of this section 4, the date of the Facility's acceptance by the District Board of Commissioners, or the date of final contract payment for the facility's installation (whichever occurs first), shall determine the age of the Facility.

(e) Whenever any State or Federal Agency with legal authority within the Franchise Area requires the relocation of District Facilities, the relocation shall be at the District's sole cost. This provision does not limit the District's rights to seek reimbursement for the costs of such relocation from the State or Federal Agency requiring the relocation.

(f) Subsections (a) and (c) of this section 4(3) shall not apply to:

(i) Relocations of District facilities required as part of a formal declaration of emergency as defined by RCW 39.04.280(3) by the City, which is ratified by Resolution of the City Council. In such cases, relocation, if necessary, shall be at the District's sole cost; and

(ii) Relocation of District facilities located on, over, or under bridges, and culverts conveying creeks and streams (identified as Des Moines Creek, Barnes Creek, Massey Creek, McSorley Creek, Woodmont Creek, Redondo Creek, Cold Creek), where relocation of such facilities, if necessary, shall be at the District's sole cost.

(4) Whenever the City is undertaking a road or City-owned utility project or improvement, the City will not use its authority to require the District to relocate water and sewer facilities

[excluding water services, hydrants and sewer stubs] for third party franchise utilities (private utilities) on City-initiated aerial-to-underground conversion projects. If conflicts between the aerial-to-underground joint-trench and the District Facilities cannot be resolved, and relocation of District Facility's is necessary, the District shall have the right as a pre-condition of such relocation to require payment to the District for any and all costs and expenses incurred by the District in the relocation of such District Facilities. On City-initiated projects requiring aerial-to-aerial relocation of third party franchise utilities (private utilities), the District shall relocate that portion of its Facilities which are in direct conflict with the new locations of the third party franchise utility facilities, such as utility poles, or participate in securing the necessary easements where no reasonable alternative location for the third party franchise utility facilities exists within the then existing right-of-way.

(5) For the purpose of this section 4, a project or improvement is considered to be caused by the City (as described in section 4(1) above) if the project is City-initiated and is part of the City's annually adopted Capital Improvement Project (CIP) Program, and can include projects or improvements where a third party has made an in lieu payment for a portion of the City's capital improvement project, provided, the City is responsible for the majority of the cost of the project or improvement, which, if applicable, includes any grant funding received by the City from any federal or state agency. A project or improvement is not considered to be caused by the City if the project or improvement is constructed by the City on behalf of a third party, where the third party is responsible for the majority of the project or improvement cost, and makes payment to the City in lieu of performing the project or improvement.

(6) Whenever any person or entity, other than the City, requires the relocation of District Facilities to accommodate the work of such person or entity within the Franchise Area [excluding State and Federal Agencies with legal authority within the Franchise Area], the City agrees not to use its authority to require the District to relocate the existing facilities. The District shall have the right as a pre-condition of such relocation to require such person or entity to:

(a) Make payment to District at a time and upon terms acceptable to the District for any and all costs and expense incurred by the District in the relocation of District Facilities; and

(b) Protect, defend, indemnify and save the District harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of District Facilities, to the extent such injury or damage is caused by the negligence or willful misconduct of the person or entity requesting the relocation of District Facilities or other negligence or willful misconduct of the agents, servants or employees of the person or entity requesting the relocation of District Facilities.

(7) If a City project requires the relocation of then existing Facilities within the Franchise Area, the District shall have the right by interlocal agreement with the City to include the relocation of any Facilities as required by the City as part of the City's public works project. Such interlocal agreement shall include and provide for, but not be limited to, the following terms and conditions:

(a) The inclusion of the District's work as part of the City's project;

(b) The District to provide plans and specifications of the District's work to the City for inclusion as a separate bid schedule in the City project, whether such District plans and specifications are prepared by the District at the District's expense, or the City prepares the plans and specifications for the District's work at the District's expense;

(c) The City bidding the project, including the District's work by separate bid schedule, and the District's approval of the contractor's bid for the District's work in the separate bid schedule, or, alternatively, the District's rejection of the contractor's bid for the District work and the District's right to perform the District's work through a District contractor,

provided that in so doing the City's project is not unreasonably delayed;

(d) The City's contractor to install both the City work and the District work, the City's obligation to pay the City's contractor for both the City work and the District work, and the District's obligation to reimburse the City for the cost of the District work performed by the City contractor; and

(e) The District's obligation to reimburse the City for District project administration and inspection fees and costs based on a time and materials basis, provided the City and the District may negotiate a lump sum payment on a per project basis, or a percentage of the total District project construction cost, and provided the District shall not be required to pay for any City-issued permits related to the City work and the District work.

(8) The Parties expressly agree that this section 4 shall not survive the expiration, revocation or termination of this Franchise, unless modified by separate agreement.

Sec. 5. Right-of-Way Management.

(1) Excavation. Whenever the District excavates in any right-of-way for the purpose of installation, construction, operation, maintenance, repair or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with the ordinances and regulations of the City requiring permits to operate in City right-of-way. Except for emergencies or routine maintenance, no District excavation work shall commence within any City right-of-way without a permit, except as otherwise provided in this Franchise and applicable City Ordinance. All work shall be done to the City's reasonable satisfaction.

(2) Restoration after construction. The District shall, after any installation, construction, relocation, operation, maintenance or repair of Facilities within the Franchise Area, restore the right-of-way to City standards as nearly as reasonably possible to its condition prior to any such work. The District agrees to promptly complete all restoration work and to promptly repair any damage to the right-of-way caused by such work at its sole cost and expense. If it is determined the District has failed

to restore the right-of-way in accordance with this Franchise and other applicable City regulations, the City shall provide the District with written notice including a description of the actions the City believes necessary to restore the right-of-way.

(3) Bonding requirement. The District, as a public agency, shall not be required to comply with the City's standard bonding requirement for working in the City's right-of-way.

(4) Emergency work, permit waiver. In the event of an emergency where any District Facilities located in the right-of-way are broken or damaged, or if the District's construction area for the District's Facilities is in a condition as to place health or safety of any person or property in imminent danger, the District shall immediately take any necessary emergency measures to repair, replace or remove its Facilities without first applying for and obtaining a permit as required by this Franchise; provided the District shall notify the City as soon as reasonably possible relative to such emergency activity and shall immediately obtain a permit for such activity if required by this Franchise or City Ordinance.

(5) City work zones. The District shall not be required to obtain a City right-of-way permit to undertake utility work when the District has included its work as part of a City public works project in accordance with section 4(7).

(6) Complete permit applications. If the District is required to obtain a City right-of-way permit to undertake utility work within City right-of-way, the City shall issue a permit within fourteen (14) calendar days of receiving a complete application for such permit from the District.

(7) City invoices. The City shall invoice the District for all City fees and charges relating to the issuance of any City right-of-way permit to the District, including inspection fees and charges, on a monthly basis, and the City's final fees and charges within thirty (30) days of the completion of any District work in City right-of-way subject to a City permit, and the City's final acceptance of any such District work.

Sec. 6. Planning coordination.

(1) The Parties agree to participate in the development of, and reasonable updates to, the other Party's planning documents as follows:

(a) For the District's service area within the City limits, the District will participate in a cooperative effort with the City to develop City's Comprehensive Plan Utilities Element that meets the requirements described in RCW 36.70A.070(4).

(b) The District will participate in a cooperative effort with the City to ensure that the Utilities Element of City's Comprehensive Plan is accurate as it relates to the District's operations and is updated to ensure continued relevance at reasonable intervals.

(c) The District shall submit information related to the general location, proposed location, and capacity of all existing and proposed Facilities within the City as requested by the City within a reasonable time, not exceeding twenty (20) days from receipt of a written request for such information, provided that such information is in the District's possession, or can be reasonably developed from the information in the District's possession.

(d) The City will provide information relevant to the District's operations within a reasonable period of written request to assist the District in the development or update of District's Comprehensive Water and Sewer Comprehensive Plan(s), provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.

(2) District and City shall each assign a representative whose responsibility shall be to coordinate planning for capital improvement plan projects including those that involve undergrounding. At a minimum, such coordination shall include:

(a) For the purpose of planning, the District and the City shall provide each other with a copy of their respective

current adopted Capital Improvement Plan annually and upon request by the other Party.

(b) By February 1st of each year, District shall provide the City with a schedule of the District's planned capital improvements which may affect the rights-of-way for that year.

(c) By February 1st of each year, City shall provide the District with a schedule of City's planned capital improvements which may affect the rights-of-way for that year including but not limited to street overlays and repairs, storm drainage improvements and construction, and all other rights-of-way activities that could affect District capital improvements and infrastructure.

(d) The District shall meet with the City, and other franchisees and users of the right-of-way, as necessary, to schedule and coordinate construction activities.

(e) All construction locations, activities, and schedules shall be coordinated to minimize public inconvenience, disruption or damages.

(f) The City and the District agree to cooperate in the planning and implementation of emergency operations response procedures.

(g) Without charge to either Party, both Parties agree to provide each other with as-built plans, maps and records in electronic format as available that show the location of its facilities within rights-of-way.

Sec. 7. Indemnification.

(1) District shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or

negligent acts, failures and/or omissions of District or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted District in this Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

(2) City shall indemnify, defend and hold the District, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of City or its agents, servants, employees, contractors, subcontractors or assigns in the City's performance, administration and operation of this Franchise or in exercising the rights granted City in this Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the District, its agents, officers, employees, volunteers or assigns.

(3) In the event any such claim or demand be presented to or filed with the District or the City arising out of or relating to the acts or omissions in whole or in part of the other Party, the Party shall promptly notify the other Party thereof, and the notified Party shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand.

(4) Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of City and District, their officers, employees and agents, District's liability hereunder shall be only to the extent of District's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes

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the parties' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification.

Sec. 8. Default. If the District fails to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon the District a written order to so comply within thirty (30) days from the date such order is received by the District. If the District is not in compliance with this Franchise after expiration of said thirty (30) day period, the City may act to remedy the violation and may charge the costs and expenses of such action to District. The City may act without the thirty (30) day notice in case of an emergency. The City may in addition, by ordinance adopted no sooner than five (5) days after notice of the City Council hearing (at which District will have an opportunity to be heard) on the impending ordinance, declare an immediate forfeiture of this Franchise, provided, however, if any material failure to comply with this Franchise by District cannot be corrected with due diligence within said thirty (30) day period, the District's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control, in which case the time within which the District may so comply shall be extended for such time as may be reasonably necessary and so long as the District commences promptly and diligently to effect such compliance, provided a good faith dispute does not exist concerning such compliance.

In addition to other remedies provided herein, if the District is not in compliance with requirements of the Franchise, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending District right-of-way use permits until compliance is achieved.

Sec. 9. Non-exclusive Franchise. This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area, which do not interfere with District's rights under this Franchise. This Franchise shall not prohibit or prevent the City from constructing, altering, maintaining, or using the Franchise

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Area or affect the jurisdiction of the City over the same or any part thereof.

Sec. 10. Jurisdiction. This Franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which the City has an actual interest within the Franchise Area. It is not a warranty of title or of interest in City road rights-of-way.

Sec. 11. Franchise term. This Franchise shall have a term of sixteen (16) years from its Effective Date as defined in section 36 herein, provided this Franchise shall be automatically extended for one additional five (5) year period unless either Party, at least one hundred eighty (180) days prior to the termination date of the Franchise provides written notice to the other Party of its intent to terminate the Franchise at the end of the then current Franchise term (collectively, the "Term").

Sec. 12. Franchise fee. As compensation to the City for its costs of creating and administering this Franchise, the District shall pay to the City a one-time franchise fee ("Franchise Fee") of Five Thousand Dollars (\$5,000.00). The Franchise Fee shall be paid by the District to the City within forty-five (45) days of the Effective Date of the Franchise.

Sec. 13. Non-assumption. In consideration of the District's payment of the Franchise Fee and Franchise payment to the City as provided in sections 12 and 14 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear its statutory authority pursuant to RCW Chapter 35.13A or other statutes to attempt to assume jurisdiction over all or part of the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise. The City's agreement and forbearance includes not providing consent to, or otherwise facilitating or cooperating with, any other city or town to attempt, pursuant to RCW Chapter 35.13A or as such statute may be amended or superseded, to assume jurisdiction over the District or any District responsibilities, property, facilities, equipment

or utility customers located within or without the City's corporate limits during the Term of this Franchise.

Sec. 14. Franchise payment.

(1) In consideration of the rights granted the District under this Franchise, the District shall pay to the City a franchise payment ("Franchise payment") in the amount of six percent (6.0%) of the District's Revenue during the Term of this Franchise, beginning September 1, 2025.

(2) Franchise payments shall be paid to the City in bi-monthly installments due and payable within forty-five (45) days following the end of the bi-monthly period.

(3) In consideration of the District's payment of a Franchise payment to the City as provided in section 14 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear any legal authority it may have to impose a utility, business and occupation tax, public utility tax, privilege tax, excise tax or any other tax (collectively "Excise Tax") upon the District based on the District's revenues, gross receipts, or gross income during the term of this Franchise.

(4) Should the District be prevented by legislative action from paying any or all of the Franchise payments or should a court of competent jurisdiction declare the Franchise payment invalid, in whole or in part, then the District's obligation to pay the Franchise payments to the City under this section shall be terminated in accordance with and to the degree required to comply with such legislative or court action, provided, the Parties agree to meet to discuss alternatives and amendments to this Franchise to retain the essential purposes of this section. If the Parties are unable to agree on appropriate amendments to this Franchise, the City shall have the right to void section 14(3) of this Agreement and may impose a 6% Excise Tax on the District's Revenue, as such revenues are described in Section 1 above. City agrees that if any such Excise Tax imposed exceeds six percent (6%), the District shall have the right to charge, and the City shall be obligated to pay, the District's current hydrant charge in an

amount up to, but not in excess of, the amount by which the excise tax charged exceeds the 6% limit on the franchise fee established in this section.

(5) The District shall have the right to recover the Franchise payments from the District's ratepayers residing within the City and may identify the Franchise payments as a separate billing item on utility customer billings.

(6) The District agrees while this Franchise is in effect that it will not pursue or support any legal challenge to the Franchise payment set forth herein. Except as provided in subsection (4) above, the District shall not charge the City for the cost of fire suppression (hydrant charge) during the term of this franchise.

(7) If the District fails to pay any fee required under this Franchise within ninety (90) days after the due date thereof, there shall be added to such fee a penalty of 1.5 percent (1.5%) of the amount of such fee.

Sec. 15. Compliance with codes and regulations.

(1) The rights, privileges and authority herein granted are subject to and governed by this Ordinance and all other applicable City ordinances and codes, as they now exist or may hereafter be amended, provided the City shall not unreasonably affect or modify any portion of this Franchise without District's written approval. Nothing in this Ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public or deprive the City of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City road rights-of-way covered by this Franchise. Any location, relocation, erection or excavation by District shall be performed by District in accordance with applicable federal, state and City rules and regulations, including the City public works policies and pre-approved plans, and any required permits, licenses or regulatory fees, and applicable safety standards then in effect or any Memorandum of Understanding with District.

(2) If any territory served by District is annexed to the City after the Effective Date of this Franchise, this Franchise shall be deemed to be the new agreement required to be granted to a franchisee in annexed territory by RCW 35A.14.900 for whatever period of time is then required under that statute or the remaining time left under this Franchise for the Franchise Area, whichever is longer. Such territory shall then be governed by the terms and conditions contained herein upon the effective date of such annexation. The first Franchise payment for any annexed area shall be calculated pro rata from the effective date of the annexation to the end of the next bi-monthly billing period and paid to the City at the same time as the fee for the Franchise Area is paid for that bi-monthly billing period.

Sec. 16. Location of Facilities and equipment. With the exception of components that are traditionally installed above ground such as fire hydrants, blow offs, air-vacs, odor control systems, flow monitoring devices, vault lids, risers, pump stations, generators, electrical control panels, power meters, telephone and communication connections, poles, antennas, automated reading equipment and appurtenances, and utility markers, all Facilities and equipment to be installed within the Franchise Area shall be installed underground; provided, however, that such Facilities may be installed above ground if so authorized by the City, which authorization shall not be unreasonably withheld, conditioned or delayed, consistent with the provisions of the City's land use and zoning code and applicable development pre-approved plans.

Sec. 17. Record of installations and service. With respect to excavations by District and the City within the Franchise Area, District and the City shall each comply with its respective obligations pursuant to chapter 19.122 RCW, and as such statute may be modified and amended, and any other applicable state law.

Upon written request of the City, District shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall

Ordinance No. ____
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such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

Upon written request of District, the City shall provide District with the most recent update available of any plan of potential improvements to its improvements located within the Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

As-built drawings of the location of any Facilities placed by District in the Franchise Area, shall be made available to the City within twenty (20) working days of request.

Sec. 18. Shared use of excavations.

(1) District and the City shall exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other Party and other utilities within the Franchise Areas informed of its intent to undertake such construction work. District and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

(2) If at any time, or from time to time, either District, the City, or another franchisee, shall cause excavations to be made within the Franchise Area, the Party causing such excavation to be made shall afford the others, upon receipt of a written request to do so, an opportunity to use such excavation, provided that:

(a) No statutes, laws, regulations, ordinances or District policies prohibit or restrict the proximity of other utilities or facilities to District's Facilities installed or to be installed within the area to be excavated;

(b) Such joint use shall not unreasonably delay the work of the Party causing the excavation to be made;

(c) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties. The Parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction.

Sec. 19. Insurance.

(1) The District shall keep a policy of insurance in force with a minimum limit of five million dollars (\$5,000,000.00). Verification of insurance coverage shall be provided as requested by the City.

(2) The insurance shall be maintained in full force and effect at the District's sole expense throughout the term of the Franchise, and, should such insurance be terminated, this Franchise shall terminate as of the date of the termination of insurance coverage.

(3) The coverage provided by the District's insurance policies shall be primary to any insurance maintained by the City, except as to losses or damages attributable to the sole negligence of the City. Any insurance maintained by the City that might relate to this Franchise shall be in excess to the District's insurance and shall not contribute with or to it. The City has no obligation to report occurrences to the insurance companies unless a claim is filed with the City's City Council; and the City has no obligations to pay the District's premiums.

(4) The District shall be solely and completely responsible to perform all work related to this Franchise in compliance with all applicable federal, state, county and city statutes, rules, regulations, ordinances, orders and codes as presently constituted or as may be subsequently amended. The District's attention is directed to the requirements of the Washington Industrial Safety and Health Act, Chapter 49.17 RCW. The District shall be solely and completely responsible for safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property

during performance of any works therein. The services of the City or City's consultant personnel in conducting construction review of the District's work relating to the Franchise is not intended to include review of the adequacy of the District's work methods, equipment, scaffolding, or trenching, or safety measures in, on or near such Franchise Area or job site. The District shall provide reasonable and appropriate access for the City and its inspectors to adequately inspect the work and its conformance with applicable statutes, ordinances, rules, regulations, and the Franchise.

Sec. 20. Abandonment and/or removal of District Facilities. The Parties agree that the standard practice will be to abandon underground District Facilities in-place whenever practical, subject to the following conditions:

(1) The District shall continue to own and be responsible for any such facilities abandoned within the Franchise Area.

(2) The City shall have the right to require the District to remove any Facilities abandoned within the Franchise Area if the City reasonably determines the removal of the abandoned Facility is required to facilitate the construction or installation of a City project within the Franchise Area and the City determines there is no other reasonable or feasible alternative to the removal of the Facility. The City will make reasonable efforts to avoid conflicts with abandoned Facilities whenever possible, however, whenever a conflict cannot be resolved except by removal from the right-of-way of previously abandoned District Facilities, then the District shall, at the District's expense, remove such abandoned Facilities by their own forces or by participating in the City's public works project. When necessary, removal of abandoned Facilities shall be limited to the area of direct conflict. In removing such material, the District shall conform to all local, state, and federal regulations applicable to asbestos abatement, when applicable.

(3) Within one hundred and eighty days (180) of the District's permanent cessation of use of its Facilities as determined by the District, or any portion thereof, the District shall provide the City with record drawings showing the location of the Facilities to be abandoned.

(4) District Facilities that are abandoned in-place shall be abandoned pursuant to City Standards, to the satisfaction of the Planning, Building and Public Works Director.

(5) The Parties expressly agree that this section shall survive the expiration, revocation or termination of this Franchise, unless modified by separate agreement.

Sec. 21. Vacation of Franchise Area. If the City processes an application and/or determines to vacate any right-of-way which is part of the Franchise Area, the City may, after giving thirty (30) days written notice to the District, terminate this Franchise with respect to any City road or rights-of-way vacated. However, should the District notify the City that an easement is required for existing Facilities within the proposed vacation area, the City shall require the applicant for a vacation to prepare and provide to the District the necessary easement documentation, at no cost to the District. The City shall withhold approval of such vacation until the District has notified the City that the necessary easement documentation has been secured, or provisions otherwise made acceptable to the District to maintain the viability and use of existing Facilities.

Sec. 22. Assignment. All of the provisions, conditions, and requirements herein contained shall be binding upon the District, and no right, privilege, license or authorization granted to the District hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold, condition or delay, provided that a merger or consolidation of District with or into another Title 57 water-sewer district shall not be considered an assignment for the purposes of this provision and shall not be subject to the City's approval.

Sec. 23. Reservation of rights. The City reserves the right, upon thirty (30) days written notice to the District, to amend or modify the provisions or conditions of this Franchise to conform to any state, county, or federal statute, ordinance, rule or regulation. Unless mandated by state or federal law, if any

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term or condition of this Franchise and any term or condition of any City code, ordinance, resolution, or regulation are in conflict, the terms of this Franchise shall control.

Sec. 24. Notice. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any Party (collectively, "notices") shall be in writing and shall be validly given or made to another Party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States Mail, certified, registered, or express mail with postage prepaid, or if sent by e-mail with electronic confirmation. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given one (1) business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given five (5) business days after the deposit thereof in the United States Mail. If such notice is sent by email, it shall be deemed given at the time of the sender's receipt of electronic confirmation. Each such notice shall be deemed given only if properly addressed to the Party to whom such notice is to be given as follows:

To City: City Clerk
 City of Des Moines
 21630 11th Ave. S.
 Des Moines, WA 98198
 Phone: (206) 878-4595
 Fax: (870) 6540

To District : General Manager
 Lakehaven Water and Sewer District
 23828 30th Ave. S.
 Kent, WA 98032
 Phone: (206) 824-0375
 Fax: (206) 824-0806

Any Party may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner required by this section to the other Party.

Sec. 25. Severability. If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect.

Sec. 26. Non-Waiver. The failure of either Party to enforce any breach or violation by the other Party or any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver by the non-breaching Party of any subsequent breach or violation of the same or any other provision of this Franchise.

Sec. 27. Non-Discrimination clause. In all hiring or employment made possible or resulting from this Franchise, the Parties agree there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, creed, national origin, marital status, families with children, honorably discharged veteran or military status or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability unless based upon a bona fide occupation qualification. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Franchise on the grounds of sex, sexual orientation, age, race, color, creed, national origin, marital status, families with children, honorably discharged veteran or military status or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability unless based upon a bona fide occupation qualification.

Sec. 28. Alternate dispute resolution. If the Parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the Parties may submit the dispute to mediation or other non-binding alternate dispute resolution process agreed to by the

Parties. Unless otherwise agreed upon between the Parties or determined herein, the cost of that process shall be shared equally by the Parties.

Sec. 29. Attorney fees. 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. 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 or the District's right to indemnification under section 7 of this Agreement.

Sec. 30. Governing law/venue. This Franchise shall be governed by the laws of the State of Washington. Any suit to enforce or relating to this Agreement shall only be filed in King County Superior Court, King County, Washington.

Sec. 31. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.

Sec. 32. Amendment. This Franchise may be amended only by written instrument, signed by both Parties, which specifically states that it is an amendment to this Franchise, and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, section 7 "Indemnity" above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by District of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or document specifically:

(1) References this Franchise; and

(2) States that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document that does not comply with subsections (1) and (2) referenced immediately above, the provisions of this Franchise shall control.

Sec. 33. Directions to City Clerk. The City Clerk is hereby authorized and directed to forward certified copies of this Ordinance to the District as set forth in this Ordinance. District shall have thirty (30) days from the receipt of the certified copy of this Ordinance to accept in writing the terms of the Franchise granted to the District by this Ordinance and file with the City Clerk the Statement of Acceptance, attached hereto as Exhibit "A," and incorporated by reference.

Sec. 34. District Acceptance of Franchise. District shall have no rights under this Franchise nor shall District be bound by the terms and conditions of this Franchise unless District shall, within thirty (30) days after the effective date of the ordinance, file with the City its written acceptance of this Franchise.

Sec. 35. Effective date of Ordinance. This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

Sec. 36. Effective date of Franchise. The terms and conditions of this Ordinance shall not be binding on the City and the District unless the District Board of Commissioners within thirty (30) days of the effective date of this Ordinance adopts a resolution accepting this Franchise, and the date of the adoption

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of such resolution by the District Board of Commissioners shall be the effective date ("Effective date") of the Franchise.

Sec. 37. Prior Ordinance Superseded. Upon the effective date of this Ordinance in Section 35, Ordinance no. 1515 is superseded by this Ordinance.

PASSED BY the City Council of the City of Des Moines this ____ day of ____, 2025 and signed in authentication thereof this ____ day of ____, 2025.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

EXHIBIT A

ORDINANCE NO. _____

ACCEPTANCE OF FRANCHISE

The undersigned authorized representative of Lakehaven Water and Sewer District hereby declares on behalf of Lakehaven Water and Sewer District the acceptance of the nonexclusive franchise to Lakehaven Water and Sewer District approved by the Des Moines City Council on _____, __, 2025, by the adoption of Des Moines City Ordinance No. _____.

DATED this _____ day of _____, 2025.

LAKEHAVEN WATER AND SEWER DISTRICT

By: _____
Its: _____

EXHIBIT B

ORDINANCE NO. _____

DEPICTION OF CITY CORPORATE BOUNDARIES

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO._____, Adopted_____.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance grants Lakehaven Water and Sewer District a non-exclusive franchise to construct, maintain, operate, replace and repair a water and sewer system within public rights-of-way of the City of Des Moines, Washington, and fixes a time when the same shall become effective.

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

Taria Keane, CMC
City Clerk

Published: _____

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: City Council Protocol Manual Review

FOR AGENDA OF: May 8, 2025

ATTACHMENTS:

1. City of Des Moines City Council Protocol Manual with updates
2. Councilmember Protocol Update Proposals

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: May 1, 2025

CLEARANCES:

- ☒ City Clerk JK
☐ Community Development
☐ Courts
☐ Finance
☐ Human Resources _____
☒ Legal /s/ TG
☐ Marina
☐ Police
☐ Parks, Recreation & Senior Services
☐ Public Works

APPROVED BY CITY MANAGER

FOR SUBMITTAL: Katherine Coffey

Purpose and Recommendation

The purpose of this agenda item is for the City Council to continue to review the *City of Des Moines City Council Protocol Manual* and discuss potential amendments or revisions. Following direction from the Council, staff will prepare an updated Protocol Manual for Council consideration at a future meeting.

Suggested Motion

Motion:

Background

At the June 23, 2022 City Council meeting, three Councilmembers supported a request to place an update of the City Council Rules of Procedure on a future agenda.

In July of 2022, an Ad Hoc Rules Committee was created by the Council for the purpose of reviewing the City Council's Rules of Procedure and proposing edits. The Committee, consisting of three Councilmembers, met several times and created a first draft document entitled "City Council Protocol Manual." This draft was forwarded to City staff in October of 2022 to begin a staff review.

Over the next several months, City staff conducted an in-depth review of the newly drafted City Council Protocol Manual to include analysis of how the new protocols aligned with existing City Codes and policies, reviews of similarly situated agency rules, legal analysis and a practical implementation review of the potential impacts. As a result of this process, staff brought forward an amended version of the Protocol Manual with updates intended to clarify the rules, eliminate repetition, ensure conformity with existing Codes and RCW's, and to ensure the intent of the Council was met.

The Ad Hoc Rules Committee met publicly several more times in 2023 to create an updated draft. That draft was then sent to Ann Macfarlane of Jurassic Parliament for her review and comments. She provided her edits to the Committee and the Committee held a final meeting in May of 2023 to create a draft ready for the full Council to review.

A first reading with the full Council was held on June 1, 2023. Several amendments were made by the Council and incorporated into the Draft for a second reading. A second reading was held on June 8, 2023 with additional amendments made and incorporated into the draft. A third and final reading was held on June 23, 2023 and the Council formally adopted the *City of Des Moines City Council Protocol Manual*.

Discussion

Pursuant to Section 9.01 of the Protocol Manual, "the City Council will review and revise the City Council Protocol Manual every two years, or as needed." Given that the final adoption of the Manual occurred in June of 2023, we are approaching the two year timeline for Council review and revisions.

At the April 3, 2025 study session, Councilmembers came prepared with items or language from the existing Protocol Manual that they would like to discuss revising. During the Study Session, the Council began their review of the list. Given the number of items subject to review, this item will continue to be placed on future agendas for Council consideration until a final draft is created.

Alternatives

Staff will prepare amendments to the Manual that are agreed upon by a majority of the Council for future Council consideration and inclusion in the Manual.

Financial Impact

None.

**CITY OF
DES MOINES
CITY COUNCIL PROTOCOL MANUAL**

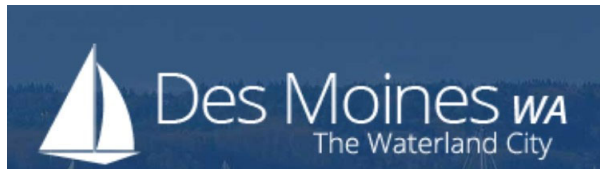


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- 12.04 Government Finance Officers Association [(312) 977-9700]35
- 12.05 Municipal Research & Services Center of Washington [(206) 625-1300]35

**CITY OF
DES MOINES
OATH OF OFFICE**

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

I do solemnly swear that I will faithfully and impartially discharge the duties of this office as prescribed by law and to the best of my ability, and that I will support and maintain the Constitution of the State of Washington and the United States of America.

Signed _____

Term of Office:
Month day, year - Month day, year

Subscribed and sworn to before me this

_____ day of _____, _____.

(Name)

Attest:

(Name)
City Clerk

Foreword

In the course of serving as a public official, there are a myriad of issues with which you will become involved. This protocol manual attempts to centralize information on common issues related to local government and your role as a member of the Des Moines City Council.

The issues that are addressed in this publication are often complex and subjective. This manual is intended to be a guide and is not a substitute for the counsel, guidance, or opinion of the City Attorney in accordance with the Revised Code of Washington (RCW).

The protocols included in this reference document have been formally adopted by the City Council. Provisions contained herein will be reviewed as needed.

Mission

Des Moines is a waterfront community committed to maintaining a safe, sustainable environment, while ensuring a high quality of life for all to live, work and play.

Vision

To be the premier waterfront destination in the Pacific Northwest.

Values

Core Values of the City of Des Moines are:

Safety

Sustainability

Integrity

Transparency

Innovation

CHAPTER 1 INTRODUCTION AND OVERVIEW

As a City Councilmember, you not only establish important and often critical policies for the community, you are also a Board Member of a public corporation having an annual budget that may exceed one hundred million dollars.

1.01 Council-Manager Form of Government

The City of Des Moines is a Council-Manager form of government. As described in the Municipal Code and Revised Code of Washington, certain responsibilities are vested in the City Council and the City Manager. This form of government establishes that a City Council's role, in this specific form of government is that of a legislative policy-making body which determines not only the local laws that regulate community life, but also determines what public policy is, and gives direction to the City Manager to administer the affairs of the City government.

1.02 Purpose of City Council Protocol Manual

The City of Des Moines has prepared its own protocol manual to assist the City Council by documenting accepted practices and clarifying expectations. This Manual has been formally adopted by the City Council and is binding on all Councilmembers.

1.03 Association of Washington Cities and Municipal Research & Services Center of Washington

[The Code City Handbook, Report No. 37](#), published by the Municipal Research & Services Center (MRSC), provides a wealth of general information on the major functions of a Councilmember's job as a locally elected official. Another publication from MRSC that goes hand in hand with the handbook is, [Knowing the Territory](#). This report discusses basic powers; basic duties, liabilities, and immunities of officers; conflict of interest and appearance of fairness; prohibited uses of public funds, property, or credit; competitive bidding requirements; the Open Public Meetings Act; Open Government-Public Records-Freedom of Information; and immunities from tort liability. These two documents have been included as resources in creating this protocol manual.

1.04 Overview of Basic City Documents

This protocol manual provides a summary of important aspects of City Council activities. However, it cannot incorporate all material and information necessary for undertaking the business of the City Council. Many other laws, plans, and documents exist which bind the City Council to certain courses of action and practices. The following is a summary of some of the most notable documents that establish City Council direction.

A. [Revised Code of Washington](#)

The state laws contain many requirements for the operation of city government and administration of meetings of city councils throughout the state. Des Moines is an "optional code city," which means it operates under the general laws of the state. As an optional code city of the State of Washington, Des Moines is vested with all the powers of incorporated cities as set forth in the Revised Code of Washington (RCW), Constitution of the State of Washington, and Des Moines Municipal Code.

B. [Des Moines Municipal Code](#)

The municipal code contains local laws and regulations adopted by ordinances. Titles 2 and 4 of the code address the role of the City Council, describes the organization of City Council meetings and responsibilities and appointment of certain City staff positions and advisory boards and commissions. In addition to these administrative matters, the municipal code contains a variety of laws including, but not limited to, zoning standards, health and safety issues, traffic regulations, building standards, and revenue and finance issues.

C. [Vision/Mission Statement](#)

[Vision, Mission & Business Plan - City of Des Moines, WA \(desmoineswa.gov\)](#)

D. [City Budget](#)

The budget is the primary tool and road map for accomplishing the goals of the City. The budget document is the result of one of the most important processes the City undertakes. By adopting the annual budget, the City Council makes policy decisions, sets priorities, allocates resources, and provides the framework for government operations.

Please note: The City Manager is required, by state statute, to present a recommended budget to the City Council in October of the preceding year of the budget. The City Council must hold at least two public hearings on the budget before they can approve the budget with any adopted changes.

E. [Annual Comprehensive Financial Report \(ACFR\)](#)

The annual financial report includes the financial statements of the City for a calendar year. It includes the financial condition of the City as reflected in the balance sheet, the results of operations as reflected in income statements, an analysis of the uses of City funds, and related footnotes. The annual financial report includes statements for the various groups of funds and a consolidated group of statements for the City as a whole.

F. [Comprehensive Plan](#)

A state-mandated comprehensive plan addresses the City's long-range planning needs relative to land use, transportation, economic development, and other planning elements such as employment and residential growth targets. The City's comprehensive plan, *Imagine Des Moines...* is reviewed on an ongoing basis, but may only be revised once a year, except as provided by State law.

G. [Six-year Capital Improvement Program](#)

The Six year Capital Improvement Program serves as a guide for determining priorities, planning, financing, and constructing capital projects which add to, support, or improve the physical infrastructure, capital assets, or productive capacity of city services.

1.05 Orientation of New Members

It is important for the members of the City Council to gain an understanding of the full range of services and programs provided by the City. As new members join the City Council, the City Manager and City Clerk provide an orientation session for new members to meet with key staff within the first quarter of taking office.

Another training opportunity for new members is the Association of Washington Cities-sponsored newly elected officials' orientation. At any time, if there are facilities or programs about which you would like more information, arrangements will be made to increase your awareness of these operations.

1.06 Medical and Religious Exemptions

The City complies with all requirements of the Americans with Disabilities Act (ADA). Accordingly, exceptions to these Protocols may be granted in accordance with the ADA. A Councilmember who believes he or she needs a reasonable accommodation in order to perform the essential functions of his or her (role as a Councilmember) must submit a request for a reasonable accommodation to the City's Human Resources Department. This request will be processed in accordance with the City Personnel Manual.

A Councilmember, who holds a "sincerely held religious belief, practice or observance" that conflicts with the Protocol requirements, may request a reasonable accommodation. Upon notice of the request, the City will process in the same manner as a reasonable accommodation request as defined by the ADA.

CHAPTER 2

DES MOINES CITY COUNCIL: GENERAL POWERS AND RESPONSIBILITIES

2.01 City Council Generally

Fundamentally, the powers of the City Council are to be utilized for the good of the community and its residents; to provide for the health, safety and general welfare of the citizenry. The City Council is the policy-making and law-making body of the City. State law and local ordinances grant the powers and responsibilities of the Council.

In carrying out their public role and in representing the positions of the Council body, Councilmembers should respect adopted Council policy. In turn, it is staff's responsibility to ensure that the policy of the Council is appropriately executed.

- A. Council Non-Participation in Administration
[RCW 35A.13.120](#) specifically prohibits interference by Councilmembers in the City's administrative service, including the hiring, firing, and work of city staff, with the exception of the City Manager.
- B. Code of Conduct/Ethics Code DMMC 2.44
[Chapter 2.44 CODE OF ETHICS \(codepublishing.com\)](#)

2.02 Role of Councilmembers

Members of the Des Moines City Council are collectively responsible for establishing policy, adopting an annual budget, and providing vision and goals to the City Manager. The following outline is a brief description of the various duties of Councilmembers. The description is not intended to be comprehensive, but rather is an effort to summarize the primary responsibilities of the Council.

Summary of Council Duties and Responsibilities as provided in, but not limited to, the Washington Administrative Code and Revised Code of Washington:

- A. Establish Policy:
 - 1. Adopt goals and objectives
 - 2. Establish priorities for public services
 - 3. Approve/amend the operating and capital budgets
 - 4. Approve contracts over \$50k
 - 5. Adopt resolutions
- B. Adopt City Ordinances
- C. Appoint City Manager:
 - 1. Evaluate performance of City Manager
- D. Boards and Commissions:
 - 1. Establish advisory boards and commissions
 - 2. Approve appointments to advisory bodies
 - 3. Provide direction to advisory bodies
- E. Provide Public Leadership:
 - 1. Communicate the City's vision and goals to constituents
 - 2. Represent the City's interest at regional, county, state, and federal levels through participation in regional boards and commissions, as appointed by Mayor or Council.
 - 3. Call special elections as necessary
 - 4. Constituent communication to City Manager

- F. Decision-Making:
 - 1. Participate in assigned committees
 - 2. Study problems
 - 3. Review alternatives
 - 4. Determine best course of public policy

2.03 Role of Mayor

- A. Presiding Officer:

The Mayor serves as the presiding officer and acts as chair at all meetings of the City Council. The Mayor may participate in all deliberations of the Council in the same manner as any other members and is expected to vote in all proceedings, unless a conflict of interest exists. The Mayor does not possess any power of veto.
- B. Ceremonial Representative:

Responsibility to act as the City Council's ceremonial representative at public events and functions has been assigned to the Mayor. The Mayor shall have no regular administrative or executive duties.
- C. Proclamations:

The Mayor is vested with the authority to initiate and read and sign Council approved proclamations.
- D. See also Section 5.04:

[Chapter 5.04 GENERAL PROVISIONS](#)

2.04 Role of Deputy Mayor

In case of the Mayor's absence or temporary disability, the Deputy Mayor shall act as Mayor during the continuance of the absence. When the Deputy Mayor acts as Mayor by participating in preparation of a council meeting agenda or study session worksheet, or by presiding at a meeting of the Council, the Deputy Mayor shall have authority only to approve the Council meeting agenda or study session worksheet as to form, without introducing or deleting items of business, and to preside at the meeting by following the approved agenda or study session worksheet as written.

2.05 Acting Mayor

When both the Mayor and Deputy Mayor are absent, the Council may choose from among its members a person to serve with the powers of the Deputy Mayor.

2.06 Election of Officers

Procedures for electing officers are as follows:

- A. Biennial Election of Mayor and Deputy Mayor

Biennially, at the first meeting of the new Council, Councilmembers will choose a presiding officer from their number who will have the title of Mayor. In addition to the powers conferred upon them as Mayor, they will continue to have all the rights, privileges and immunities of a member of the Council. If a permanent vacancy occurs in the Office of Mayor, the members of the Council at their next regular meeting will select a Mayor from their number for the unexpired term. Following the election of the Mayor, if the Deputy Mayor is selected as the new Mayor, there will be an election for Deputy Mayor. The term of the Deputy Mayor will run concurrently with that of the Mayor.

 - 1. Nominations

The election for Mayor shall be conducted by the City Clerk. The City Clerk shall call for nominations. Each member of the City Council shall be permitted to nominate one (1) person who has previously served on the Council for a minimum of two years, and nominations shall not require a second. A nominee who wishes to decline the nomination shall so state at this time. Nominations

are then closed. The election for Deputy Mayor shall be conducted by the newly-elected Mayor, and nominations shall be made in the manner previously described for the election of the Mayor. Candidates for Deputy Mayor shall have previously served on the Council for a minimum of one year. The minimum experience condition for candidacy for Mayor or Deputy Mayor may be waived by a vote of five Councilmembers.

B. Casting Ballots

Except when there is only one nominee, election will be by audible vote; each Councilmember declaring a vote into the record. The City Clerk will publicly announce and record the results of the election in the official minutes, stating the name of each voting Councilmember and the manner in which the Councilmember voted. Once a nominee receives a majority vote of the members present, the nominee is declared elected to the position.

C. Unable to Agree

In the event that the Council is unable to agree on a Mayor by majority vote of the members present, the Office of Mayor shall be temporarily filled by an Acting Mayor. The Acting Mayor shall be the Councilmember who just previously served as Mayor; or if such person is not a member of the Council, the Councilmember who just previously served as Deputy Mayor; or if such person is not a member of the Council, the Councilmember with the highest seniority as determined by the City Attorney.

In the event that the Council is unable to agree on a Deputy Mayor, the appointment of Deputy Mayor shall be filled in the same manner as described above.

The Acting Mayor and Acting Deputy Mayor shall continue in office and exercise such authority as is described in Chapter [35A.13 RCW](#) until the members of the Council agree on a Mayor, at which time the Office of Acting Mayor and Acting Deputy Mayor shall cease and terminate.

D. Resignation of Mayor or Deputy Mayor

If the Mayor or Deputy Mayor resign, the City Council will appoint a new Mayor or Deputy Mayor using the procedure outlined above, as soon as practical.

2.07 Appointment of City Manager

The City Council is responsible for appointing one position within the City organization, the City Manager. The City Manager serves at the pleasure of the Council.

2.08 Council Board and Committee Service

A. Committees of the Council:

Committees of the Council are comprised of a collaboration of Councilmembers and Staff, and are designed to review, discuss, and vet potential plans and decisions that may come before the Council body. These committees may make recommendations on proposed ordinances, resolutions, or motions within their area of expertise.

The procedures governing all committees of the Council shall be as follows:

1. The following standing committees shall consist of three members of the Council appointed by the Mayor in January following an election, or at such time as new standing committees are authorized; Environment, Municipal Facilities, Public Safety and Emergency Management, Transportation, and Economic Development.
2. In addition to standing advisory committees, special purpose or Ad Hoc committees and task forces may be appointed by the Mayor to address issues of interest or to conduct background work on technical or politically sensitive issues. Special or ad-hoc committees will be dissolved upon completion of the intended task.
3. Minutes shall be kept of each City Council standing and special committee meeting, listing discussion topics, a summary of key points made, without attribution to individuals and any final

recommendations.

4. Standing committees of the Council are open public meetings, shall be noticed to the public, and be recorded and available to the public for viewing.
5. During the appropriate portion of the regular City Council meeting, the Committee Chair shall report back to the Council regarding items of discussion, progress, or plans.
6. Councilmembers may be appointed or removed by the Mayor.

Councilmembers shall not serve on appointed City Advisory Bodies concurrent with their term of office as Councilmember.

However, at the discretion of the Mayor, Councilmembers may be appointed as liaison to one or more Council-established Citizen Advisory Bodies or other Community agencies/organizations. In their capacity as a Council liaison, a Councilmember shall:

1. Attend meetings on time and conduct themselves with respect, honoring the chair and members of the appointed or community body.
2. Participate only as requested by the Chair in answering questions or representing the will or opinion of the Council as a whole, and shall not interact as a member of the body by engaging with questions, discussion, or voting.
3. Report back to Staff and/or Council as appropriate with updates, progress and/or questions posed by community members. This should be done in a timely manner and may be done from the dais during Board and Committee Reports as appropriate.

B. Regional Boards and Committees:

Members of the City Council are often requested to serve on outside boards, councils, commissions, or committees. This type of representation serves to facilitate communication and provide interaction with other governmental bodies.

1. Membership appointment to these groups shall be made, or authorized by the Mayor for a 2-year period. If more than one Councilmember desires to serve as a member of a particular outside group, the member will be appointed by the Mayor.
2. Where applicable, the Mayor will appoint an alternate to attend outside boards, councils, commissions, or committees. The main delegate will notify the alternate as soon as possible after they realize they will be unable to attend an upcoming meeting of the outside group.
3. Councilmembers participating in policy discussions at regional meetings will represent the consensus of the Council, except where regional appointment requires regional opinion. Personal positions, when given, will be identified and not represented as the position of the City.
4. Assignment and direction of staff in relation to regional meetings are at the discretion of the City Manager.

2.09 Citizen Advisory Bodies

The Council policy regarding Citizen Advisory Bodies is found in DMMC Title 4:
[Title 4 COUNCILS AND APPOINTIVE COMMITTEES \(codepublishing.com\)](#)

2.10 Incompatibility of Offices

Councilmembers shall not simultaneously hold any other elected position, an incompatible public office or employment within the City government except as permitted under the provisions of [RCW 42.23](#), [35A.12](#) and [35A.13](#).

CHAPTER 3 SUPPORT PROVIDED TO CITY COUNCIL

3.01 Staff

The use of City staff to provide support for a Councilmember is limited to that which is authorized by the City Manager.

Councilmembers are responsible to keep their own calendars and make their own appointments.

3.02 Electronic Devices

A computer and phone will be provided to each Councilmember for the conducting of City business. The IT staff will ensure that all appropriate software is installed and will also provide an orientation in the use of computers and related software. While staff will maintain those computer applications related to City affairs, staff cannot provide assistance for personal computer applications. Personal media and programs cannot be stored on City computers. Councilmembers must adhere to all policies under the City of Des Moines IT Security Policies.

Throughout Councilmember terms, City equipment is subject to audit. Virus protection software must not be disabled at any time on City equipment and non-city programs or media found during audits will be removed. When individual Councilmembers have completed their term of office, IT staff will retrieve City computers, software, and phones.

3.03 Mail and Deliveries

Members of the City Council receive mail and other materials that are delivered through the use of mailboxes located at City Hall. Councilmembers are encouraged to check mailboxes often.

CHAPTER 4 FINANCIAL MATTERS

4.01 Council Compensation

The municipal code provides for payment of a stipend to members of the City Council. A seated City Council may not increase or decrease its own compensation. Councils may only pass an ordinance to adjust the compensation of a future City Council. Currently, Council salaries are set as provided in chapter 4.08 DMMC or [RCW 35.21.015](#).

4.02 Business, Education and Travel

When determined by the City Council to be in the best interests of the City, Councilmembers may attend conferences and workshops, take part in educational or leadership opportunities, and conduct City business which may require travel, tuition, fees, or registration costs. Councilmembers may be reimbursed for these expenses under the following guidelines:

- A. The Administration will keep account of Councilmember expenses.
- B. When the Councilmember makes arrangements or incurs eligible expenses as determined by the Council, the Councilmember shall provide receipts for reimbursement.

4.03 Financial Disclosure

Candidates for the office of Councilmember shall file a financial disclosure statement with the State Public Disclosure Commission in accordance with State law. When appointed to fill a vacancy on the Council, the appointee shall file a financial disclosure statement with the Commission, covering the preceding 12-month period, at least two weeks prior to appointment. Councilmembers are required to file a financial disclosure

statement with the Commission on an annual basis after January 1 and before April 15 of each year covering the previous calendar year. Councilmembers whose terms expire on December 31 shall file the statement for the year that ended on that December 31. Statements filed in any of the above cases will be available for public inspection.

Failure to timely file a financial disclosure statement with the State Public Disclosure Commission in accordance with the requirements of State law, or filing a false or incomplete financial disclosure statement, if done knowingly, is a Class 1 Misdemeanor. There are also civil penalties for violations.

CHAPTER 5 COMMUNICATIONS

5.01 Overview

Perhaps the most fundamental role of a Councilmember is communication. This is essential to engage with the public to assess community opinions and needs, and to share the vision and goals of the City with constituents. In addition, connection with the staff provides policy direction and assists in understanding the implications of various policy alternatives.

Because the City Council performs as a body, based on the will of the majority as opposed to individuals, it is important that general guidelines be understood when speaking for the Council. Equally important, when members are expressing personal views and not those of the Council, the public must be advised.

5.02 Councilmember Contact and Information

A page on the City of Des Moines website will display information about each councilmember for community reference, which will include:

- A. A color photo
- B. A short biography/resume
- C. List of assignments or designations
- D. Phone number and email

5.03 Correspondence from Councilmembers

Councilmembers are committed to open communications in their capacity as elected officials. Individual Councilmembers use a variety of methods to communicate with the public, stakeholders, partners, and the media. Social media platforms offer a way to deliver public information and customer service to constituents and give community members another means to interact with their government.

The purpose of this policy is to establish standards for Council communication with the public, when Councilmembers are acting in their official capacity or commenting on City government matters, either through traditional media outlets or the use of social media platforms or personal accounts or pages.

The Council believes that the following standards will provide consistency in procedures and allow for use of more tools to communicate with the public.

- A. The content and tenor of all public communications shall model the same professional behavior displayed during Council meetings and community meetings, and reflect well on the individual Councilmember, the Council as a whole, and the community.

- B. The following disclaimers shall be included in whole or referenced with a link to the disclaimers for all communications initiated by Councilmembers in open forums:
 - 1. The views expressed represent the views of the author and may not reflect the views of the City of Des Moines or the Des Moines City Council.
 - 2. Responses to this communication by other Councilmembers may be limited by the provisions of the Open Public Meetings Act under which a policy discussion or other action taken must be held in an open public meeting if a quorum of the Council participates.
 - 3. Comments posted in response to a Councilmember-initiated communication may be subject to public disclosure under chapter [42.56 RCW](#), the Public Records Act.
- C. Media outlets such as newspapers, radio and television news coverage may be used as communications medium by individual Councilmembers provided that the communication clearly states that the views expressed do not represent those of the City Council or the City of Des Moines, but the views of the individual Councilmember.
- D. Communications initiated by Councilmembers. Guest editorials, letters to the editor and blog posts published by Councilmembers should be provided to the full Council at the same time they are delivered to the media outlet. Drafts of guest editorials, letters to the editor or blog posts which may be submitted on behalf of the Council as opposed to an individual Councilmember may not be circulated for comment to a quorum of the Council prior to publication as this may violate the Open Public Meetings Act.
- E. Use of Social Media. Posts to social media sites such as, blogs, Facebook, and Twitter may be used by individual Councilmembers to communicate with the public provided the following guidelines are used:
 - 1. Blog posts or other posts to social media sites should include, or reference a link which includes the disclaimers listed in Section 5.03.B.
 - 2. Social media sites are not to be used for the conduct of Council business other than to informally communicate with the public. Public notices, items of legal or fiscal significance that have not been released to the public, and discussion of quasi-judicial matters may not be included in Councilmembers social media posts. Councilmembers are encouraged to maintain social media sites with settings that can restrict users' ability to comment in order to avoid inadvertent discussions of these items. Unsolicited public comments on quasi-judicial matters must be placed on the record by the Councilmember at the time the matter is before the Council for consideration.
 - 3. In order to demonstrate openness and a willingness to listen to the entire community, Councilmember posts on social media sites should be made through a public-facing page or by marking individual posts as available to the public as a whole.
 - 4. When commenting on a post or an article published by someone other than a Councilmember, a link to the standard disclaimers in Section 5.03.B should be included within the thread.
- F. If a Councilmember makes a factual error in a public communication, it should be corrected as soon as the error is discovered. Blog posts may be corrected by amending a previous post with a note that a correction was made.
- G. Councilmembers shall not take actions, in writing, speaking, or otherwise, outside the public meeting(s) that undermine the decisions of the body.

5.04 Council Representation

To promote a favorable image of the City and pursue resources or relationships that will benefit the community, the Mayor, or another Councilmember designated by the Council, may take the lead in representing the City of Des Moines to other partners and representatives including, but not limited to; businesses, other local governments, regional agencies and organizations, and state, federal and international governments.

- A. Councilmembers shall not conduct communication or business in this manner without the authorization of the Administration or the City Council.
- B. Neither the Mayor, nor a Councilmember, can commit the City without authorization of a majority of the City Council.
- C. The Mayor, or another Councilmember designated by the City Council, shall be the spokesperson about actions taken by the Council. On behalf of the City Council, the Mayor or designated Councilmember may inform the public, media, and staff about issues affecting the community.

5.05 State Public Disclosure Act

The City Council is bound by State Public Records Act and City records policies. Please refer to Resolution No. 1185 [142.pdf \(civiclive.com\)](#)

5.06 Open Public Meetings Act

The City Council is bound the State Open Public Meetings Act. More information can be found at [Open Government Training | Washington State](#)

5.07 Communication with the public

- A. If a Councilmember receives communication from a member of the community conveying a concern, complaint, or administrative issue, the Councilmember shall not attempt to address it or resolve it individually but will refer that matter directly to the City Manager for their review and/or action. The individual Councilmember may request to be informed of the action or response made to the complaint.
- B. Written Communications:
Letters, correspondence, and memoranda received by the City, addressed to a Councilmember or the Council as a body, shall be provided to all City Councilmembers.
- C. E-mail:
 - 1. If a community member sends an e-mail to a Councilmember and requests that it be included in the record of a particular public hearing, the Councilmember will forward said e-mail to the City Clerk.
 - 2. If a Councilmember wishes that an e-mail be distributed to a City staff member, the Councilmember will forward said e-mail to the City Manager.
 - 3. E-mail communications that are intended to be shared among four or more Councilmembers, whether concurrently or serially must be considered in light of the Open Public Meetings Act. If the intended purpose of the e-mail is to have a discussion that should be held at an open meeting, the electronic discussion may not occur. Further, the use of e-mail communication to form a collective decision of the Council is illegal.
 - 4. E-mail should be used cautiously when seeking legal advice or if discussing matters of pending litigation or other "confidential" City business. In general, e-mail is discoverable in litigation, even deleted e-mail is not necessarily removed from the system, and councilmembers may not delete official email in violation of the Open Public meetings Act. Confidential e-mail communications should not be shared with individuals other than the intended recipients, or the attorney-client privilege protecting the document from disclosure may be waived:
 - a. E-mail between Councilmembers, and Councilmembers and staff shall not be transmitted to the public or news media unless a public disclosure request has first been filed with the City Clerk.
 - b. City email shall not be used for personal communication.

CHAPTER 6

CONFLICTS OF INTEREST, APPEARANCE OF FAIRNESS DOCTRINE, AND LIABILITY OF ELECTED OFFICIALS

6.01 Conflicts of Interest

In the course of conducting City business, it is essential that Councilmembers understand and are able to identify if and where they may have conflicts of interest. If there is ever a question, Councilmembers should consult with the City Attorney before the meeting at which the issue may be considered.

City Councilmembers are bound by the Conflict of Interest provisions of chapter [2.44 DMMC](#) as well as chapter [42.23 RCW](#).

6.02 Appearance of Fairness Doctrine

Appearance of Fairness Doctrine and its Application.

- A. Appearance of Fairness Doctrine Defined. "When the law which calls for public hearings gives the public not only the right to attend but the right to be heard as well, the hearings must not only be fair but must *appear* to be so. It is a situation where appearances are quite as important as substance. The test of whether the appearance of fairness doctrine has been violated is as follows: Would a disinterested person, having been apprised of the totality of a Boardmember's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist? If answered in the affirmative, such deliberations, and any course of conduct reached thereon, should be voided." [Zehring v. Bellevue, 99 Wn.2d 488 \(1983\)](#).
- B. Types of Hearings to Which Doctrine Applies. The appearance of Fairness Doctrine shall apply only to those actions of the Council, which are quasi-judicial in nature. Quasi-judicial actions are defined as actions of the City Council, which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents of the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance. [RCW 42.36.010](#). Some examples of quasi-judicial actions, which may come before the Council are: rezones or reclassifications of specific parcels of property, appeals from decisions of the Hearing Examiner, substantive appeals of threshold decisions under the State Environmental Protection Act, subdivisions, street vacations, and special land use permits. City staff is advised to notify the City Council upon receipt of an application or decision, which will result in an action before the City Council that is quasi-judicial in nature.
- C. Obligations of Councilmembers, Procedure.
 1. Councilmembers should recognize that the Appearance of Fairness Doctrine does not require establishment of a conflict of interest, but whether there is an appearance of conflict of interest to the average person. This may involve the Councilmember or a Councilmember's business associate or a member of the Councilmember's immediate family. It could involve ex parte communications, ownership of property in the vicinity, business dealings with the proponents or opponents before or after the hearing, business dealings of the Councilmember's employer with the proponents or opponents, announced predisposition, and the like.

Prior to any quasi-judicial hearing, each Councilmember should give consideration to whether a potential violation of the Appearance of Fairness Doctrine exists. If the answer is in the affirmative, no matter how remote, the Councilmember should disclose such facts to the City Manager who will seek the opinion of the City Attorney as to whether a potential violation of the Appearance of Fairness Doctrine exists. The City Manager shall communicate such opinion to the Councilmember and to the Presiding Officer.

2. Anyone seeking to disqualify a Councilmember from participating in a decision on the basis of a violation of the Appearance of Fairness Doctrine must raise the challenge as soon as the basis for

disqualification is made known or reasonably should have been made known prior to the issuance of the decision; upon failure to do so, the Doctrine may not be relied upon to invalidate the decision. The party seeking to disqualify the Councilmember shall state with specificity the basis for disqualification; for example: demonstrated bias or prejudice for or against a party to the proceedings, a monetary interest in outcome of the proceedings, prejudgment of the issue prior to hearing the facts on the record, or ex parte contact. Should such challenge be made prior to the hearing, the City Manager shall direct the City Attorney to interview the Councilmember and render an opinion as to the likelihood that an Appearance of Fairness violation would be sustained in superior court. Should such challenge be made in the course of a quasi-judicial hearing, the Presiding Officer shall call a recess to permit the City Attorney to make such interview and render such opinion.

3. The Presiding Officer shall have sole authority to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. Further, if two (2) or more Councilmembers believe that an Appearance of Fairness violation exists, such individuals may move to request a Councilmember to excuse himself/herself on the basis of an Appearance of Fairness violation. In arriving at this decision, the Presiding Officer or other Councilmembers shall give due regard to the opinion of the City Attorney.

4. Notwithstanding the request of the Presiding Officer or other Councilmembers, the Councilmember may participate in any such proceeding.

D. Specific Statutory Provisions.

1. Candidates for the City Council may express their opinions about pending or proposed quasi-judicial actions while campaigning. [RCW 42.36.040](#).
2. A candidate for the City Council who complies with all provisions of applicable public disclosure and ethics laws shall not be limited under the Appearance of Fairness Doctrine from accepting campaign contributions to finance the campaign, including outstanding debts. [RCW 42.36.050](#).
3. During the pendency of any quasi-judicial proceeding, no Councilmember may engage in ex parte (outside the hearing) communications with proponents or opponents about a proposal involved in the pending proceeding, unless the Councilmember: (a) places on the record the substance of such oral or written communications; and (b) provides that a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication shall be made at each hearing where action is taken or considered on the subject. This does not prohibit correspondence between a citizen and his or her elected official if the correspondence is made a part of the record, when it pertains to the subject matter of a quasi-judicial proceeding. [RCW 42.36.060](#).

6.03 Liability

The City must always approach its responsibilities in a manner that reduces appropriate risk to all involved. Nevertheless, with such a wide variety of high profile services (i.e., police, parks, roads, land use), risk cannot be eliminated. To better manage insurance and risk, the City participates in risk- and loss-control activities.

It is important to note that violations of certain laws and regulations by individual members of the City Council may result in the member being personally liable for damages which would not be covered by the City's insurance.

[DMMC 2.24.030](#) identified the exclusions to insurance coverage as follows:

The obligations assumed under this chapter by the city and the city attorney shall not apply to:

- A. Any dishonest, fraudulent, criminal, or malicious act of any official or employee;
- B. Any act of an official or employee, which is not performed on behalf of the city;
- C. Any act which is outside the scope of an official's or employee's service or employment with the city; or

D. Any lawsuit brought by or on behalf of the city.

The determination of whether an official or employee is entitled to a defense by the City under shall be made by the City Attorney. There shall be no appeal from such determination, except to the superior court by means of an action for declaratory judgment.

For more information, see [Chapter 2.24 DMMC](#).

CHAPTER 7 INTERACTION WITH CITY STAFF/OFFICIALS

7.01 Overview

City Council policy is implemented through dedicated and professional staff. Therefore, it is critical that the relationship between Council and staff be well understood by all parties so policies and programs may be implemented successfully. To support effective relationships, it is important that roles are clearly recognized.

The employment relationship between the City Council and City Manager honors the fact that the City Manager is the chief executive of the City. All dealings with the City Manager, whether in public or private, should respect the authority of the City Manager in administrative matters.

7.02 City Manager Performance Evaluation

In accordance with [DMMC 2.04.050](#), all members of the City Council will be required to participate in a review of the City Manager.

Prior to the process, the City Attorney will distribute evaluation forms to all Councilmembers for review, completion, and return within 14 days of receipt. The forms will be collated into one document for review before the evaluation date.

The members of the Council will use the collated document to review the City Manager during Executive Session.

7.03 City Council/City Clerk Relationship

The City Clerk is appointed by the City Manager. The City Clerk shall keep minutes as required by the Revised Code of Washington and Robert's Rules of Order, including a specific action item section, and shall perform such other and further duties in the meeting as may be required by the Council, Presiding Officer, or City Manager. In the absence of the City Clerk, the City Manager shall appoint a replacement to act as Clerk of the Council.

7.04 City Council/City Attorney Relationship

The City Attorney is the legal advisor for the Council, its committees, commissions and boards, the City Manager, and all City officers and employees with respect to any legal question involving an official duty or any legal matter pertaining to the affairs of the City.

It is important to note that the City Attorney does not represent, or advise, individual members of Council, but rather the City Council as a whole.

7.05 Non-Interference

In accordance with [RCW 35A.13.120](#), the City Council is to work through the City Manager when dealing with administrative services of the City. In no manner, either directly or indirectly, shall a Councilmember

become involved in, or attempt to influence or criticize personnel matters or individual staff members, who are under the direction of the City Manager.

Any criticism of staff by Councilmembers shall be directed to the City Manager. It is inappropriate and unethical for Councilmembers to publicly criticize individual staff members.

Individual Councilmembers may not intervene in staff decision-making, the development of staff recommendations, scheduling of work, or executing department priorities. Following this RCW is necessary in order to protect staff from undue influence and pressure from individual Councilmembers, and to allow staff to execute priorities given by management and the Council as a whole without fear of reprisal.

The City Council shall not be involved in, or influence, the purchase of any supplies beyond the requirements of the City procurement code/procedures.

If a Councilmember wishes to influence the actions, decisions, recommendations, or priorities of staff, that member must prevail upon the Council to do so as a matter of Council policy.

7.06 Access to Information

The City Manager is the information liaison between Council and City staff. Requests for information from Councilmembers are to be directed to the City Manager. The information requested will be copied to all members of Council so that each member may be equally informed.

There are limited restrictions when information cannot be provided. The City is legally bound to protect certain confidential personnel information. Likewise, certain aspects of police department affairs (i.e., access to restrict or confidential information related to crimes) may not be available to members of the City Council.

No Councilmember shall request or direct the City Manager or Department Directors to initiate any action or prepare any report, or initiate any project or study without the consent of a majority of the Council.

The full City Council retains the authority to accept, reject, or amend the staff recommendation on policy matters.

7.07 Staff Roles

The Council recognizes the primary functions of staff as executing Council policy and actions taken by the Council. Staff is directed to reject any attempts of individual Councilmembers to unduly direct or otherwise pressure them into making, changing, or otherwise influencing recommendations.

7.08 Councilmember Relationship with Staff

Staff support and assistance may be provided to advisory boards, commissions, and task forces. Advisory bodies, however, do not have supervisory authority over City employees. While staff may work closely with advisory bodies, staff members remain responsible to their immediate supervisors and, ultimately, the City Manager.

When Councilmembers are acting as Liaisons they shall not direct staff.

CHAPTER 8 CITY COUNCIL MEETINGS

The City Council's collective policy and law-making powers are put into action exclusively at the council meetings. It is here that the Council conducts its business. The opportunity for community members to be

heard, the availability of local officials to the public, and the openness of council meetings all lend themselves to the essential democratic nature of local government.

8.01 Meeting Schedule

Council business meetings are generally held the first, second, and fourth Thursdays of each month, convening at 6:00 p.m., in the Council Chambers at Des Moines City Hall, 21630 11th Ave S, Suite C, Des Moines WA, 98198. The first Thursday is intended to be reserved as a study session.

If Council Meetings are moved to alternate location or conducted remotely they will be noticed publicly at least 24 hours in advance in accordance with the State law.

8.02 Public Notice of Meetings and Hearings

Pursuant to [RCW 35.22.288](#), cities are charged with establishing a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. The procedure followed by the City of Des Moines is as follows:

A. Open to the Public:

All meetings of the City Council and of committees thereof shall be open to the public, except as provided for in [RCW 42.30.110](#) or [RCW 42.30.140](#).

B. Notices of Public Hearing:

Except where a specific means of notifying the public of a public hearing is otherwise provided by law or ordinance, notice of upcoming public hearings before the City Council shall be given by public notice containing the time, place, date, subject, and body before whom the hearing is to be held, using the City's official notification process at least ten (10) days before the date set for the hearing.

C. Preliminary Agenda of Council Meeting:

The public shall be notified of the preliminary agenda for the forthcoming regular City Council meeting by posting a copy of the agenda in the following public places in the City at least 24 hours in advance of the meeting:

Des Moines City Hall
21630 11th Ave So
Des Moines, WA 98198
Website: The City's Official Website: desmoineswa.gov
Des Moines Libraries
Des Moines Marina
Redondo

8.03 Special Meetings

It is the intent of the Des Moines City Council that the procedures of this Council Rule 8.03 are enforceable to the same extent as [RCW 42.30.080](#), as the City's implementation of the Open Public Meetings Act special meeting requirements set forth at [RCW 42.30.080](#). Procedures for setting a special meeting are as follows:

A. A special meeting may be called by the Mayor or any four members of the Council.

B. Notice of the special meeting shall be prepared in writing. The notice shall contain the following information about the meeting: time, place, duration of meeting, and business to be transacted. The notice shall be reviewed by the City Attorney for proper legal form. After the preliminary agenda has been approved by the Presiding Officer, a copy of the agenda and supporting materials shall be prepared for Councilmembers, the City Manager, and the press by close of business Friday prior to the Special Council Meeting, except in case of an emergency.

- C. The notice shall be posted on the City's website and Councilmembers will be notified via email of the special meeting. The notice must be delivered at least twenty-four (24) hours prior to the meeting.
- D. When email notice is given to Councilmembers, the City Clerk shall provide confirming follow up of such email notice by making a personal telephone call directly to each Councilmember who has not acknowledged receipt of the email. The City Clerk shall document the date and time of such follow up telephone call.
- E. The notices provided in this section may be dispensed within the circumstances provided by [RCW 42.30.080](#).

8.04 Placing Items on the Agenda

The Presiding Officer, three Councilmembers, or the City Manager may introduce a new item to the preliminary agenda.

The Presiding Officer shall have the option of postponing any item on the agenda until the next regular Council meeting, unless it was introduced by three Councilmembers.

The City Clerk, under the direction of the City Manager, shall arrange a list of such matters according to the order of business and prepare a preliminary agenda for the Council.

After the preliminary agenda has been approved by the Presiding Officer, a copy of the agenda and supporting materials shall be prepared for Councilmembers, the City Manager, and the press by close of business Friday prior to the Regular Council Meeting, except in case of an emergency.

Emergency items may be added to an agenda in accordance with state law.

8.05 Recording and Broadcast of Meetings

The City Clerk, or designee, shall make and keep audio recordings, and video when possible, of all standing committee and business meetings of the Des Moines City Council, except those meetings or portions of meetings conducted in Executive Session.

Recordings and related records of all City Council meetings, except as referenced above, shall be retained by the City in accordance with the Washington State Records Retention Schedule.

All public meetings of a quorum of the City Council not exempt from the Open Public Meetings Act held in the Des Moines City Hall at 21630 11th Avenue South should be video recorded and broadcast within the City.

8.06 Order of Business – Regular Meetings

The City Council, by adoption of this manual, establishes the general order of meetings. This section details the order of meeting components and gives direction for their conduct. The Presiding Officer may, during a Council meeting, rearrange items on the agenda to conduct the business before the Council more expeditiously. Any ruling by the Presiding Officer relative to rearrangement of items on the agenda may be overruled by a vote of a majority of members present.

The components of business and their order are as follows:

- A. Call to Order and Pledge of Allegiance
- B. Roll Call
- C. Correspondence not Previously Received by Council
- D. Comments from the Public
- E. Committee Chair Reports
- F. City Manager Report/Presentations/Briefings

- G. Consent Agenda
- H. Ceremonial Matters, Proclamations (reading)
- I. Public Hearings
- J. Unfinished Business
- K. New Business
- L. New Agenda Items for Consideration
- M. Councilmember Reports
- N. Presiding Officer's Report
- O. Executive Session (as required)
- P. Next Meeting Date
- Q. Adjournment
- R. Meeting Materials -

Conduct of Business:

- A. Call to Order/Pledge
- B. Roll Call:
 - 1. (For procedure to excuse an absence see 8.09.E)
- C. Correspondence not previously received by Council.

D. Comments from the Public:

Public Comments are encouraged and appreciated. All Public Comment will be recorded and become part of the Public Record, which is available to the Public on the City website. Public comment is provided as an informational and educational tool for the Council. The information and advice received from citizens helps the City Council make the best possible decisions. Public comment is for the benefit of the Council, and is not provided as an opportunity to speak to, inform, or educate the community.

The following rules have been established in order to ensure that all individuals wishing to address the City Council are fairly heard:

- a. The following language will be added to the published agenda under Public Comment: "During this item, the Presiding Officer will invite public comment. Those testifying or providing public comment will be limited to three minutes. Citizens representing a group will be allowed up to five minutes to speak. No speaker may convey or donate their time for speaking time to another speaker.
- b. Persons wishing to address the Council, who are not specifically scheduled on the agenda shall first fill out a sign-in sheet, stating their name, City of residence, and public comment topic, and the sign-in sheet shall be submitted to the City Clerk prior to the start of Public Comment.
- c. Citizens who have signed in will be invited by the Presiding Officer to the podium. Speakers will first state their name and City of residence and be allowed three minutes to speak.
- d. Except where permission is granted by the Presiding Officer, all remarks shall be made only from the designated podium and addressed to the Council as a body, and not to individual members, the audience, or the cameras.
- e. No person other than the Council and the person having the floor will be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer.
- f. The Presiding Officer or designee shall notify the individual when the allotted time has expired and the speaker shall promptly conclude their remarks. All speakers are encourage to submit supplemental or detailed written remarks for Council consideration.
- g. Public comments with regard to subjects of a Public Hearing must be made during the Public Hearing portion of the meeting. If information pertaining to a public hearing is presented during the general comment period, the speaker will be ruled, "Out of Order" by the Presiding Officer and asked to save their comments for the Public Hearing.
- h. Any person or speaker who engages in behavior that disrupts the meeting so that it may not

continue may be ordered to leave the meeting. The Presiding Officer has the authority and duty to preserve order at all meetings of the Council, to cause the removal of any person from any meeting for disrupting the meeting and to enforce these rules.

- i. At the pleasure of the Presiding Officer or by a motion and agreement of a Council majority, following a public comment, a matter may be placed on a future agenda, or be referred to the administration or a council committee for investigation and report. A vote of a Council majority may also overrule the decision of the Presiding Officer in this case.
- j. Residents are encouraged to supplement correspondence through written submittals. Written correspondence may be submitted to the Council at any time by email, citycouncil@desmoineswa.gov or mailing or otherwise delivering to the City Clerk, 21630 11th Ave So, Des Moines, WA 98198. A copy of all correspondence will be distributed to each Councilmember and will be made part of the public record, but will not be read aloud.

E. Committee Chair Reports:

This is a three-minute opportunity for Chairs of standing committees of the Council to update the Council on Board and committee activities, work plans, and other items of interest.

F. City Manager Report/Presentations/Briefings:

The City Manager's report is an opportunity for the City Manager to brief the Council on the progress or plans with regard to items, projects, issues, relationships, or events of significant interest.

G. Consent Agenda:

The City Manager, in consultation with the Presiding Officer, shall place matters on the Consent Agenda which are considered to be of a routine and non-controversial nature. The individual items on the consent agenda shall be approved, adopted, or enacted by one motion of the Council. Any item may be removed from the Consent Agenda on the request of a single Councilmember. It will be considered at its regular place in the agenda OR It will be considered immediately after the Consent Agenda.

No discussion shall take place regarding any item on the consent agenda beyond asking questions for simple clarification.

H. Ceremonial Matters, Proclamations, Recognitions:

1. Proclamations:

The Mayor and the Council have authority to introduce proclamations for a variety of purposes, as approved by the Council. No proclamation shall constitute official City actions unless approved or authorized by a majority of the City Council.

I. Public Hearings – The procedures of a public hearing are as follows:

1. Prior to the start of the "Comments from the Public" portion of the public hearing, the Presiding Officer may require that all persons wishing to be heard shall sign in with the Clerk, giving their names City of residence, the agenda item, and whether they wish to speak as proponent, opponent, or otherwise. Any person who fails to sign in shall not be permitted to speak until all those who signed in have done so. At any public hearing all persons who have signed in and wish to be heard shall be heard. However, the Presiding Officer shall be authorized to establish speaker time limits and otherwise control presentations to avoid repetition. In public hearings that are not of a quasi-judicial nature, the Presiding Officer, subject to concurrence of the majority of the Council, may establish time limits and otherwise control presentations. The Presiding Officer may change the order of speakers so that testimony is heard in the most logical groupings (i.e. proponents, opponents, adjacent owners, vested interests, etc.).
2. The Presiding Officer introduces the agenda item, opens the public hearing, and provides a summary of the following Rules of Order and/or advises the public that they may have a copy of such rules, which shall be available with other agenda materials regularly made available to the public at each Council meeting:

- a. All comments by proponents, opponents, or the public shall be made from the speaker's rostrum and any individual making comments shall first give their name and city of residence. This is required because an official recorded transcript of the public hearing is being made. If there is any appeal to King County Superior Court, the court must make its decision on the basis of what was said here.
 - b. It is not necessary to be a proponent or opponent in order to speak. If you consider yourself neither a proponent nor opponent, please speak during the proponent portion and identify yourself as neither a proponent nor an opponent
 - c. No comments shall be made from any other location, and anyone making "out of order" comments shall be subject to removal from the meeting.
 - d. There will be no demonstrations during or at the conclusion of anyone's presentation
 - e. These rules are intended to promote an orderly system of holding a public hearing, to give every person an opportunity to be heard, and that every individual who speaks can do so without ridicule or intimidation.to ensure that no individual is embarrassed by exercising their right of free speech.
3. When Council conducts a hearing to which the Appearance of Fairness Doctrine applies (Rule 6.2, and Parliamentary Procedure 11.06B) the Presiding Officer will ask if any Councilmember knows of any reason which would require such member to excuse themselves pursuant to Rule 6.2. The suggested form of the announcement is as follows:
- "All Councilmembers should now give consideration as to whether they have: (1) a demonstrated bias or prejudice for or against any party to the proceedings; (2) a direct or indirect monetary interest in the outcome of the proceedings; (3) a prejudgment of the issue prior to hearing the facts on the record; or (4) ex parte contact with any individual, excluding Administrative staff, with regard to an issue prior to the hearing. If any Councilmember should answer in the affirmative, then the Councilmember should state the reason for their answer at this time so that the Chair may inquire of Administration as to whether a violation of the Appearance of Fairness Doctrine exists."
- a. When Council conducts a "quasi-judicial" hearing, the Presiding Officer may require that all persons wishing to provide testimony during the course of such hearing provide an oath, on the record, affirming the truth of their testimony. The suggested form and process for such oath is as follows:
 - "The Presiding Officer asks all possible speakers to raise their right hand, asks such individuals to consider the following question and respond "I do", and inquires:
 - "Do you affirm under penalty of perjury under the laws of the State of Washington that the testimony you are about to provide is true and accurate to the best of your knowledge?"
4. At the outset of each public hearing or meeting to consider a zoning amendment or zoning reclassification the Presiding Officer will call upon City Administration to describe the matter under consideration, including legal standards for approval of the item before the Council, and ask the parties to limit their presentations to information within the scope of the Council standards.
5. The Presiding Officer calls for proponents in quasi-judicial proceedings (and for speakers in non-quasi-judicial proceedings).
6. The proponents now speak. (Note: If the City of Des Moines is the proponent, a member or members of the administration shall be designated to give proponent and rebuttal testimony).
7. The Presiding Officer calls for additional proponents or speakers three times.
8. In non-quasi-judicial proceedings refer to Public Hearing Rule 10a, otherwise the Presiding Officer calls for opponents by announcing the following:
- "At this time the opponents will have an opportunity to speak. Should any opponent have questions to ask of the proponents, ask the questions during your presentation. The proponents shall note the question asked, and answer such questions when the proponent speaks in rebuttal. The proponent shall be required to answer any reasonable question, provided that the Presiding Officer reserves the right to rule any question out of order."
9. Opponents speak.
10. The Presiding Officer calls for additional opponents three times.

11. The Presiding Officer calls for proponents to speak in rebuttal. A proponent speaking in rebuttal shall not introduce new material. If the proponent does, or is allowed to do so, the opponents shall also be allowed to rebut the new elements.
12. The Presiding Officer announces:
 "At this time I will inquire of the administration as to whether there have been any mis-statements of fact or whether the administration wishes to introduce any material as to subjects raised by the proponents or opponents or alter in any regard its initial recommendations."
13. The Presiding Officer inquires as to whether any Councilmembers have any questions to ask the proponents, opponents, speakers, or administration. If any Councilmember has questions, the appropriate individual will be recalled to the podium.
14. The Presiding Officer closes the public hearing.
15. After a public hearing is closed, no member of the public shall be permitted to address the Council or the staff. In fairness to members of the public, the City Council shall be considered to be in deliberations from that point forward. Continuance of the item shall place it on the "unfinished business" portion of any forthcoming agenda. Additional public testimony either that evening or at a future meeting would be precluded until public hearing notification procedures required by the Des Moines Municipal Code are concluded.
16. The Presiding Officer inquires if there is a motion by any Councilmembers. If a motion is made, it shall be in the form of an affirmative motion. Following the motion and its second, discussion occurs among Councilmembers. The Presiding Officer may call on individual Councilmembers in the discussion.
17. The Presiding Officer inquires if there is any further discussion by the Councilmembers.
18. The Presiding Officer inquires if there are any final comments or recommendations from administration.
19. The Presiding Officer inquires of the Councilmembers as to whether they are ready for the question.
20. The Clerk shall conduct a roll call vote.
21. The Presiding Officer directs administration to prepare findings consistent with the action.

J. Unfinished Business.

K. New Business - The following are types of business conducted by the City Council:

1. Ordinances, Resolutions, Proclamations, Contracts:
 All Ordinances, Resolutions, Proclamations and Contracts shall, before presentation to the Council, have been approved as to form and legality by the City Attorney, the applicable Department Head(s), and the City Manager.
2. Draft Preparation:
 Ordinances and resolutions shall be prepared by the City Attorney and presented to the full Council for consideration. Prior to final passage of all ordinances, resolutions or motions, such documents or proposals shall be designated as DRAFTS as follows:
 - a. Proposed Drafts shall contain the name of the group, organization, committee or individual originating, initiating or sponsoring the proposal prior to the first presentation to the City Council where a vote is taken directing some official action or further consideration.
 - b. Council Drafts shall be documents or proposals which have been presented in open session and voted on by the City Council when the resultant Council action was other than passage or a vote to cease further consideration.
3. Ordinances:
 An enacted ordinance is a legislative act prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality. Council action shall be taken by ordinance as required by law, or to prescribe permanent rules of conduct which continue in force until repealed, or where such conduct is enforced by penalty. If a Councilmember requests that the entire ordinance, certain sections, or the title be read, such requests shall be granted.
4. Resolutions:

An enacted resolution is an administrative act which is a formal statement of policy concerning matters of special or temporary character. Council action shall be taken by resolution as required by law and in those instances where an expression of policy more formal than a motion is desired.

5. The title of each resolution shall in all cases be read prior to its passage; provided, should a Councilmember request that the entire resolution or certain of its sections be read, such requests shall be granted. Printed copies shall be made available upon request to any person attending a Council meeting.

6. Contracts:

Refer to Addendum B, [Resolution No. 1118](#), policies governing City Council participation in public contracts.

7. Motions:

A motion is a formal procedure for taking action. To make a motion, a Councilmember must first be recognized by the Mayor.

- L. New Agenda Items for Consideration:

This portion of the meeting allows a Councilmember to present an idea to their colleagues for consideration in placing the item on a future agenda:

1. A presenter should come to the dais prepared with research and answers to questions, and offer a specific, concise request.
2. It is not a time for discussion, deliberation, presentation, or research – other than the minimum amount of information necessary to gain needed support.
3. A minimum of three Councilmembers must agree in order for the item introduced to be placed on a future agenda.

- M. Councilmember Reports:

This is an opportunity for Councilmembers to comment on agenda items and update each other regarding community events, activities, or notable regional issues:

1. Reports shall be limited to four minutes, unless extended time is granted by the Presiding Officer. The Presiding Officer shall notify the Councilmember when the allotted time has expired. Discussion or voting during this time will not be considered a part of their time limit.

- N. Presiding Officer's Report:

In addition to any special board or committee reports, the Presiding Officer may give a report on any activity participated in as part of the official duties of the Mayor.

- O. Executive Session (as needed):

At the call of the presiding officer, or with a majority vote, the City Council may recess to Executive Session to privately discuss and consider matters of confidential concern to the well-being of the City. The purposes for which an Executive Session or Closed Session may be held are identified in [RCW 42.30.110](#) and [RCW 42.30.140](#).

The City Council may also hold an Executive Session to receive confidential advice from the City Attorney under the attorney-client privilege.

Before convening in Executive Session or Closed Session, the presiding officer shall publicly announce the purpose for excluding the public from the meeting place, and the time when the Executive Session/Closed Session will be concluded. ~~An Executive Session/Closed Session may be extended to a stated later time by announcement of the Presiding Officer. If the Executive Session runs long, the presiding officer must come back to the location of the regular meeting and announce the new time the open session will reconvene.~~

Participants in an executive session have a duty under the Open Public Meetings Act to keep information from the session confidential, Pursuant to Attorney General Opinion ([AGO 2017 No. 5](#)).

disclosure of confidential information from an executive session by a municipal officer violates [RCW 42.23.070\(4\)](#) and accordingly may result in the sanction or censure of the violating party.

P. Next meeting date announced by Presiding Officer.

Q. Adjournment. No meeting shall be permitted to continue beyond 9:00 p.m. without approval of three-fourths of the Councilmembers who are present and eligible to vote. A new time limit must be established before taking a Council vote to extend the meeting. In the event that a meeting has not been closed or continued by Council vote prior to 9:00 PM, the items not acted on shall be deferred to the next regular Council meeting as unfinished business, unless the Council, by a majority vote of members present, determines otherwise.

R. Meeting Materials - Following each meeting, public comment and any materials included at the meeting, which were not in the original packet, will be posted on the City website with a notification.

8.07 Order of Business - Study Sessions

The study session is the forum used by Council to review forthcoming programs of the City, to receive progress reports on current issues, or to receive similar information from the City Manager and others. The purpose of Study Sessions is to allow Councilmembers to do concentrated preliminary work with administration on single subjects of time consuming, complex matters (i.e., budget, complex legislation or reports, research, etc.)

Study Sessions need have no formal agenda and may be conducted informally so long as such informality is not in conflict with these rules. These conditions will allow the Councilmembers to communicate informally about these impending issues. The Presiding Officer retains the option of assuming the function of the Moderator in order to keep the discussion properly focused.

No final Council action on ordinances or resolutions may be taken during a Study Session.

A. In Preparation for a Study Session, the City Clerk, under the direction of the City Manager, shall arrange a Council Study Session worksheet for the Study Session. The Council Study Session worksheet shall contain the Discussion Item.

B. After the proposed Council Study Session worksheet has been approved by the Presiding Officer, a copy of it along with any available supporting materials shall be prepared for Councilmembers, and the meeting will be noticed by close of business Friday prior to the Council Study Session, except in an emergency.

C. During a Study Session, the Moderator may:

1. Introduce and give background information
2. Identify the discussion goal
3. Act as facilitator to keep the discussion focused
4. Alert the Presiding Officer when/if it is appropriate to call for a motion or other official direction of the Council

8.08 Order of Business – General Procedures

A. Forms of Address:

The Mayor shall be addressed as "Mayor (surname)." The Deputy Mayor shall be addressed as "Deputy Mayor (surname)." Members of the Council shall be addressed as "Councilmember (surname)."

B. Seating Arrangement of the Council:

Councilmembers shall occupy the respective seats in the Council Chamber assigned to them by the Mayor.

C. Signing of City Documents:

The Mayor, unless unavailable, shall sign all ordinances, resolutions and other documents which have been adopted by the City Council and require an official signature; except when the City Manager has been authorized by Council action to sign documents. In the event the Mayor is unavailable, the Deputy Mayor may sign such documents.

D. Quorum:

At all meetings of the Council, four Councilmembers who are present and eligible to vote shall constitute a quorum for the transaction of business. A lesser number may adjourn from time to time, provided that written notice of said adjournment is posted in accordance with RCW 42.30.090. Council meetings adjourned under the previous provision shall be considered a regular meeting for all purposes.

E. Attendance:

[RCW 35A.12.060](#) provides that a Councilmember shall forfeit his/her office by failing to attend three consecutive regular meetings of the Council without being excused by the Council. Members of the Council may be so excused by complying with this section. The member shall contact the Presiding Officer prior to the meeting and state the reason for his/her inability to attend the meeting. If the member is unable to contact the Presiding Officer, the member shall contact the City Manager or City Clerk, who shall convey the message to the Presiding Officer. Following roll call, the Presiding Officer shall inform the Council of the member's absence, state the reason for such absence, and inquire if there is a motion to excuse the member. This motion shall be non-debatable. Upon passage of such motion by a majority of members present, the absent member shall be considered excused and the Clerk will make an appropriate notation in the minutes.

F. Remote Attendance:

A Councilmember may participate remotely in all or part of a Council meeting because of an unanticipated event that prevents a Councilmember from attending in person through no fault of their own. In order to receive compensation for a meeting, a formal recognition of remote attendance must be granted by the Mayor or Presiding Officer.

If the basis for the remote participation is due to the Councilmember attending to City business in another capacity, the Councilmember shall be considered physically present for the purposes of [DMMC 4.08.020](#).

In the event that the Mayor seeks to attend a meeting remotely, the Mayor shall seek prior approval from the Deputy Mayor. If approval is granted, the Deputy Mayor shall act as the Presiding Officer for the meeting.

When participating remotely:

1. A Councilmember must be able to be heard.
2. The Councilmember shall have reviewed all of the applicable material and participated in the relevant portion of the Council Meeting related to the topic of the vote. Any technical prohibitions or difficulties that prevent all parties present at the Council Meeting from adequately communicating, will negate any authorization previously given by the Mayor.
3. The remote participant shall notify the Presiding Officer if they are about to disconnect participation.
4. A remote appearance shall count toward a quorum of the Council for all purposes and shall entitle the Councilmember to vote.

G. Minutes:

The City Clerk or designee shall take minutes at all meetings of the City Council. The minutes shall be made available for public inspection.

H. Voting:

Unless otherwise provided for by statute, ordinance, or resolution, all votes shall be taken by voice or by raise of hand as requested by the Presiding Officer. A roll call vote shall be taken by the Clerk at the request of a Councilmember. The order of the roll call vote shall be determined by the Presiding Officer:

1. Vote requirements include:
 - a. Majority of the fixed membership of the Council (4 votes)
 - b. Two-thirds of the fixed membership of the Council (5 votes)
 - c. Minimum of a majority of members present and voting (if 4 or 5 members present and voting, this is 3. If 6 or 7 members present and voting, this is 4).
2. In case of a tie in votes on any proposal, the proposal shall be considered lost.
3. Every member who was in the Council chambers when the question was put, shall give their vote unless the Councilmember excuses themselves in accordance with 8.08(e). If any unexcused Councilmember remains silent, they shall be listed in the record as "abstain."
4. Reconsideration of an item will be taken up by a majority vote of members present and voting. A member of the prevailing side must make a motion for reconsideration after the previous vote was taken, and it can be made no later than the next regular meeting after which the previous vote was taken.
5. The passage of any ordinance, grant or revocation of franchise or license, any resolution for the payment of money, any approval of warrants, and any resolution for the removal of the City Manager shall require the affirmative vote of at least a majority of the fixed membership of the Council (four votes)
6. The passage of any public emergency ordinance (an ordinance that takes effect immediately), expenditures for any calamity or violence of nature or riot or insurrection or war, and provisions for a lesser emergency such as a budget amendment shall require the affirmative vote of at least two-thirds of the fixed membership of the Council (five votes).
7. Only those ordinances, resolutions, or motions that receive an affirmative vote by the majority of members present and voting shall be passed or become effective unless other voting requirements are provided by Washington State law, DMMC, or this Resolution as amended.
8. In order for an ordinance or resolution to become effective immediately, the City Council must declare that an emergency exists and approve the ordinance or resolution by the affirmative vote of two-thirds of the fixed membership of the Council (five votes). (See Chapter 8.G.10E).

8.09 Open Public Meetings Act

- A. The Des Moines City Council will comply with all state and federal law in the notice, conduct, recording, storage and dissemination of meetings and associated information.
- B. All writings distributed for discussion or consideration at a public meeting are public records. To that end, except for emergencies and technical issues, Councilmembers shall not communicate digitally, in forms such as, but not limited to; call, text, chat, or social media posting during a council meeting.
- C. Actions:

No legal action can be taken by the Council except in a public meeting. At a *Special Meeting*, action can be taken only on those items appearing on the posted agenda, except for emergency items. At a Regular Meeting of the City Council, the Council is free to take action on non-agenda items, subject to applicable notice requirements in state statutes or local ordinances for the subject matter being considered.

**CHAPTER 9
PROTOCOL ADMINISTRATION**

9.01 Biennial Review

The City Council will review and revise the City Council Protocol Manual every two years, or as needed.

If needed, an Ad Hoc committee may be appointed by the Mayor for the purpose of review and advice to the Council.

9.02 Adherence to Protocol

- A. Each Councilmember shall have the duty and obligation to review this Protocol Manual and understand to be bound by its provisions.
- B. The Mayor will be primarily responsible to ensure that the City Council, staff, and members of the public adhere to the Council's adopted Protocol Manual.
- C. Knowing and/or willful failure to adhere to the provisions of this Protocol Manual may subject a Councilmember to enforcement and sanctions as follows:
 - 1. Upon determining that there is credible evidence that a Councilmember has, or may have, engaged in knowing and/or willful action or omission that constitutes failure to adhere to the provisions of this Protocol Manual, the Mayor or the Deputy Mayor, in the event that the Mayor is the Councilmember alleged to have engaged in such action or omission, may call upon the Council to determine whether such knowing and/or willful action or omission has occurred, and the sanctions, if any, to be imposed.
 - 2. Prior to conducting any hearing on an alleged failure to adhere to the provisions of this Protocol Manual, the Mayor or Deputy Mayor shall provide written notice to the Councilmember alleged to have engaged in such failure to adhere at least ten (10) calendar days prior to calling for such hearing. The written notice shall identify the specific provisions of this Protocol Manual with which the Councilmember is alleged to have failed to adhere and the facts supporting such allegation.
 - 3. Upon call by the Mayor or Deputy Mayor, a majority of the Council shall vote on whether to hold a hearing to determine the existence of an act or omission constituting a failure to adhere and the sanctions, if any, to be imposed. If such hearing is approved by the Council, the hearing shall be held at a time and place specified in the motion approving such hearing.
 - 4. At such hearing, the Council shall determine whether there is a preponderance of credible and substantial evidence indicating that a Councilmember has knowingly and/or willfully acted or failed to act in a manner constituting a failure to adhere to the provisions of this Protocol Manual. The Councilmember alleged to have failed to adhere to the provisions of this Protocol Manual shall have the right to present evidence and testimony. The finding of the existence of such knowing and/or willful failure to adhere shall be determined by motion approved by a majority of the Council.
 - 5. Upon finding that a knowing and/or willful failure to adhere to the provisions of this Protocol Manual has occurred, the Council shall proceed to determine whether the sanctions, if any, should be imposed. Such breaches include, but are not limited to:
 - a. Failure to observe respectful rules of discussion
 - b. Creating disruption at the dais
 - c. Breaching confidentiality of executive session
 - d. Failing to observe ethics guidelines
 - e. Taking action outside the board meeting which undermines the body.
 - f. Appropriate sanctions include, but are not limited to the following:
 - 1. Verbal warning
 - 2. Written warning
 - 3. Public censure
 - 4. Removal of appointment to extra-territorial boards, committees, or commissions; and
 - 5. Removal of appointment to Council boards or committees

9.03 City Attorney as Protocol Advisor

The City Attorney shall assist the Mayor and serve as an advisor for interpreting the City Council's adopted Protocol Manual.

CHAPTER 10

LEAVING OFFICE/FILLING VACANCIES

10.01 Return of Materials and Equipment

During their service on the City Council, members may have acquired or been provided equipment such as computers, cell phone or other items of significant value. These items are to be returned to the City at the conclusion of a member's term. If an item is lost or unable to be returned, the Councilmember will reimburse the City for the current value of the item.

10.02 Filling Council Vacancies

The purpose of this section is to provide guidance to the City Council when a Des Moines Councilmember position becomes vacant before the expiration of the official's elected term of office. Pursuant to state law, a vacancy shall be filled only until the next regular municipal election, to serve the remainder of the unexpired term.

A. References

[RCW 42.30.110 \(H\)](#) – Executive Session Allowed to Consider Qualifications of a Candidate for Appointment to Elective office.

[RCW 42.30.060](#) – Prohibition on Secret Ballots.

[RCW 42.12](#) – Vacant Position.

[RCW 35A.13.020](#) – Vacancies – Filling of Vacancies in Council/Manager Form of Government:

1. A Council position shall be officially declared vacant upon the occurrence of any of the causes of vacancy set forth in [RCW 42.12.010](#), and [RCW 35A.13.020](#), including resignation, recall, forfeiture, written or public statement of intent to resign, or death of a Councilmember. The Councilmember who is vacating their position is not allowed to participate in the appointment process.
2. In order to fill the vacancy with the most qualified person available until an election is held, the City Council shall direct staff to begin the Councilmember appointment process and establish an interview and appointment schedule, so that the position is filled at the earliest opportunity:
 - a. The City Clerk's Office shall prepare and distribute a public notice as required. This notice shall contain information, including but not limited to, time to be served in the vacant position, election information, salary information, Councilmember powers and duties, the deadline date and time for submitting applications, interview and appointment schedules, and such other information that the City Council deems appropriate.
 - b. The City Clerk's Office shall prepare an application form, which requests appropriate information for City Council consideration of the applicants. Applications will be available at City of Des Moines offices and on the City's official website.
 - c. Applications and any attachments received by the deadline date and time will be distributed by the City Clerk's Office, to the Mayor and City Council.
 - d. The City Clerk's Office shall publish the required public notice(s) for the meeting scheduled for interviewing applicants for consideration to the vacant position. This meeting may be a regularly scheduled City Council meeting, or a special City Council meeting.
 - e. The City Clerk's Office shall notify applicants of the location, date and time of City Council interviews, and include instructions about how the interview process will be conducted.
3. Interview Process:
The Interview process will be determined by a vote of the majority of the Council.
4. Voting:
Upon completion of the interviews, Councilmembers may convene into Executive Session to discuss the qualifications of the applicants. However, all interviews, deliberations, nominations and votes taken by the Council shall be in open public session:

- a. The Mayor shall ask for nominations from the Councilmembers for the purpose of creating a group of candidates to consider. No second is needed.
- b. Nominations are closed by a motion, second and majority vote of the Council.
- c. Councilmembers may deliberate on such matters as criteria for selection and the nominated group of candidates.
- d. The Mayor shall poll Councilmembers to ascertain that Councilmembers are prepared to vote.
- e. The City Clerk shall proceed with a roll-call vote.
- f. Elections will continue until a nominee receives a majority vote of the remaining Councilmembers.
- g. At any time during the election process, the City Council may postpone elections until a date certain or regular meeting if a majority vote has not been received.
- h. Nothing in this policy shall prevent the City Council from reconvening into Executive Session to further discuss the applicant/candidate qualifications.
- i. The Mayor shall declare the nominee receiving the majority vote as the new Councilmember and shall be sworn into office by the City Clerk at the earliest opportunity or no later than the next regularly scheduled City Council meeting.
- j. If the City Council does not appoint a qualified person to fill the vacancy within 90 days of the declared vacancy, the Revised Code of Washington delegates appointment powers to King County.

CHAPTER 11

PARLIAMENTARY PROCEDURES

Rules of Order not specified by statute, Ordinance or Resolution shall be governed by the most recent edition of *Robert's Rules of Order Newly Revised*.

All items of business placed before the Council that require the expenditure of Council and/or administration resources, shall be in the form of an affirmative motion.

11.01 Meeting Decorum and Order

- A. The presiding officer shall preserve decorum and decide all questions of order, subject to appeal by the Council. During Council meetings, Councilmembers shall preserve order and decorum and shall not delay or interrupt the proceedings or refuse to obey the orders of the chair or the rules of protocol.
- B. Courtesy: Members of the Council, in the discussion, comments or debate of any matter or issue, shall be courteous in the language and demeanor, and shall not engage in derogatory remarks or insinuations in respect to any other member of the Council, or any member of the staff or the public, but shall, at all times, confine their remarks to those facts which are germane and relevant as determined by the Presiding Officer, to the question or matter under discussion.

Interruption: No member of the Council shall interrupt or argue with any other member while such a member has the floor

- C. The City of Des Moines is committed to maintaining a drug and alcohol free workplace. Accordingly, members of the Council shall abide by Sections 6(1) and (6)(J)(I) of the City of Des Moines Personnel Manual while serving at the dais.

Any Councilmember may request the presiding officer to enforce the rules of protocol by using the motion "Point of Order." The Presiding Officer rules on whether the Point of Order is well-taken or not. Any Councilmember may appeal the Presiding Officer's ruling. The Council will decide whether to sustain or overrule the Presiding Officer's ruling by majority vote. The Presiding Officer may vote on the appeal. A

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tie vote sustains the Presiding Officer's decision.

- D. Dress Code: For Council Business meetings and representation assignments, Councilmembers shall adhere to a business casual attire, allowing for appropriate cultural expectations.

11.02 Obtaining the Floor

A Councilmember shall address or signal the presiding officer and gain recognition prior to making a motion or engaging in debate. Cross-exchange between Councilmembers and the public should be avoided. This is to prevent general conversation and to keep the order necessary to maintain decorum and accomplish the business of the Council.

After a member has concluded comments and yielded the floor, if two or more members are trying to obtain the floor at the same time, the general rule is that the person who addresses or signals the chair first is entitled to be recognized. When a motion is open to debate, however, there are two instances in which the presiding officer should assign the floor to a person who may not have been the first to address the chair. These are:

- A. The Councilmember who made the motion currently under debate is entitled to be recognized in preference to other members if that individual is claiming the floor and has not already spoken on the question.
- B. No member is entitled to the floor a second time in the meeting on the same motion as long as another member who has not spoken on the motion desires the floor.

11.03 Interruptions

Once recognized, a Councilmember should not be interrupted while speaking, except when another member makes a point of order. If a Councilmember is called to order while speaking, the individual shall cease speaking until the question order is determined.

Upon being recognized by the presiding officer, members of the staff shall hold the floor until completion of their remarks or until recognition is withdrawn by the presiding officer.

11.04 Discussion Limit

- A. Councilmembers should not speak more than once on a particular subject until every other Councilmember has had the opportunity to speak. No member of the Council shall speak more than twice on the same motion except by consent of the majority of the Council present.
- B. Questions and answers by the members of the Council are not considered as speaking to the motion.
- C. Each member of the Council shall speak for not more than five minutes per turn unless granted exception by a majority of the Council present.
- D. No member of the Council may give their allotted time to another member unless there is approval of the majority of the Council present.

11.05 Suspending the Rules

A majority vote of members present and voting may suspend any provision of these meeting rules not governed by state law or ordinance without debate. The Councilmember moving the motion will state, "I move that we suspend the rules to [giving the purpose]." The Council may not suspend rules on fundamental principles of parliamentary procedure or those affecting the rights of individual members.

CHAPTER 12

ADDITIONAL TRAINING AND RESOURCE MATERIALS

12.01 Association of Washington Cities [(800) 562-8981]

<https://wacities.org/> The Association is a voluntary, nonpartisan, nonprofit association comprised of all incorporated cities and towns in Washington.

12.02 National League of Cities [(202) 626-3000]

www.nlc.org A non-partisan organization serving municipal governments, the NLC works to establish unified policy positions, advocates those policies forcefully, and shares information that strengthens municipal government throughout the nation.

12.03 International City/County Management Association [(202) 289-4262]

<https://icma.org/> ICMA is a professional and educational association of local government administrators that serves to enhance the quality of local government through professional management and to support and assist professional local government administration. The Association's *Elected Officials Handbook* series can be of great value to Councilmembers. Publications are also available through ICMA concerning every basic city service.

12.04 Government Finance Officers Association [(312) 977-9700]

www.gfoa.org GFOA is a professional association of state and local finance officers. The Association administers a broad range of services and programs related to government financial management.

12.05 Municipal Research & Services Center of Washington [(206) 625-1300]

www.mrsc.org MRSC is a nonprofit, independent organization created in 1969 to continue programs established in 1934 under the Bureau of Governmental Research at the University of Washington. One of the principal services of MRSC is to respond to inquiries on virtually every facet of local government.

City Council Protocol Manual:

Councilmember Grace-Matsui:

1. Bring back 26a - second reading of all ordinance changes (undecided).
2. Adjournment 8.06 Order of Business – Regular Meetings. "No meeting shall be permitted to continue beyond 9:00 p.m. without approval of three fourths of the Councilmembers who are present and eligible to vote...." I propose this rule be changed to read "...beyond 10:00pm" (undecided).
3. Executive Session 8.06 Order of Business – Regular Meetings. I propose we add a section on how to extend an Executive session. According to MSRC, the "If the executive session runs long, the presiding officer must come back to the location of the regular meeting and announce the new time the open session will reconvene." No vote is needed, three other councilmembers don't need to accompany the Mayor back to the dais. (Included in new draft).
4. The Code of Conduct and Ethics Code are repeated, but what about other City standards that apply to Councilors? I'm thinking Weapons policy, Equal Opportunity/nondiscrimination policies, Drug and Alcohol Free workplace policies, etc
**Note from KC: I am visiting with Tim about this. Technically Councilmembers are not employees--- so we are looking into appropriate way to include these standards if Council wished to. (Staff review).*

Mayor Buxton:

5. Add Vision/Mission/Values to the Forward. (Included in new draft).
6. Recommend eliminate automatic ending time *(also recommended by Grace-Matsui, see #2)* (Undecided).
7. 2.08.A.6 – DMMC needs to be reflected to show that Councilmembers shall not serve on appointed City Advisory Bodies. (Will be addressed with future code updates).
8. 5.03.B – Not practical in real life. Recommend the following:

B. The following disclaimer shall be included in ~~whole or referenced with a link to the disclaimers~~ for all

communications initiated by Councilmembers in open forums; "The following is my view alone and may not represent the views of the Staff or City Council (link)." And the following shall be referenced via a link to a statement posted on the City's website:

1. The link shall include the statement above in the third person, as well as the following:
 - o Responses to this communication by other Councilmembers may be limited by the provisions of the Open Public Meetings Act under which a policy discussion or other action taken must be held in an open public meeting if a quorum of the Council participates.
 - o Comments posted in response to a Councilmember-initiated communication may be subject to public disclosure under chapter 42.56 RCW, the Public Records Act.
9. Update 5.07.A, B, and C Recommend:
 - o A. If a Councilmember receives a communication from a member of the community conveying a concern, complaint, or administrative issue, the Councilmember shall **cc the City Manager in their response. It will be up to the City Manager's discretion as to further dissemination of the information,** and the Councilmember may request to be informed of actions or response to the email.
 - o **A. If a Councilmember wishes to respond to a communication that has been addressed to the entire Council, they shall cc the City Manager in their response in order to eliminate redundancy and create accountability. It will be up to the City Manager as to the further dissemination of the information.**
 - o Eliminate B.
10. 8.08.F – Clarify procedure for remote attendance to Council meetings – remote participant should not preside. Recommend:
 - o (paragraph 3) "In the event that the Mayor or Chair seeks to attend a meeting remotely, they shall notify the Deputy Mayor/Vice Chair, and the Deputy Mayor/Vice Chair shall preside over the meeting."
 - o Unanticipated events do not include; vacations/travel, meetings unconnected with City Council, and ??

Councilmember Mahoney:

11. 4.02 Add C – Any expenses exceeding \$1000 for any councilmember in a calendar year must be approved by the council majority prior to any additional expenses incurred. Failure to Follow this stipulation will require councilmember to be responsible for all additional expenses. The City Manager has the authority to pause any requests outside the normal expenses and bring before the council for approval.
12. 5.07 C Add 5 – Any email received under city email addresses whether as council as a whole or individual must allow time for staff to respond. To ensure transparency any councilmember

responding must use city email for all responses, no personal email can be used as a substitute. Any email using personal email with any official city designation or associated with a campaign address i.e. identity as a councilmember possibly giving the inference of a response in any official capacity is not permitted, any such email should they occur must be forwarded to City Clerk so full transparency is established.

13. 7.06 3rd paragraph – add “shall request or direct the City Manager, Department Directors, Staff or outside entity to initiate any action or prepare any report...”

14. 7.08 End of First Paragraph, add sentence. “Councilmember interactions with staff , including the City Manager, shall be in a respectful and professional manner at all times.”

Councilmember Harris:

15. 2.08 A.4 "Standing committees of the Council are open public meetings.

(amend) "All committee meetings shall be noticed to the public, video recorded, and available to the public for viewing..."

16. 2.08 A.6 "Councilmembers may be appointed or removed by the Mayor." Propose to remove.

17. 2.08 "However, at the discretion of the Mayor, Councilmembers may be appointed as liaison to one or more Council-established Citizen Advisory Bodies or other Community agencies/organizations. In their capacity as a Council liaison," Propose removing this- No more 'liaisons'.

18. 4.03 Strike. It's already a state requirement.

19. 5.01 Strike first paragraph "Perhaps the most fundamental role of a Councilmember is communication..." Actually, the fundamental role of a Councilmember is "Passing a budget and hiring/firing the City Manager." One might add legislation and oversight.

20. 5.04 Strike first paragraph "To promote a favorable image of the City..."

21. 5.04 C. Strike second sentence "On behalf of the City Council, the Mayor or designated Councilmember..." Propose: The City Manager (or their designated comms) should be the sole voice of the government to the community (residents).

22. 5.07 C.4.a (amend) E-mail between Councilmembers, and Councilmembers and staff shall not be transmitted to the public or news media unless a public disclosure request has first been filed with the **Public Records Officer**.

23. 7.04 Second para (amend) "It is important to note that the City Attorney does not represent, or advise, individual members of Council, but rather the City Council as a whole." However, individual members of the Council may ask the City Attorney questions concerning issues of interest to the entire Council. *(Note from KC: My understanding is this is already addressed in the RCW's—will see if additional clarity is needed)*

24. 8.05 -- see below. Strike the word 'standing'.

25. 8.06 L 1 New Agenda Items for Consideration (amend) "A presenter should come to the dais prepared with research, be afforded time for a brief presentation, and then offer a specific, concise request."

26. 9.03 (see below) (amend) "The City Attorney shall assist and serve the Council as an advisor for interpreting the City Council's adopted Protocol Manual.

27. 7.02 re-instate City Manager mid-year performance review should be the same process as the end of year review. *(note from KC: this is also in my contract—quarterly reviews. This was added by the City)*

28. 8.06K Ordinances. Re-instate second reading. Do *not* add a Rule 26b. If there is a real need we can suspend that with 11.05. *(similar to what recommended by Councilmember Grace-Matsui)*

29. 9.01 "If needed, an Ad Hoc committee may be appointed by the Mayor for the purpose of review and advice to the Council." Recommend removal.

30. 11.04 A. (2x rule) Strike second sentence.

31. 11.04 D. (Donating time) Strike. Cms *should* be able to donate time.

32. 12.02 Strike. Until we are members, they are not an official resource.