

AGENDA

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, May 9, 2024 - 6:00 PM**

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

COMMENTS FROM THE PUBLIC

COMMITTEE CHAIR REPORT

- Finance Committee: Chair Matt Mahoney
- Public Safety/Emergency Management Committee: Chair Traci Buxton
- Transportation Committee: Chair Matt Mahoney
- Environment Committee: Chair JC Harris

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

CONSENT AGENDA

Item 1. APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through April 25, 2024 and payroll transfers through April 20, 2024 in the attached list and further described as follows:

| | | |
|-------------------------|----------------|----------------|
| EFT Vendor Payments | #9961-10037 | \$ 574,371.96 |
| Wires | #2559-2568 | \$2,575,320.53 |
| Accounts Payable Checks | #165802-165824 | \$ 218,623.13 |
| Payroll Checks | #19816-19816 | \$ 1,870.04 |
| Payroll Voided Advice | #9202-9202 | \$ (2,020.04) |
| Payroll Checks | #19817-19820 | \$ 5,704.88 |
| Payroll Advice | #9224-9385 | \$ 462,221.35 |

Total Checks and Wires for A/P & Payroll: \$3,836,091.85

[Approval of Vouchers](#)

Item 2. APPROVAL OF MINUTES

Motion is to approve the March 28, 2024 and April 11, 2024 Regular City Council Meeting and the April 04, 2024 Study Session Minutes.

[Approval of Minutes](#)

Item 3. PRIDE MONTH PROCLAMATION

Motion is to approve the Proclamation recognizing June as LGBTQIA+ Pride Month.

[Pride Month Proclamation](#)

Item 4. SENIOR SERVICES ADVISORY COMMITTEE APPOINTMENT

Motion is to confirm the Mayoral appointment of Randy Richards to an open position on the City of Des Moines Senior Services Advisory Committee, effective immediately and expiring December 31, 2027.

[Senior Services Advisory Committee Appointment](#)

Item 5. REDONDO SPEED ENFORCEMENT FUND

Motion is to adopt Draft Ordinance No. 24-032, adding a new section to the chapter 3.51 DMMC establishing a Special Revenue Fund entitled "Redondo Speed Enforcement Fund."

[Redondo Speed Enforcement Fund](#)

Item 6. SENIOR ACTIVITY CENTER MANAGEMENT CONTRACT

Motion is to approve the Professional Management Services Contract with Wesley for the provision of Senior Services, and authorize the City Manager to sign the Agreement substantially in the form as submitted.

[Senior Activity Center Management Contract](#)

Item 7. KENT DES MOINES ROAD/16TH AVE S PIPE REPLACEMENT PROJECT - CONTRACT AWARDS

Motion 1 is to approve the Public Works Contract with Harkness Construction LLC (Contractor) for the Kent Des Moines Road/16th Ave S Pipe Replacement Project in the amount of \$346,422.00, authorize a project construction contingency in the amount of \$35,000.00, and further authorize the City Manager to sign said Contract substantially in the form as submitted.

Motion 2 is to approve the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-01 with KBA, Inc. to provide Construction Administration and Inspection services for the Kent Des Moines Road/16th Ave S Pipe Replacement Project in the amount of \$75,660.00 and further authorize the City Manager to sign said Task Assignment substantially in the form as submitted.

Motion 3 is to approve the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-02 with KPG Psomas to provide

Engineer of Record services for the Kent Des Moines Road/16th Ave S Pipe Replacement Project in the amount of \$14,721.33, and further authorize the City Manager to sign said Task Assignment substantially in the form as submitted.

[Kent Des Moines Road-16th Ave S Pipe Replacement Project Contract Award](#)

Item 8. HEARING EXAMINER APPOINTMENT

Motion is to confirm the appointment of Peregrin Sorter as the City's Hearing Examiner and to authorize the City Manager to sign the professional services agreement with the Laminar Law, PLLC substantially in the form as attached.

[Hearing Examiner Appointment](#)

NEW BUSINESS

Item 1. DRAFT ORDINANCE 24-023 AMENDING THE ANIMAL CODE
Staff Presentation by Interim City Attorney Matthew Hutchins

[Draft Ordinance 24-023 Amending the Animal Code](#)

Item 2. NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

PRESIDING OFFICER'S REPORT

EXECUTIVE SESSION

NEXT MEETING DATE

June 06, 2024 City Council Study Session

ADJOURNMENT

CITY OF DES MOINES
Voucher Certification Approval
May 9, 2024
Auditing Officer Certification

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

As of **May 9 2024** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through April 25, 2024 and payroll transfers through April 20, 2024 included in the attached list and further described as follows:

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



 Jeff Friend, Finance Director

| | | # From | # To | Amounts |
|--|-----------|--------|--------|---------------------|
| Claims Vouchers: | | | | |
| EFT's | | 9961 | 10037 | 574,371.96 |
| Wires | | 2559 | 2568 | 2,575,320.53 |
| Accounts Payable Checks | | 165802 | 165824 | 218,623.13 |
| Total Vouchers paid | | | | 3,368,315.62 |
| Payroll Vouchers | | | | |
| Payroll Checks | 4/8/2024 | 19816 | 19816 | 1,870.04 |
| Payroll Voided Advice | | 9202 | 9202 | (2,020.04) |
| Payroll Checks | 4/20/2024 | 19817 | 19820 | 5,704.88 |
| Payroll Advice | | 9224 | 9385 | 462,221.35 |
| Total Paychecks & Direct Deposits | | | | 467,776.23 |

MINUTES

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, March 28, 2024 - 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 lead by Councilmember Matt Mahoney.

ROLL CALL

Council Present:

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

Staff Present:

Interim City Manager Tim George; Interim City Attorney Matt Hutchins; Assistant City Manager Adrienne Johnson-Newton; Director of Community/Administrative Services Bonnie Wilkins; Police Chief Tim Gately; Finance Director Jeff Friend; Harbormaster Scott Wilkins; City Engineer Tommy Owen; and City Clerk Taria Keane

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

- There was no additional correspondence outside of the emails already received by Council.

COMMENTS FROM THE PUBLIC

- Victoria Andrews, Budget and Levy
- Jim Lamp, Levy

COMMITTEE CHAIR REPORT

- Municipal Facilities: Vice Chair Matt Mahoney
 - Vice Chair Matt Mahoney gave Council an update on the Municipal Facilities Committee Meeting.
- Economic Development: Vice Chair Harry Steinmetz

Regular Meeting Minutes
March 28, 2024

- Vice Chair Harry Steinmetz gave Council an update on the Economic Development Committee Meeting.
- Citizens Advisory Committee: Deputy Mayor Harry Steinmetz
 - Deputy Mayor Harry Steinmetz gave Council an update on the Citizens Advisory Committee Meeting.

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

- Interim City Attorney Matthew Hutchins gave Council a PowerPoint Presentation regarding Consent Agenda Item #4, Permitting Illegal Firework Infraction Ordinance.
- Interim City Manager Tim George gave Council an update on the 4th of July Drone Show.
- Assistant City Manager Adrienne Johnson-Newton gave Council an update in regards to the City Manager Recruitment.

CONSENT AGENDA

Item 1: APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through March 14, 2024 and payroll transfers through March 20, 2024 in the attached list and further described as follows:

| | | |
|-------------------------|----------------|---------------|
| EFT Vendor Payments | #9759-9846 | \$774,268.64 |
| Wires | #2524-2529 | \$330,152.90 |
| Accounts Payable Checks | #165694-165754 | \$805,306.15 |
| Payroll checks Voided | #165550-165550 | \$ (5,000.25) |
| Payroll Checks | #19806-19811 | \$ 10,498.56 |
| Payroll Advice | #8883-9050 | \$516,183.05 |

Total Checks and Wires for A/P & Payroll: \$2,431,409.05

Item 2: SEXUAL ASSAULT AWARENESS MONTH PROCLAMATION

Motion is to approve the Proclamation recognizing April as Sexual Assault Awareness Month.

Item 3: CITIZENS ADVISORY APPOINTMENTS

Motion 1 is to confirm the Mayoral appointments as shown on Exhibit A to be the primary representatives on the Citizens Advisory Committee, effective immediately and expiring on the date listed.

Motion 2 is to confirm the Mayoral appointments as shown on Exhibit B to be the alternate representative on the Citizens Advisory Committee,

Regular Meeting Minutes
March 28, 2024

effective immediately and expiring on the date listed.

- Item 4: PERMITTING ILLEGAL FIREWORK INFRACTION
Motion is to enact Draft Ordinance No. 24-011 to make permitting the use or possession of fireworks on one's real property a civil infraction.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the Consent Agenda; seconded by Councilmember Matt Mahoney.
Motion passed 7-0.

Mayor Traci Buxton read the Sexual Assault Awareness Month Proclamation into the record.

UNFINISHED BUSINESS

2023 2024 ANNUAL BUDGET AMENDMENTS
Staff Presentation by Finance Director Jeff Friend

- Finance Director Jeff Friend gave Council a PowerPoint Presentation on the Budget Amendments.

Direction/Action

Motion made Councilmember Jeremy Nutting to enact Draft Ordinance No. 24-012 relating to municipal finance, amending the 2024 Annual Budget adopted by Ordinance No. 1779; seconded by Deputy Mayor Harry Steinmetz.
Motion passed 7-0.

BIENNIAL BUDGETING (2ND READING)
Staff Presentation by Finance Director Jeff Friend

- Finance Director Jeff Friend gave Council a PowerPoint Presentation on Biennial Budgeting.

Direction/Action

Motion made by Councilmember Jeremy Nutting to enact Draft Ordinance No. 24-016 relating to municipal finance, adopting a biennial budgeting cycle beginning with the 2025-2026 budget; seconded by Councilmember Matt Mahoney.
Motion passed 7-0.

PROPERTY TAX LEVY LID LIFT, FIRST READING
Staff Presentation by Finance Director Jeff Friend

Regular Meeting Minutes
March 28, 2024

- Finance Director Jeff Friend gave Council a PowerPoint Presentation on a Property Tax Levy Lid Lift.

Direction/Action

Motion made by Councilmember Jeremy Nutting to pass Draft Ordinance No. 24-020 to a second reading on April 11, 2024 for further City Council consideration; seconded by Councilmember Matt Mahoney. Motion passed 7-0.

NEW BUSINESS

Item 1: NEW AGENDA ITEMS FOR CONSIDERATION – 10 Minutes

- Councilmember JC Harris requested the City look into reinstating virtual meetings, Council Supported.

COUNCILMEMBER REPORTS

(4 minutes per Councilmember) - 30 minutes

COUNCILMEMBER MATT MAHONEY

- Marina Parking Pass
- Highline Forum
- Youth Resource Fair

COUNCILMEMBER YOSHIKO GRACE MATSUI

- Biennial Budgeting
- Levy Lid Lift
- Short-Term Rentals
- Fireworks

COUNCILMEMBER JEREMY NUTTING

- No Report

COUNCILMEMBER GENE ACHZIGER

- No Report

COUNCILMEMBER JC HARRIS

- Port Planning Meetings

Regular Meeting Minutes
March 28, 2024

- Citizens Advisory Committee Meeting

DEPUTY MAYOR HARRY STEINMETZ

- Meeting with representatives from Sister City Fuzhou, China
- Citizens Advisory Committee Tour of the Theater
- Local 242 Ground Breaking
- Destination Des Moines Board Meeting

PRESIDING OFFICER'S REPORT

- Local 242 Ground Breaking
- South King Housing and Homelessness Partners Board Meeting
- Chat with the Mayor
- Multicultural Night at Pacific Middle School
- EGGstravaganza

NEXT MEETING DATE

April 04, 2024 City Council Study Session

ADJOURNMENT

Direction/Action

Motion made by Councilmember Matt Mahoney to adjourn; seconded by Councilmember Yoshiko Grace Matsui.

Motion passed 7-0.

The meeting adjourned at 8:37 p.m.

MINUTES

**DES MOINES CITY COUNCIL
STUDY SESSION
City Council Chambers
21630 11th Avenue S, Des Moines, Washington
Thursday, April 4, 2024 - 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 Councilmember Yoshiko Grace Matsui.

ROLL CALL

Council Present:

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

Staff Present:

Interim City Manager Tim George; Interim City Attorney Matt Hutchins; Assistant City Manager Adrienne Johnson-Newton; Finance Director Jeff Friend; Assistant Police Chief Mark Couey; City Clerk Taria Keane; and Director of Emergency Management and Workplace Safety Shannon Kirchberg

CORRESPONDENCE

- There were no additional correspondence outside of 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.

- No one signed up to speak

DISCUSSION ITEMS

SENIOR EXEMPTIONS PRESENTATION

- John Wilson, King County Assessor

Study Session Minutes
April 4, 2024

- King County Assessor John Wilson gave Council a PowerPoint Presentation on Property Values, Taxes, and Exemptions.

COMMUNICATIONS ASSESSMENT FINAL REPORT AND NEXT STEPS

- Council discussed Communication Recommendations.

CITY MANAGER RECRUITMENT

- Assistant City Manager Adrienne Johnson-Newton gave Council a PowerPoint Presentation update on the 2024 City Manager Recruitment.

NEXT MEETING DATE

April 11, 2024 City Council Regular Meeting

ADJOURNMENT

Direction/Action

Motion made by Councilmember Yoshiko Grace Matsui to adjourn;
seconded by Councilmember Jeremy Nutting
Motion passed 7-0.

The meeting adjourned at 8:25 p.m.

MINUTES

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

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

The flag salute was led by Councilmember Jeremy Nutting.

ROLL CALL

Council Present:

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

Staff Present:

Interim City Manager Tim George; Interim City Attorney Matt Hutchins; Assistant City Manager Adrienne Johnson-Newton; Director of Community/Administrative Services Bonnie Wilkins; Harbormaster Scott Wilkins; Assistant Harbormaster Katy Bevegni; Police Chief Tim Gately; Officer Doug Weable; Finance Director Jeff Friend; Director of Community Events and Services Nicole Nordholm; Executive Administrative Analyst Rochelle Caton; Community Development Director Denise Lathrop; Civil Engineer II Tyler Beekley; Civil Engineer I Cong Nguyen; Legislative Advocate Anthony Hemstad; and City Clerk Taria Keane

CORRESPONDENCE NOT PREVIOUSLY RECEIVED BY COUNCIL

- There was no additional correspondence outside of the emails already received by Council.

COMMENTS FROM THE PUBLIC

- Rus Higley, Parking in Redondo
- David Emery, Street Racing in Redondo
- Jim DeRosa, Budget
- Karen Schartman, Levy Lid Lift

Regular Meeting Minutes
April 11, 2024

- Barbara McMichael, Earth Day, Levy Lid Lift, Trees
- Bill Linscott, Marina Redevelopment
- Steve Quinn, Communication
- Patrice Thorell, Legacy 25th Anniversary
- Rick Johnson, Speed Camera's and Clean Up After your Pets

COMMITTEE CHAIR REPORT

FINANCE COMMITTEE: Chair Councilmember Matt Mahoney

- Councilmember Matt Mahoney gave Council an update on the Finance Committee meeting.

ENVIRONMENT COMMITTEE: Chair Councilmember JC Harris

- Councilmember JC Harris gave Council an update on the Environment Committee meeting.

PUBLIC SAFETY/EMERGENCY MANAGEMENT: Chair Mayor Traci Buxton

- Mayor Traci Buxton gave Council an update on the Public Safety/Emergency Management Committee meeting.

CITY MANAGER REPORT/PRESENTATIONS/BRIEFINGS

- Interim City Manager Tim George gave Council an update on the Senior Activity Center repairs.

LEGISLATIVE UPDATE

- Legislative Advocate Anthony Hemstad gave Council a PowerPoint Presentation on the 2024 Des Moines Legislative Priorities

AUTOMATED TRAFFIC SAFETY CAMERA PROGRAM UPDATE

- Interim City Attorney Matthew Hutchins gave Council a PowerPoint Presentation on the Automated Traffic Safety Camera Program Update. Consent Agenda Item #5

CONSENT AGENDA

Item 1: APPROVAL OF VOUCHERS

Motion is to approve the payment vouchers through April 04, 2024 and payroll transfers through April 05, 2024 in the attached list and further described as follows:

| | | |
|---------------------|------------|--------------|
| EFT Vendor Payments | #9847-9927 | \$784,721.31 |
|---------------------|------------|--------------|

Regular Meeting Minutes
April 11, 2024

| | | |
|----------------------------|----------------|---------------|
| Wires | #2530-2536 | \$526,810.88 |
| Accounts Payable Checks | #165755-165769 | \$ 59,394.70 |
| Payroll checks Voided | # 9861-9861 | \$ (3,045.00) |
| Payroll Checks | # 19812-19815 | \$ 2,818.28 |
| Payroll Advice | #9051-9223 | \$520,323.55 |

Total Checks and Wires for A/P & Payroll: \$1,891,023.72

- Item 2: SENIOR SERVICES ADVISORY COMMITTEE APPOINTMENTS
Motion 1 is to confirm the Mayoral appointment of Paul Barton DeLacy to an open position on the City of Des Moines Senior Advisory Committee, effective immediately and expiring on December 31, 2027.

Motion 2 is to confirm the Mayoral appointment of Julie McCullough to an open position on the City of Des Moines Senior Advisory Committee, effective immediately and expiring on December 31, 2025.
- Item 3: BLACK WELLNESS WEEK PROCLAMATION
Motion is to approve the Proclamation recognizing April 15-19 as Black Wellness Week.
- Item 4: PUBLIC DRAINAGE EASEMENT
Motion is to approve the attached "Public Drainage Easement," and authorize the City Manager to accept the easement and sign the agreement substantially in the form as submitted.
- Item 5: UPDATING THE CITY'S AUTOMATED TRAFFIC SAFETY CAMERA PROGRAM
Motion is to enact Draft Ordinance 24-022, amending chapters 10.36 and 10.40 DMMC to implement changes to the automated traffic safety camera program required by ESHB 2384.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve the Consent Agenda; seconded by Councilmember Matt Mahoney. Motion passed 7-0.

Mayor Traci Buxton read the Black Wellness Week Proclamation into the record.

UNFINISHED BUSINESS

At 7:25 p.m. Council took a 10 minute break and resumed the meeting

Regular Meeting Minutes
April 11, 2024

at 7:35 p.m.

Due to technical difficulties, at 7:39 p.m. Council took a 5 minute break and resumed the meeting at 7:44 p.m.

CITY MANAGER RECRUITMENT

Staff Presentation by Assistant City Manager Adrienne Johnson-Newton

- Assistant City Manager Adrienne Johnson-Newton introduced Vice President of SGR Consultant Dave Tuan
- Assistant City Manager Adrienne Johnson-Newton gave Council a PowerPoint Presentation on the 2024 City Manager Salary Schedule.

Direction/Action

Motion made by Councilmember Jeremy Nutting to approve salary grade option #4 as the 2024 City Manager salary range; seconded by Councilmember Matt Mahoney.

Motion passed 6-0-1

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

Abstained: Councilmember JC Harris

At 8:17 p.m. Council took an 8 minute break and resumed the meeting at 8:25 p.m.

Direction/Action

Motion made by Councilmember Matt Mahoney to extend the meeting with a hard stop at 9:30 p.m.; seconded by Councilmember Jeremy Nutting.

Motion passed 7-0.

PROPERTY TAX LEVY LID LIFT

Staff Presentation by Finance Director Jeff Friend

- Finance Director Jeff Friend gave Council a PowerPoint Presentation on the Property Tax Levy Lid Lift.

Direction/Action

Motion made by Councilmember Jeremy Nutting to adopt the amendments to Draft Ordinance No. 24-020 and pass it to a final

Regular Meeting Minutes
April 11, 2024

reading on April 25, 2024 for further City Council consideration;
seconded by Deputy Mayor Harry Steinmetz.
Motion passed 7-0.

NEW BUSINESS

- Item 1: COMPREHENSIVE MARINA MASTER PLAN UPDATE
- Due to time constraints New Business Item #1 will be moved to a future meeting date.

NEXT MEETING DATE

April 25, 2024 City Council Regular Meeting

ADJOURNMENT

Direction/Action

Motion made by Councilmember Jeremy Nutting to adjourn, seconded by Councilmember Matt Mahoney.
Motion passed 7-0.

The meeting adjourned at 9:24 p.m.

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Pride Month Proclamation

FOR AGENDA OF: May 09, 2024

ATTACHMENTS:
1. Proclamation

DEPT. OF ORIGIN: Administration

DATE SUBMITTED: April 29, 2024

- CLEARANCES:
- City Clerk *[Signature]*
 - Community Development _____
 - Courts _____
 - Emergency Management _____
 - Finance _____
 - Human Resources _____
 - Legal _____
 - Marina _____
 - Police _____
 - Parks, Recreation & Senior Services _____
 - Public Works _____

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

Purpose and Recommendation

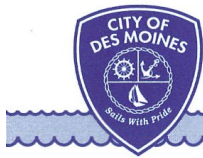
The purpose of this agenda item is to recognize June as LGBTQIA+ Pride Month.

Suggested Motion

Motion: "I move to approve the Proclamation recognizing June as LGBTQIA+ Pride Month."

Background

Members of the lesbian, gay, bisexual, transgender, and queer/questioning, intersex, and asexual/aromatic/agender communities, (LGBTQIA+) contribute to our community's success and strengths in a great number of immeasurable ways; and LGBTQIA+ Washingtonians invite all people to join them during the month of June in celebrating the resiliency of the community.



City of Des Moines

CITY COUNCIL

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, the City of Des Moines recognizes that one of its greatest strengths is the diversity of its residents and citizens; and

WHEREAS, members of the lesbian, gay, bisexual, transgender, and queer/questioning, intersex, and asexual/aromantic/agender communities, (LGBTQIA+) contribute to our community's success and strengths in a great number of immeasurable ways; and

WHEREAS, the City of Des Moines must proactively ensure that acts of discrimination and hatred will not be tolerated; and

WHEREAS, the LGBTQIA+ community continues to be a target of violence, harassment, and discrimination by many and yet continue to thrive through the efforts of the community itself and through the support of LGBTQIA+ affirming spaces, agencies, and individual allies; and

WHEREAS, while nationwide trends continue to highlight the targeting and discriminate against members of the LGBTQIA+ community, Washington State continues to lead in affirming the lives and values of LGBTQIA+ individuals; and

WHEREAS, LGBTQIA+ Washingtonians invite all people to join them during the month of June in celebrating the resiliency of the community;

NOW THEREFORE, THE DES MOINES CITY COUNCIL HEREBY PROCLAIMS June LGBTQIA+ Pride Month and encourage all people in our state to join in celebrating diversity, and promoting inclusion and equal protection under the law, and further encourage people to join us in eliminating discriminatory policies and practices toward any culture, race, or group.

SIGNED this 9th day of May, 2024.

Traci Buxton, Mayor

The Waterland City

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Senior Services Advisory Committee
Appointment

FOR AGENDA OF: May 9, 2024

DEPT. OF ORIGIN: Community Services

ATTACHMENTS:

- 1. Randy Richards application

DATE SUBMITTED: April 17, 2024

CLEARANCES:

- City Clerk *JK*
- Community Development _____
- Courts _____
- Emergency Management _____
- Finance _____
- Human Resources _____
- Legal /s/MH
- Marina _____
- Police _____
- Parks, Recreation & Senior Services *BRM*
- Public Works _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is to recommend City Council approval of appointment to the City of Des Moines Senior Services Advisory Committee.

Suggested Motion

Motion 1: "I move to confirm the Mayoral appointment of Randy Richards to an open position on the City of Des Moines Senior Services Advisory Committee, effective immediately and expiring December 31, 2027."

Background

The Senior Services Advisory Committee was created by chapter 4.44 DMMC, which details the powers and duties of the Committee, ex-officio members, terms, meetings, reports to City Council, and scope of duties for the Senior Services Advisory Committee. The Committee advises the City Council on policy and budgetary subjects related to senior services, current and future facilities relating to senior services, review of federal, state and county laws and regulations, proposed laws and regulations and the impact of such laws and regulations on delivery of senior services, and to perform such other tasks as are assigned by the City Council.

The Committee consists of seven members. One member of the Committee need not be a resident of the City and up to two members of the Committee may reside outside the City limits but work or volunteer within the City limits. Four Committee members are appointed to two year terms and three members of the committee are appointed to four year terms.

Discussion

Staff met with the proposed applicant Randy Richards and had a robust conversation on his interests in serving seniors in the community, his background in law enforcement and animal control, and his desire to engage with residents both in his home at the Adriana, as well as in the community at large.

Alternatives

None provided.

Financial Impact

No financial impact.

Recommendation/Concurrence

Des Moines Administration recommends the Mayoral appointment of Randy Richards to the Senior Services Advisory Committee.



CITY OF DES MOINES
APPLICATION FOR APPOINTIVE OFFICE
21630 11th Avenue South
Des Moines, WA 98198

Recvd. _____

Please Check

NAME: RANDALL S. RICHARDS
ADDRESS: 225 25 7TH AVE SO. APT #209
CITY/ZIP: Des Moines WA 98198
PHONE: Home 360792-6594 Work -
LENGTH OF RESIDENCE AT THE ABOVE ADDRESS 6 YEARS
REGISTERED VOTER? YES
E-MAIL ADDRESS: rsrichards087@gmail.com

- Civil Service Commission
- Library Board
- Human Services
- Senior Services
- Arts Commission
- Marina Beach Park
- Landmarks Commission
- Lodging Tax Committee

EMPLOYMENT SUMMARY LAST FIVE YEARS: RETIRED

Are you related to anyone presently employed by the City or a member of a City Board? NO
If yes, explain: _____

Do you currently have an owning interest in either real property (other than your primary residence or a business) in the Des Moines planning area? NO if so, please describe: _____

IN ORDER FOR THE APPOINTING AUTHORITY TO FULLY EVALUATE YOUR QUALIFICATIONS FOR THIS POSITION, PLEASE ANSWER THE FOLLOWING QUESTIONS USING A SEPARATE PAPER IF NECESSARY.

1. Why do you wish to serve in this capacity and what can you contribute? As a senior resident of the City of Des Moines I wish to give back to my community.

2. What problems, programs or improvements are you most interest in? Volunteering at the senior community and (center) and on the Senior Citizens Advisory Board

3. Please list any Des Moines elective/appointive offices you have run/applied for previously: N/A

Randy Richards

- Lives at the Adriana, has since its opening
- Background: law enforcement
 - Military Police, Air Force
 - Reserve Police Officer with Lake Forest Park
 - Started the Animal Control program with the City of Lakewood
 - Code Enforcement after this
 - 22 years in total
- Hobbies:
 - Calls Bingo on Wednesdays at the Adriana
 - Resident vehicle jump started. He purchased a device, and helps residents or anyone that needs a jump (which happens often)
 - Church attender
 - Loves to see movies in the theater, or check out movies and books from the library

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Redondo Speed Enforcement Fund

FOR AGENDA OF: May 9, 2024

ATTACHMENTS:

- 1. Draft Ordinance No. 24-032

DEPT. OF ORIGIN: Finance

DATE SUBMITTED: May 2, 2024

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The proposed ordinance provides authorization to establish a new special revenue fund entitled “Redondo Speed Enforcement Fund.” This fund will account for revenue and expenditures related to the speed enforcement cameras installed in the Redondo area.

Suggested Motion

Motion: “I move to adopt Draft Ordinance No. 24-032, adding a new section to the chapter 3.51 DMMC establishing a Special Revenue Fund entitled “Redondo Speed Enforcement Fund.”

Background

Title 3 DMMC authorized and provides the legal definition of “funds” used for budgeting and reporting City financial activity. Title 3 DMMC currently has separate chapters for certain categories of funds (e.g. “Special Revenue Fund” DMMC 3.51)

Discussion

Speed enforcement cameras have been installed in Redondo and the City will begin receiving revenue upon the start of the enforcement program. The Washington State legislature has restricted the use of the revenue to:

- 1) “Traffic safety activities related to construction and preservation projects and maintenance and operations purposes, including, but not limited to, projects designed to implement the complete streets approach as defined in RCW 47.04.010, changes in physical infrastructure to reduce speeds through road design, and changes to improve safety for active transportation users, including improvements to access and safety for road users with mobility, sight, or other disabilities; and
- 2) The cost to administer, install, operate, and maintain the automated traffic safety cameras, including the cost of processing infractions.

According to the Washington State Auditor’s Office, Special Revenue Funds “should be used to account for and report the proceeds of specific revenue sources that are restricted or committed to expenditure for specific purposes other than debt service or capital projects.”

As the expenditure of revenue from the Redondo speed cameras is restricted by the State for specific uses; accounting for the funds in a Special Revenue Fund is an appropriate accounting treatment.

Recommendation

Staff recommends that the Council adopt Draft Ordinance 24-032.

CITY ATTORNEY'S FIRST DRAFT 4/26/2024

DRAFT ORDINANCE NO. 24-032

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to municipal finance, adding and codifying a new section in chapter 3.51 DMMC establishing a "Special Revenue" fund entitled "Redondo Speed Enforcement Fund."

WHEREAS, generally accepted accounting principles define what activities are accounted for in special revenue funds, and

WHEREAS, the City Council authorizes the creation, changes and deletions of funds, and

WHEREAS, from time to time new funds are necessary to track new activities, and

WHEREAS, the City Council has created an "Automated Speed Enforcement Fund", codified at DMMC 3.51.190, for the receipt and expenditure of funds resulting from the operation of school zone speeding cameras authorized under Ordinance no. 1512, and

WHEREAS, this Fund 190 restricts expenditures to the purposes specified in Ordinance no. 1512, and

WHEREAS, the Council authorized the installation and use of automated traffic safety cameras to detect speed violations in public park speed zones in Ordinance no. 1769, and

WHEREAS, the Legislature in 2024 imposed new restrictions on the use of revenues from public park speed zone cameras that are not applicable to Fund 190, and

WHEREAS, there is a need to create a new Special Revenue fund entitled "Redondo Speed Enforcement Fund" to account for the different treatment of the park zone camera proceeds, and

WHEREAS, the City Council finds that the amendments contained in this Ordinance are appropriate and necessary for the preservation of the public health and welfare; now therefore,

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

Ordinance No. ____
Page 2 of 3

Sec. 1. A new section is added to Chapter 3.51 DMMC to read as follows:

3.51.195 Redondo Speed Enforcement Fund

(1) There is created a "Redondo Speed Enforcement Fund."

(2) The purpose of the fund is for the accounting of funds related to public park speed enforcement cameras located outside of a school zone authorized by DMMC 10.36.020.

(3) Revenue from fines assessed for park zone speed violations issued under authority of chapter 10.36 DMMC shall be used solely for the purposes set forth in DMMC 10.36.070(4) or as otherwise provided by State law.

Sec. 2. Ratification, confirmation, and approval. All acts undertaken prior to the effective date of this Ordinance that are consistent with the intent and purpose of same are hereby ratified, confirmed, and approved.

Sec. 3. Severability - Construction.

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

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

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

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2024 and signed in authentication thereof this ____ day of _____, 2024.

Ordinance No. _____
Page 3 of 3

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published: _____

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Senior Activity Center Management Contract

FOR AGENDA OF: May 9, 2024

DEPT. OF ORIGIN: Community Services

ATTACHMENTS:

- 1. Professional Management Services Contract

DATE SUBMITTED: May 1, 2024

CLEARANCES:

- City Clerk *JK*
- Community Development _____
- Courts _____
- Emergency Management _____
- Finance *MM 2/1*
- Human Resources _____
- Legal */s/MH*
- Marina _____
- Police _____
- Parks, Recreation & Senior Services *BM*
- Public Works _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is to seek City Council approval for a Contract for Professional Management Services between the City of Des Moines and Wesley to provide Senior Services staffing at the Des Moines Senior Activity Center.

Suggested Motion

Motion: "I move to approve the Professional Management Services Contract with Wesley for the provision of Senior Services, and authorize the City Manager to sign the Agreement substantially in the form as submitted."

Background

In 2018, The Council approved a Pilot Project of contracting for senior services staffing and management through Wesley for our Senior Activity Center. This was undergone after research into neighboring cities, communication with Des Moines various community service organizations, and the acknowledgement that services could be more efficient and beneficial to seniors if better coordinated with our local organizations who specialize in senior services support and resources.

The Des Moines Activity Center (DMAC) has been a fundamental space for gathering and activities in the City of Des Moines. Wesley has been a community partner for decades, and has a long standing history of providing quality services and programs for seniors. The decision to contract with Wesley was logical and has been quite successful.

Discussion

The City's DMAC remains committed to serving seniors in the area. Despite challenging closures during the Covid-19 pandemic, as well as most recently for repairs after a major pipe burst, DMAC continues to serve and engage with our seniors through outreach activities, excursions, and personalized check-ins with mailings and phone calls.

The contract (Attachment 1) provides for continued management and oversight of the City's DMAC. Wesley will continue to provide a staff member, (Senior Services Manager) to manage. There is also a Transportation Services Contract in place with Wesley, which provides for a part-time shuttle driver, who joined us in 2023.

This contract will also work to bring back the secondary position, (Senior Services Engagement Coordinator) as the need has arrived – with additional programming, continued engagement and outreach, and trips and outings for our senior population. Wesley will support in recruitment and training for this position, and City Staff will be involved in interviewing and training.

The City will continue to provide all other necessary resources.

Alternatives

Reject the contract. Under this scenario, City Administration would recruit candidates to fill the positions. This would cause a substantial disruption to services and take time. (Not recommended).

Financial Impact

The contract with Wesley was drafted to break even with the City's expenditures for staffing DMAC.

Recommendation/Concurrence

Staff recommends approval of the Contract with Wesley.

**CONTRACT FOR PROVIDING
PROFESSIONAL MANAGEMENT SERVICES
Between
THE CITY OF DES MOINES
and
WESLEY**

THIS CONTRACT is made and entered into between the CITY OF DES MOINES, a Washington Municipal Corporation (“the City”) and WESLEY, a 501(c)(3) not-for-profit organization (“Wesley” or “Contractor”).

WHEREAS, the Des Moines Senior Activity Center, located at 2045 South 216th Street is owned by the City, and has been successfully managed by Wesley for the last four years to provide programs that enhance the experience of being an older adult and are focused on meeting the goals of successful aging; and

WHEREAS, such programs and services include coordinated meal services, scheduled outings, and on site activities at the Senior Center including positive and useful medical classes and clinics which have benefitted seniors in attendance; and

WHEREAS, Wesley, is an organization, located in Des Moines, that has provided retirement communities and a network of services offering a continuum of care in the community for many years; and

WHEREAS, Wesley’s vision is to build a network of services providing a continuum of care for older adults; and

WHEREAS, the coordination of efforts between the City and Wesley has positively impacted the quality and availability of Senior Services in Des Moines and Normandy Park; and

WHEREAS, the City and Wesley would like to continue this partnership in order to allow Wesley to oversee and manage the day to day operations at the Senior Center; and

WHEREAS, this agreement between the City of Des Moines and Wesley is made in furtherance of these mutual goals to benefit the Senior Community;

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

1. Senior Center Services.

- a. The City does hereby engage Wesley and Wesley does hereby accept the engagement by the City to continue to oversee and manage the day to day operations at the Senior Center.
- b. Wesley shall provide professional programming, oversight, supervision, and management of the Des Moines Senior Activity Center and its associated programs located at 2045

Management Services Contract
Senior Services and Activity Center

South 216th Street, and in connection therewith Wesley shall provide the services generally described in Exhibit A hereto (the “Senior Center Services”).

- c. In performing said work, Wesley shall provide a staff person to manage the day-to-day operations at the Senior Activity Center, and to work in coordination with the City to manage other City staff assigned to the Senior Activity Center (currently 1 FTE), as well as volunteers and organizations associated with the Senior Activity Center. This staff member provided by Wesley will be called the Senior Services Manager, and shall meet the expectations of the job description that is provided as Exhibit B.
 - d. Beginning on July 1, 2024, or as soon thereafter as possible, Wesley shall provide an additional staff person to act as Senior Services Coordinator for the Activity Center. The staff member provided by Wesley will be called the Senior Services Engagement Coordinator and shall meet the expectations of the job description that is provided as Exhibit C.
 - e. If a position becomes vacant or is currently vacant, Wesley shall provide a recommendation to the City of the staff person that they intend to appoint to the position. The City shall have right to review the qualifications of the candidate and approve or deny the recommended candidate. The candidate will also be subject to a City of Des Moines background check.
 - f. The Senior Center shall be open to the public Monday through Friday from 8:00 a.m. to 4:30 p.m. excluding those state and/or federal holidays on which the offices of the City of Des Moines are closed for business.
 - g. The parties recognize that evening and weekend activities may be scheduled outside of these normal operating hours, however, these evening and weekend activities shall be an addition to the normal operating hours listed above and not be treated as an off-set or substitute.
 - h. All data, documents, and files created by Contractor under this Agreement may be stored at City facilities or at Wesley, until this contract expires or is terminated, at which time they will be turned over to the City. Wesley shall make such data, documents, and files available to the City upon its request at all reasonable times for the purpose of editing, modifying, and updating as necessary. Duplicate copies of this information shall be provided to the City upon its request, and at reasonable cost.
- 2. Employee Supervision and Independent Contractor.**
- a. The Parties intend that the Services provided by Wesley under this Contract are provided as an independent contractor. Nothing in this Contract shall be considered to create the relationship of employer and employee between the parties. Neither Wesley and/or any Wesley employees shall be entitled to any benefits accorded City employees by virtue of the services provided under this Contract. The City will not be responsible for withholding or otherwise deducting federal income tax or social security payments, or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Contractor.

Management Services Contract
Senior Services and Activity Center

- b. Accordingly that Wesley has the sole ability and responsibility to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement. Wesley shall be solely responsible for the payment of salaries and/or benefits of its employees engaged in the provision of the Senior Center Services and in complying with all laws, rules, and regulations governing such payments.
- c. Wesley shall require and ensure all employees associated with the Services to be performed under the terms of this Agreement pass all required background checks, including but not limited, to background checks under the Child and Adult Abuse Information Act. In addition, all employees driving a vehicle on Senior Center business must at all times possess a valid driver license and have an acceptable Abstract of Driving Record (ADR).
- d. Wesley's employees will agree to follow the City's Personnel Manual.

3. City Rights and Responsibilities.

- a. The City shall provide all materials, tools, software, equipment, utilities, and all other things necessary or required at the Senior Activity Center for the satisfactory performance of the work, and the City shall provide Wesley with access to the City's Senior Activity Center.
- b. The Senior Center shall be used by Wesley solely for the provision of the Senior Center Services. The City reserves the right to use the Senior Center for other activities and by other entities so long as those activities do not interfere with the day to day operation of the Senior Center and the provision of the Senior Center Services in accordance with the terms of this Agreement.
- c. The City further agrees to maintain, repair, and, if and as deemed necessary in the sole discretion of the City, replace, the real property, including the landscaping and parking lot, furniture, fixtures, equipment, including a copier and computer, kitchen equipment and cookware comprising the Senior Center, subject to the City's right to seek indemnity with respect to the cost thereof, if applicable, pursuant to Section 10 below.
- d. The City shall continue to pay all utilities related to the ownership and/or operation of the Senior Center.

4. Compensation. In consideration for the complete and faithful performance of the Contract, Wesley shall be paid as follows:

- a. Wesley will invoice the City not later than the 5th of the following month.
- b. The monthly invoice shall be the total cost of compensation of the Contractor provided Senior Services Manager, including the direct, indirect, and Wesley administrative overhead costs.

Management Services Contract
Senior Services and Activity Center

- c. The City shall pay Wesley for all actual costs associated with providing the Senior Services Manager, including direct and indirect expenses, and overhead. The City shall initially pay approximately \$7,500 per month (the "Services Fee") until the Senior Services Engagement Coordinator is hired and assigned under Section 1(d) above. Once the Senior Services Engagement Coordinator is assigned (target date July 1, 2024), the anticipated monthly payment amount will be \$13,750. Wesley shall provide documentation to demonstrate the actual costs of providing the service to support the monthly invoice. Beginning in the second year and for each subsequent year that this Agreement is in effect, the compensation payments shall increase annually at a rate of 95% of the annual All Urban Consumer Price Index (CPI-U) for the Seattle-Tacoma area for June over June. The Services Fee shall be due and payable on the 20th day of each month and if not paid when due shall be subject to a late fee of 1% per month (the "Overdue Rate") from the date due to the date paid in full.
- d. The Services Fee shall be prorated in the event the Term commences other than on the first day of a month or terminates other than on the last day of a month.
- e. In consideration for the payment of the Services Fee, other than those costs and expenses for which the City has specifically agreed to remain responsible pursuant to Sections 3 and 10 hereof, Wesley shall be responsible for all of the costs and expenses related to the provision of the Senior Center Services including, but not limited to, all employee wages and benefits and related taxes.

5. Term.

- a. Unless earlier terminated as provided herein or unless extended as provided herein the initial term of this Agreement (the "Initial Term") shall for two (2) years from the Commencement Date (as hereinafter defined). For purposes hereof, the Commencement Date shall mean June 19, 2024.
- b. Upon mutual written agreement of the parties, the Initial Term of this Agreement can be extended for an additional two year (the "Renewal Term" and together with the Initial Term, the "Term").
- c. Notwithstanding the foregoing, the Term of this Agreement may be earlier terminated, in whole or in part, at any time, by either party without cause upon ninety (90) days written notice of termination to the non-terminating party which notice shall set forth the termination date.
- d. Further, this Agreement may be terminated by either party (the "non-defaulting party") on written notice to the other (the "defaulting party") in the event of a breach by the defaulting party of its obligations under this Agreement, which is not cured within ten (10) days in the case of a monetary breach or thirty (30) days in the case of a non-monetary breach after written notice from the non-defaulting party setting forth in reasonable detail the nature of such breach; provided, however, in the case of a non-monetary breach which cannot reasonably be cured within thirty (30) days, the

Management Services Contract
Senior Services and Activity Center

defaulting party shall have an additional period of thirty (30) days in which to complete the cure provided it commences the cure within the initial thirty (30) day cure period and diligently prosecutes the same to completion.

6. Performance Standards.

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

7. Record Keeping.

All records or papers of any sort relating to the City and the project will always be the property of the City and shall be surrendered to the City upon demand. All information concerning the parties, which is not otherwise a matter of public record or required by law to be made public, is confidential, and neither party will disclose that information without the express written consent of the other party. Wesley acknowledges that the City, as a public agency, is subject to the Public Records Act in Chapter 42.56 RCW.

8. Assignment.

Wesley shall not assign this Contract or any interest herein, nor any money due or to become due hereunder without first obtaining the written consent of the City, nor shall Wesley subcontract any part of the consulting Services to be performed hereunder, without first obtaining the consent of the City. The City has the full discretion to determine whether to consent to assignment.

9. Modification.

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

10. Indemnification.

Wesley shall defend, indemnify and hold the City, officials, employees and volunteers harmless from all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or resulting from the negligent acts, alleged negligent acts, errors or omissions of Wesley in the performance of this Agreement.

The City shall defend, indemnify and hold Wesley, officials, employees and volunteers harmless from all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or resulting from the negligent acts, alleged negligent acts, errors or omissions of the City in the performance of this Agreement.

It is further specifically and expressly understood that the indemnification provided herein constitutes both parties 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 Agreement.

11. Liability Insurance.

Management Services Contract
Senior Services and Activity Center

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

Wesley's maintenance of insurance as required by the Contract shall not be construed to limit the liability of Wesley to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance. Wesley shall obtain insurance of the types described below:

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

Minimum Amounts of Insurance: Wesley shall maintain the following insurance limits:

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

B. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. Wesley's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of Wesley's insurance and shall not contribute with it.
2. Wesley shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.

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

D. Verification of Coverage Wesley shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of this Agreement. Upon request by the City, Wesley shall furnish certified copies of all required insurance policies, including endorsements, required in this Contract.

12. Dispute Resolution Procedures.

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

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

13. Severability.

If any term, provision, covenant, or condition of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated because of such decision.

14. Waiver.

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

15. Captions.

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

Management Services Contract
Senior Services and Activity Center

16. Time of Essence.

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

17. Concurrent Originals.

This Contract may be signed in counterpart originals.

18. Ratification and Confirmation.

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

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

CITY OF DES MOINES

CONTRACTOR

By _____
Its City Manager

Wesley, Title _____

Dated _____

Dated _____

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

WESLEY PROVIDED SERVICES AND RESPONSIBILITIES

- Coordinate with the City to develop the goals of the Senior Center which shall include maximizing the benefits and resources offered by the Senior Center.
- Develop a schedule of programs and activities to be offered at the Senior Center which are designed to achieve the goals of the Senior Center.
- Provide a Senior Services Manager to oversee and manage the day to day operations of the Senior Center, including City staff (currently 1 FTE), as well as volunteers and organizations associated with the Senior Activity Center.
- Review and make recommendations to the City concerning policies and procedures necessary for the effective operation of the Senior Center.
- Monitor customer satisfaction and take such steps as may be deemed necessary and appropriate by Wesley to maintain and/or improve, as applicable, customer satisfaction and provide a report at least quarterly or as requested by the City.
- Coordinate the services offered at the Senior Center with City-contracted vendors, including coordination of meal services, currently provided by Catholic Community Services.
- Coordinate with other City Departments and Department Directors as necessary.
- Identify and promptly notify the City of any maintenance requirements and/or needed capital improvements to the Senior Center.
- The Senior Services manager shall meet regularly with City Administration to report on the operations of the Senior Center.
- Provide periodic reporting to the City on the results of operations at the Senior Center.

EXHIBIT B

**SENIOR SERVICES MANAGER
Job Description**

Nature of Work

This position is responsible for administrative, supervisory, and professional work in the planning, development, and operation of a comprehensive senior services program managing recreation and continuing education activities, health and nutrition programs, facilities, personnel, volunteers and special events. Work is coordinated with other senior and human services providers in the community. Work is performed under the general direction of assigned supervisor. Work is completed independently with considerable autonomy. The incumbent is responsible for supervision, scheduling and evaluation of regular full-time, part-time and extra-hire staff and volunteers.

Essential Functions

- Plans, manages, implements and evaluates a comprehensive senior citizen program including recreation, social, health, nutrition, and human services programs.
- Assures the development of new programs, services and activities as appropriate.
- Assures adequate equipment and supplies; analyzes productive output to identify improvement needs and forecast requirements of personnel, programs, services, activities, supplies and equipment.
- Inspects and evaluates recreation programs and facilities; formulates recommendations for appropriate additions, replacements, and repairs; investigates complaints/feedback regarding recreational programs, services, activities, personnel, and facilities.
- May provide staff support to Senior Services Advisory Committee and Human Services Advisory Committee.
- Plans, prepares, develops, monitors and manages an annual budget for senior services functions. Approves purchases of supplies and operating inventory within established limits. Analyzes and controls expenditures to assure conformance with budget and established fiscal policies; obtain sources of funding and grants as appropriate.
- Establishes work performance standards, goals and objectives; reviews and resolves conflicts; monitors, reviews and approves time sheets.
- Coordinates services offered at the senior center that are funded, but not staffed, by other agencies.
- Communicates with City administrators, personnel, outside organizations, groups, and schools to coordinate, promote, publicize, and evaluate recreation programs, services, and activities.
- Assures the timely and accurate preparation of records, files, and comprehensive reports related to the programs, services, activities, operations, and budget of senior services.
- Researches and applies for outside funding for services and equipment including grant writing, fund raising, and securing donations; administer grant-funded projects and services. Develops partnerships and sponsorships for programs and facility improvements.

Management Services Contract
Senior Services and Activity Center

- Attends or chairs various professional, staff, and committee meetings and conferences; prepare and deliver speeches to park, civic and community groups as appropriate.
- Serves as technical advisor to community and city staff.
- Assists in short- and long-range planning for a comprehensive senior services program. Coordinates facilities and programs with other public agencies and organizations.
- Manages division computer system, training, and planning.
- Assures employees and volunteers are trained in safety procedures and ensures that all safety rules, regulations, and procedures are followed. Provides for risk management practices.
- Proposes long range capital improvement and development of senior programs facilities, equipment, and programs.
- Establishes and implements policies, procedures, and standards consistent with city policies and ordinances.
- Maintains communications and effective working relationships with co-workers, supervisors, other city employees, other government agencies, elected and appointed officials, community groups, and the general public. Makes presentations to council and community groups.
- Coordinates and monitors service provider and interlocal contracts; insurance agreements for facilities; human services contracts; concessions and program related contracts.
- May perform administrative and record-keeping functions as needed.
- Makes recommendations for hiring, trains, supervises, and evaluates work performance of assigned staff and volunteers; establishes work priorities and performance standards for staff; monitors performance and provides effective feedback; works with staff to correct any deficiencies; implements any necessary disciplinary action after appropriate consultation with the City's Human Resources Director.
- May serves as technical advisor to Seattle Southside RTA Sports Tourism Committee.
- Establishes and maintains cooperative, effective working relationships with co-workers, City employees, and the general public using principles of good customer service.
- Reports for scheduled work with regular, reliable and punctual attendance.
- Performs other duties as assigned, including but not limited to being assigned to work in other functional areas to cover absences or relief, equalize peak work periods, or balance the workload.

Necessary Knowledge, Skills, and Abilities

Knowledge of:

- Current principles and practices related to the administration of a comprehensive senior citizen program.
- Planning techniques and procedures for parks and recreation systems.
- Fund development and grant writing.
- Principles of customer service, conflict resolution, public relations and marketing.
- Effective personnel management techniques, and all applicable city policies and procedures.
- Budget planning, accounting, grant funding development and control techniques.
- Recordkeeping techniques and research methods.
- Sound purchasing and inventory control practices.

Management Services Contract
Senior Services and Activity Center

- Office procedures, methods, and equipment including computers and applicable software applications such as word processing, spreadsheets, and databases; social media.
- All phases of senior recreation and human services programming and volunteer coordination.
- Scheduling techniques and procedures for recreation facilities.
- Standard first aid, CPR, and bloodborne pathogen procedures.
- Pertinent federal, state and local laws, codes and regulations.

Ability to:

- Develop and implement senior center programs and events.
- Organize and express ideas effectively through the use of oral and written communications.
- Effectively use interpersonal skills in a tactful, patient, and courteous manner.
- Apply principles and practices of management, administration, supervision, and training.
- Develop, monitor, and manage the division budget.
- Analyze community recreational needs and recommend appropriate programs, services and activities.
- Estimate and project costs and expenditures.
- Develop program funding and obtain and administer grants.
- Develop and implement goals and objectives of the assigned division.
- Organize work to meet schedules and timelines.
- Write reports, business correspondence, and procedure manuals.
- Effectively present information and respond to questions from City Council, top management, clients, customers, the general public, and/or public groups.
- Respond to common inquiries and/or complaints/feedbacks from customers, regulatory agencies, or members of the business community.
- Demonstrate positive and effective interaction and communication with individuals of diverse occupational and social-economic backgrounds.
- Work effectively on several projects concurrently.
- Develop and implement comprehensive procedures for the effective management of senior citizen programs.
- Interpret and explain policies and procedures established by administration or City Council.
- Supervise the work of staff including coordinating, assigning, monitoring, and evaluating work; hiring, training, counseling, and disciplining staff (after consultation with City Human Resources Director).
- Establish and maintain effective working relationships with staff, other City employees/departments, City officials, community groups, and the public.
- Make timely decisions considering relevant factors and evaluating alternatives, exercising discretion and sound independent judgment.
- Create and meet schedules, time lines and work independently with little direction.
- Communicate clearly and concisely, both orally and in writing.
- Work effectively in a dynamic environment that is constantly changing, resulting in continually re-evaluating and shifting priorities.

Management Services Contract
Senior Services and Activity Center

- Ability to work both independently and within a collaborative team-oriented environment; contribute openly, respectfully disagree, understand the ideas of others, listen well and work for consensus.

Education and Experience Requirements

- Bachelor's degree from an accredited college or university with major course work in gerontology, recreation administration or related field; and
- Three years of increasingly responsible senior center programming experience, including at least one year in a supervisory capacity.

Special Requirements

- Must obtain a valid First Aid/CPR card within three months of employment, and maintain throughout employment.
- Must obtain and maintain a current King County Health Department Food Workers Permit.
- Possession of and the ability to maintain throughout employment a valid Washington State Driver's License with an acceptable Abstract of Driving Record (ADR).
- Successful completion of a pre-employment background (including references) and criminal history check.
- Because of the known effects of tobacco use, the City of Des Moines does not hire applicants who use tobacco products.

Working Conditions and Physical Abilities

- Environment: Work is performed at indoor and outdoor recreational facilities; travel to different locations; may be exposed to inclement weather conditions; work and/or walk on various types of surfaces, including slippery or uneven surfaces; may be required to work extended hours including evenings and weekends, and may be required to travel outside City boundaries to attend meetings.
- Physical: Primary functions require sufficient physical ability and mobility to work in an office and recreation facility setting; to stand or sit for prolonged periods of time; to occasionally stoop, bend, kneel, crouch, reach, and twist; to lift, carry, push, and/or pull light to moderate amounts of weight; to operate office equipment requiring repetitive hand movement and fine coordination including use of a computer keyboard; to travel to other locations using various modes of private and commercial transportation; and to verbally communicate to exchange information.

Equal Opportunity Employer

- The City of Des Moines is committed to hiring a diverse workforce and all qualified applicants, including all ethnic backgrounds and persons with disabilities, are encouraged to apply. The City is an Equal Opportunity Employer and does not unlawfully discriminate on the basis of race, sex, age, color, religion, national origin, marital status, sexual orientation, veteran status, disability status, or any other basis prohibited by federal, state, or local law.
- In accordance with the Americans with Disabilities Act, an employer is obligated to make a reasonable accommodation only to the known limitations of an otherwise qualified individual with a disability. In general, it is the responsibility of the applicant or employee with a disability to inform the employer that an accommodation is needed to participate in

Management Services Contract
Senior Services and Activity Center

the application process, to perform essential job functions or to receive equal benefits and privileges of employment.

General Information

- The statements contained herein reflect general details as necessary to describe the principal functions for this job classification, the level of knowledge and skill typically required and the scope of responsibility, but should not be considered an all-inclusive listing of work requirements.
- The physical abilities described above are representative of those that must be met by an employee to successfully perform the essential functions of the job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.
- The provisions of this job description do not constitute an expressed or implied contract. Any provision contained herein may be modified and/or revoked without notice.
- Updated 2018.

EXHIBIT C

**SENIOR SERVICES ENGAGEMENT COORDINATOR
Job Description**



RETIREMENT COMMUNITIES | HEALTH SERVICES | FOUNDATION

JOB DESCRIPTION

Mission Statement

Wesley is a faith-based organization providing retirement communities and a network of services for older adults. With love and joy, we are called to meet the physical, social and spiritual needs of those we serve. We affirm the worth of all those we serve and those who provide service.

| | |
|---|-------------------------|
| Job Title: Senior Services Engagement Coordinator | Facility: 03 Terrace |
| Department: Resident Engagement | Job Code: 966 |
| Supervisor: Senior Engagement Program Manager | FLSA Status: Non-Exempt |
| EEO-1 Job Classification: | |

JOB SUMMARY

The Senior Services Engagement Coordinator provides professional community recreation program and special event planning, development and supervision. The incumbent interacts with a broad and diverse constituency of citizens, organizations, and agencies. This position assists in the recruiting, training, supervision, and scheduling of volunteers. Hours vary based on program schedule and may include occasional evenings and weekends.

ESSENTIAL FUNCTIONS

- Plans, leads and supervises recreational, educational and social activities for assigned areas.
- Prepares and administers senior services budgets and monitors expenditures and revenue for assigned areas in accordance with established procedures.
- Coordinates, approves and monitors contractual service agreements for instructional staff.
- Coordinates facilities and programs with other agencies as assigned.
- Maintains monthly records and prepares written reports relating to senior services activities and facilities for assigned areas.

Management Services Contract
Senior Services and Activity Center

- Coordinates, schedules and supervises use of facility during normal operating hours.
- Assists in training volunteers in safety procedures and ensures all safety rules, regulations and procedures are followed. Provides for risk management practices.
- Assists in recruiting, training and supervising volunteers and instructors for senior services programs.
- Prepares the program quarterly newsletter, publicity, promotion and advertising for assigned areas.
- Communicates effectively with program participants and provides activities designed to promote health, fitness and socialization for older adults.
- Answers department telephone, assists customers with their requests, directs calls to appropriate personnel, takes messages and provides information.
- Assists facility users/staff with program information and registration, facility set-up and take-down, equipment check-out, lost and found, and general site supervision and security.
- Assists with participant registration system regarding scheduling, fee collection, accounting, participant records, refunds and notification, and class/program evaluations.
- Oversees participant use of Park and Recreation Department program facilities, vehicles, and equipment.
- Purchases supplies and equipment as needed.
- Attends to injury and incident victims, providing assistance and First Aid when needed.
- Completes accurately all City/Department forms for supervisory review and action when needed.
- Assists the Parks, Recreation and Senior Services Department professional staff with special projects as needed.
- Establishes and maintains cooperative, effective working relationships with co-workers, other City employees, and the general public using principles of good customer service.
- Reports for scheduled work with regular, reliable and punctual attendance.
- Performs other duties as assigned, including but not limited to being assigned to work in other functional areas to cover absences or relief, equalize peak work periods, or balance the workload.

QUALIFICATIONS/REQUIREMENTS

- Current principles and practices related to the coordination of a community recreation program, with emphasis on older adults.
- Scheduling techniques and procedures for recreation activities, facilities and special events.
- Interpersonal skills using tact, patience and courtesy.
- Principles and practices of administration, supervision and training.
- Standard First Aid, CPR and Bloodborne Pathogens procedures.
- Maintain effective working relationships with individuals and groups encountered in fulfilling job requirements.
- Ability to effectively plan, schedule, oversee and evaluate programs and personnel.
- Ability to analyze problems and negotiate effectively.
- Ability to make oral presentations.
- Ability to communicate effectively both orally and in writing using correct English usage, grammar, spelling, punctuation and vocabulary.
- Ability to use computer technology such as DASH registration systems, facility scheduling, and report preparation.
- Ability to perform the essential functions of the position.

Education Background

Management Services Contract
Senior Services and Activity Center

- Bachelor’s degree in Parks and Recreation Administration or a related field; or equivalent and
- Two years’ experience in recreation or gerontology; or

- **Licensure, Registration, Certification**
 - Maintain a valid First Aid/CPR card (within three months of employment).
 - Maintain a King County Food Handlers Permit (within three months of employment).
 - Possession of and the ability to maintain throughout employment a valid Washington State Driver's License with a good driving record.
 - Successful completion of a pre-employment background and criminal history check.
 - Because of the known effects of tobacco use, the City of Des Moines does not hire applicants who use tobacco products.

- **Physical Demands**
 - Indoor and outdoor work environments. Outdoor environment can include uneven and unstable walking surfaces, tripping hazards, and inclement weather conditions.
 - Occasional travel to off-site locations is required.
 - Hand-eye coordination and fine-manipulation skills are necessary to operate computers and a variety of office machinery.
 - The position also requires the ability to speak and hear to exchange information, sit for extended periods of time, bend and stretch to retrieve and maintain files and program supplies, and lift up to 50 pounds.

INFECTIOUS RISK CATEGORY

NO RISK: No contact with patient’s blood or other body fluids. No protective equipment required to be worn.

I have received, read and understand the above job description and can perform the essential functions of the job with or without reasonable accommodation. In the event I need future reasonable accommodation(s) it is my responsibility to submit that request in writing to Human Resources for review.

Employee Signature: _____ Date: _____

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Kent Des Moines Road/16th Ave S
Pipe Replacement Project –Contract
Awards

FOR AGENDA OF: May 9, 2024

DEPT. OF ORIGIN: Public Works

ATTACHMENTS:

DATE SUBMITTED: May 1, 2024

1. Public Works Contract
2. KBA, Inc. 2024-2025 On-Call General Civil Engineering Services, Task Assignment 2024-01
3. KPG Psomas 2024-2025 On-Call General Civil Engineering Services, Task Assignment 2024-02
4. Bid Proposal (Responsive Low Bid)

CLEARANCES:

- City Clerk _____
- Community Development _____
- Courts _____
- Director of Marina Redevelopment _____
- Emergency Management _____
- Finance *[Signature]*
- Human Resources _____
- Legal /s/MH
- 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 seek City Council approval for the Public Works Contract (Attachment 1) with Harkness Construction LLC, seek approval of the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-01 with KBA, Inc. (Attachment 2) to provide Construction Administration and Inspection Services, and seek approval of the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-02 with KPG Psomas (Attachment 3) to provide Engineer of Record Services. The following motions will appear on the Consent Agenda:

Suggested Motions

Motion 1: “I move to approve the Public Works Contract with Harkness Construction LLC (Contractor) for the Kent Des Moines Road/16th Ave S Pipe Replacement Project in the amount of \$346,422.00, authorize a project construction contingency in the amount of \$35,000.00, and further authorize the City Manager to sign said Contract substantially in the form as submitted.”

Motion 2: “I move to approve the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-01 with KBA, Inc. to provide Construction Administration and Inspection services for the Kent Des Moines Road/16th Ave S Pipe Replacement Project in the amount of \$75,660.00 and further authorize the City Manager to sign said Task Assignment substantially in the form as submitted.”

Motion 3: “I move to approve the 2024-2025 On-Call General Civil Engineering Services Task Assignment 2024-02 with KPG Psomas to provide Engineer of Record services for the Kent Des Moines Road/16th Ave S Pipe Replacement Project in the amount of \$14,721.33, and further authorize the City Manager to sign said Task Assignment substantially in the form as submitted.”

Background

The Kent Des Moines Road/16th Ave S Pipe Replacement Project is a high-priority project identified in the 2015 SWM Comprehensive Plan. The project is located at the north leg of 16th Avenue South as it intersects with Kent Des Moines Road. The limits of the project extend east of this intersection along the north side of Kent Des Moines Road, across the intersection following the existing storm undercrossing, through a public easement south of the intersection, before ending at the existing storm outfall to Massey Creek. The piped system at this intersection and outfall to Massey creek is insufficient to convey a 25-year storm that can result in runoff to overflow across Kent Des Moines Road and towards downstream properties.

At the July 28, 2022 City Council meeting, the City approved a task assignment with KPG Psomas for design and permitting of the Kent Des Moines Road/16th Ave S Pipe Replacement Project under the 2022-2023 On-Call General Civil Engineering Services Contract. After design completion, a solicitation for Bids was published on April 4th, 2024, and April 11th, 2024, with a public Bid Opening on April 22, 2024.

As the project aims to reduce localized flooding in the Massey Creek Basin an application for funding support was submitted to the King County Flood Control District. At the April 13, 2023 City Council meeting, the City approved an award of a \$200,000 Flood Reduction Grant from the King County Flood Control District.

Discussion

Construction Contract (Motion #1)

The Kent Des Moines Road/16th Ave S Pipe Replacement Project was advertised for public bids in accordance with state law, WSDOT LAG Manual, and requirements for competitive bidding of public works contracts. Bid proposals from three contractors were received. Bids were publicly opened and read out loud on April 22, 2024 by the City Clerk and are summarized below.

BID RESULTS

| | |
|----------------------------|-----------------------------------|
| <u>Engineer’s Estimate</u> | <u>\$284,372.00</u> |
| <u>Contractor Name</u> | <u>Bid Proposal</u> |
| Harkness Construction LLC | \$346,422.00 (Responsive Low Bid) |
| Road Construction NW | \$390,128.50 |
| Northwest Cascade | \$413,300.00 |

Harkness Construction LLC is the Responsive Low Bidder at \$346,422.00 (Attachment 4). The bid proposals and contractor qualifications have been reviewed and staff finds that the low bid is responsive and recommends award of the contract to Harkness Construction LLC. While the bid is higher than the engineering estimate, there is no indication that bids would be lower or more competitive if they were rejected and the City re-solicited for bids at a later time.

Construction Administration and Inspections Services Task Assignment (Motion #2)

Engineering consultants are needed in order to supplement and expand the capability of City staff for Construction Administration and Inspection for the Project. These services are proposed to be provided by KBA, Inc. (Attachment 2). The scope of work for KBA, Inc. includes the following services: preconstruction coordination, documentation and project control and construction inspection.

All construction support shall comply with the Washington State Department of Transportation (WSDOT) Local Agency Guidelines (LAG) for construction contract administration to maintain the City’s Certification Acceptance (CA) status.

Construction Engineering Task Assignment (Motion #3):

Engineering consultants are needed in order to supplement and expand the capability of City staff for Engineer of Record Services for the Project. These services are proposed to be provided by KPG Psomas (Attachment 3). KPG Psomas will be able to maintain valuable overall project history and consistency with the previous phases of work. The scope of work for KPG Psomas includes the following services: design clarifications, schedule review, change order review, and response to information requests.

Alternatives

(Motion #1) – Reject All Bids

The City Council could direct staff to reject all Bid Proposals and re-submit for construction bids at a later time. However, there is no reason to believe project bids would be lower given the busy bidding climate and expected future cost inflation. Additionally, the \$200,000 Flood Reduction Grant requires that the construction of improvements is completed by December 2024. Delaying construction could risk loss of the Flood Reduction Grant.

(Motion #2) – Not Approve On-Call Task Assignment with KBA, Inc.

The City Council could elect not to approve the Task Assignment with KBA, Inc. for Construction Administration and Inspection Services. The City does not have adequate resources to perform complete Construction Administration and Inspection in compliance with the general project requirements or the WSDOT LAG Manual. Council could direct staff to solicit for proposals, but this will cause project delay and potential need to re-bid the project in 2025 due to current project permits.

Motion #3 – Not Approve On-Call Task Assignment with KPG Psomas

The City Council could elect not to approve the Task Assignment with KPG Psomas for Engineer of Record Services. The City does not have adequate resources to perform Engineer of Record Services in compliance with the general project requirements or the WSDOT LAG Manual. Council could direct staff to solicit for proposals, but this will cause project delay and potential need to re-bid the project in 2025 due to current project permits.

Financial Impact

The City's CIP Budget includes revenues to achieve full project funding.

Recommendation

Staff recommends the adoption of the motion(s).

Council Committee Review

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



PUBLIC WORKS CONTRACT between City of Des Moines and Harkness Construction LLC

THIS CONTRACT is made and entered into this [Enter Day] day of [Enter Month], [Year], by and between the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), and Harkness Construction LLC organized under the laws of the State of Washington, located and doing business at 45015 244th Ave SE, 253-335-1449, Jason Harkness (hereinafter the "Contractor").

CONTRACT

The parties agree as follows:

I. DESCRIPTION OF WORK.

Contractor shall perform the services for the City as specifically described in Exhibit "A" Scope and Schedule of Work, attached hereto and incorporated herein by reference.

Kent Des Moines Rd / 16th Ave S Pipe Replacement Stormwater Improvement Project

- Constructing storm drainage improvements
- Cured in place pipe (CIPP) lining for storm drainage improvements
- Adjustment of surface utilities to grade
- Property restoration
- And all incidental items necessary to complete the Work as described in the Plans and Specifications.

The contractor agrees to furnish all materials, tools, labor, equipment, and other incidentals, and to perform all services and work as described in this Agreement and the contract documents, which consist of this Agreement and the following items, which are by this reference incorporated herein:

Standard Specifications for Road, Bridge and Municipal Construction, 2023 prepared by the Washington State Department of Transportation and the American Public Works Association – Washington State Chapter.

This is a Public Works Project which is subject to Prevailing Wage and Sales Tax rules. A current City of Des Moines Business License is required for all contractors and subcontractors that perform work under this contract. These licenses shall be in place prior to the issuance of any Notice to Proceed. This



project site is located on private property and coordination with the property owner is required for access. Coordination will be handled through Contractor to the City Project Manager to the homeowner.

- Exhibit A: Bid Documents
- Exhibit B: Contract Documents
- Exhibit C: Special Provisions
- Appendix A: Standard Plans
- Appendix B: Prevailing Wage Rates
- Appendix C: Permits

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

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

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

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

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

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

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

II. TIME OF COMPLETION. The parties agree that work on the tasks described in Section I above and more specifically detailed in Exhibit A attached hereto will begin immediately upon execution of this Contract. Upon the effective date of this Contract, the Contractor shall complete the work described in Section I 25 Working Days. If said work is not completed within the time specified, the Contractor agrees to pay the City the sum specified in Section VI - Liquidated Damages of this contract.

III. COMPENSATION. The City shall pay the Contractor a total amount not to exceed \$346,422.00, plus any applicable Washington State Sales Tax, for the work and services contemplated in this Contract. If the work and services to be performed as specified in Exhibit A "Scope and Schedule of Work" is for street, place, road, highway, etc. as defined in WAC 458-20-171, then the applicable Washington State Retail Sales Tax on

this contract shall be governed by WAC 458-20-171 and its related rules for the work contemplated in this Contract. The Contractor shall invoice the City monthly. The City shall pay to the Contractor, as full consideration for the performance of the Contract, an amount equal to the unit and lump sum prices set forth in the bid. The Contractor will submit requests for Progress payments on a monthly basis and the City will make progress payment within 45 days after receipt of the Contractor's request until the work is complete and accepted by the City. The City's payment shall not constitute a waiver of the City's right to final inspection and acceptance of the project.

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

IV. INDEPENDENT CONTRACTOR. The parties understand and agree that Contractor is a firm skilled in matters pertaining to construction and will perform independent functions and responsibilities in the area of its particular field of expertise. Contractor and its personnel, subcontractors, agents and assigns, shall act as independent contractors and not employees of the City. As such, they have no authority to bind the City or control employees of the City, contractors, or other entities. The City's Public Works Director or his or her designated representative shall have authority to ensure that the terms of the Contract are performed in the appropriate manner.

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

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

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

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

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

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

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

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

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

City and Contractor agree that for each day beyond the completion date specified in the Contract that the project is not completed, the sum of **\$2,078.53 [Liquidated Damages = (0.15*Contract Amount)/Time for Completion]** shall be deducted from the amount to be paid Contractor and shall be retained by City as damages.

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

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

Code of Washington, as well as any other applicable prevailing wage rate provisions. The latest prevailing wage rate revision issued by the Department of Labor and Industries must be submitted to the City by Contractor. It shall be the responsibility of Contractor to require all subcontractors to comply with Chapter 39.12 RCW and this section of the Contract.

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

IX. Compliance with Wage, Hour, Safety, and Health Laws. The Contractor shall comply with the rules and regulations of the Fair Labor Standards Act, 29 U.S.C. 201 et seq, the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, et seq, the Washington Industrial Safety and Health Act, Chapter 49.17 RCW, and any other state or federal laws applicable to wage, hours, safety, or health standards.

X. Days and Time of Work. Unless otherwise approved by the City, the working hours for this project will be limited to the following hours:

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

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

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

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

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

XII. CHANGES. The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Contractor determines, for any reason, that a change order is necessary, Contractor must submit a written change order request to the person listed in the notice provision section of this Contract, section XXII(C), within seven (7) calendar days of the date Contractor knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to

agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Contractor fails to require a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided in subsections A through E of Section XIII, Claims, below.

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

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

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

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

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

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

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

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

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

XV. WARRANTY. Upon acceptance of the contract work, Contractor must provide the City a warranty bond for one year in the amount of the contract value specified in Section III above and in a form acceptable to the City. In the event any defects are found within the first year, the warranty bond shall be extended for an additional year. The Contractor shall correct all defects in workmanship and materials within one (1) year from the date of the City's acceptance of the Contract work. In the event any parts are repaired or replaced, only original replacement parts shall be used—rebuilt or used parts will not be acceptable. When defects are corrected, the warranty for that portion of the work shall extend for one (1) year from the date such correction is completed and accepted by the City. The Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not accomplish the corrections within a reasonable time as determined by the City, the City may complete the corrections and the Contractor shall pay all costs incurred by the City in order to accomplish the correction.

XVI. DISCRIMINATION. In the hiring of employees for the performance of work under this Contract or any sub-contract, the Contractor, its sub-contractors, or any person acting on behalf of the Contractor or sub-contractor shall not, by reason of race, religion,

color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

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

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

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

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

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

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

A. Minimum Scope of Insurance

Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed

operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85 or an equivalent endorsement. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

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

C. Other Insurance Provisions

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

D. Acceptability of Insurers

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

E. Verification of Coverage

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

F. Subcontractors

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

E. Notice of Cancellation

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

F. Failure to Maintain Insurance

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

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

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

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

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

XXII. MISCELLANEOUS PROVISIONS.

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

B. Resolution of Disputes and Governing Law.

1. Alternative Dispute Resolution. If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written Contract of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

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

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

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

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

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

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

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

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

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

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

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

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

| | |
|-------------------------------------|---|
| CONTRACTOR: By: _____ | CITY OF DES MOINES: By: _____ |
|-------------------------------------|---|

| | |
|--|--|
| <p>Print Name: _____ <i>(signature)</i> Its _____ DATE: _____ <i>(Title)</i></p> | <p>Print Name: <u>Tim George</u> <i>(signature)</i> Its <u>City Manager</u> DATE: _____ <i>(Title)</i></p> <p style="text-align: right;">Approved as to Form: _____ City Attorney DATE: _____</p> |
|--|--|

| | |
|---|--|
| <p>NOTICES TO BE SENT TO:</p> <p>CONTRACTOR:</p> <p>Jason Harkness Harkness Construction LLC 45015 244th Ave SE Enumclaw, WA 98022</p> <p>253-335-1449 (telephone) Jason@harknessconstruction.com (facsimile/email)</p> | <p>NOTICES TO BE SENT TO:</p> <p>CITY OF DES MOINES:</p> <p>Cong Nguyen City of Des Moines 21630 11th Avenue S., Suite A Des Moines, WA 98198 206-870-6875 (telephone) Cnguyen@desmoineswa.gov (facsimile/email)</p> |
|---|--|



FORMAL TASK ASSIGNMENT DOCUMENT

Task Number TO-02

The general provisions and clauses of Agreement 2024-2025 On-Call General Civil Engineering Services

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

Location of Project: Kent Des Moines Rd and 16th Ave S

Project Title: Kent Des Moines Rd / 16th Ave S Pipe Replacement Stormwater Improvement Project

Maximum Amount Payable Per Task Assignment: \$75,660

Completion Date: 12/31/2024

Description of Work: Provide Construction Management Services for the above-named project as described in the attached scope and budget exhibits.

Agency Project Manager Signature: _____ Date: _____

Oral Authorization Date: _____ See Attachment Dated: _____

Consultant Signature: Kristen M. Overleese Date: 4/29/24
Kristen M. Overleese (Apr 29, 2024 12:33 PDT)

Agency Approving Authority: _____ Date: _____

EXHIBIT A SCOPE OF SERVICES

for

Kent Des Moines Rd / 16th Ave S Pipe Replacement Stormwater Improvement Project

KBA, Inc. (Consultant) will provide Construction Management (CM) services to the City of Des Moines (Client), for the project known as ***Kent Des Moines Rd / 16th Ave S Pipe Replacement Stormwater Improvement Project*** (Project). These services will include consultation, contract administration, field observation, and documentation, as required during the construction of the Project, as detailed below.

Project Description: This project makes improvements the stormwater system and includes the following work: Clearing and grubbing, roadway and structure excavation, HMA paving, storm drainage installation, CIPP lining of existing storm drainage pipe, utility adjustment to grade, channelization, and property restoration. The Designer of Record on this Project is KPG Psomas (Designer).

I. CONSTRUCTION MANAGEMENT SERVICES

A. Consultant Contract and Team Management: Provide overall day-to-day management of the Consultant contract and Team, including:

1. Decide on best modes and frequency of communication with Client and Designer. Liaison and coordinate with Client on a regular basis to discuss Project issues and status.
2. Manage Consultant Team, comprised of Consultant's staff and its subconsultants, if any. Organize and layout work for Consultant Team.
3. Review monthly expenditures and Consultant Team scope activities. Prepare and submit to Client monthly, an invoice and progress report describing services provided that period. Prepare and submit reporting required by funding source(s), if any.

Deliverables

- *Monthly invoices and progress reports*

B. Preconstruction Services

1. Review Contract Documents to familiarize team with Project requirements.
 - a. Communication and coordination between the CM Team, Designer, Client and other stakeholders
 - b. Project procedures and forms
 - c. Document control system
2. Organize and lead preconstruction conference:
 - a. Prepare and distribute notices.
 - b. Prepare agenda.
 - c. Conduct the meeting.
 - d. Prepare and distribute meeting notes to attendees and affected agencies.
3. Provide one set of preconstruction photographs.

Deliverables

- *Preconstruction Conference Notice, Agenda, and Notes*
- *Preconstruction photos, digital files on electronic storage medium*

C. Construction Phase Services – Contract Administration

1. Liaison with the Client, construction contractor, Designer, appropriate agencies, adjacent property owners, and utilities.
2. In concurrence with Progress Estimates, provide the Client with brief construction progress reports, highlighting progress and advising of issues that are likely to impact cost, schedule, or quality/scope.
3. Schedule Review:
 - a. Review construction contractor's schedules for compliance with Contract Documents.
 - b. Monitor the construction contractor's conformance to schedule and request revised schedules when needed. Advise Client of schedule changes.
4. Progress Meetings. Lead regular (usually weekly) progress meetings with the construction contractor, including Client pre-briefing. Prepare weekly meeting agenda and meeting notes and distribute copies to attendees. Track outstanding issues on a weekly basis.
5. Manage Submittal Process. Track and review, or cause to be reviewed by other appropriate party, work plans, shop drawings, samples, test reports, and other data submitted by the construction contractor, for general conformance to the Contract Documents.
6. Prepare weekly statement of working days and distribute to the Client and Contractor.
7. Manage RFI (Request for Information) process. Track and review/evaluate or cause to be reviewed/evaluated by other appropriate party, RFIs. Manage responses to RFIs.
8. Change Management. Evaluate entitlement, and prepare scope, impact, and independent estimate for change orders. Facilitate resolution of change orders.
9. Monthly Pay Requests. Prepare monthly progress estimates for payment. Review payment requests submitted by construction contractor for comparison and reconcile differences. Review with Client and construction contractor and recommend approval, as appropriate.
 - a. Evaluate construction contractor's Schedule of Values for lump sum items. Review the Contract Price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents.
10. Notify construction contractor of work found in noncompliance with the requirements of the contract.
11. Assist the Client in the investigation of malfunctions or failures observed during construction.
12. Public Information. Provide information for Client to prepare media communications and public notices on Project status. Provide information for Client's inclusion into a Project website and/or newsletter, if requested.
13. Record Drawings. Review not less than monthly, the construction contractor's redline set of contract plans. Maintain a CM Team set of conformed drawings tracking plan changes, location of discovered anomalies and other items, as encountered by Consultant Team. Use these markups to check the progress of the Contractor-prepared Record Drawings.
14. Document Control. Establish and maintain document filing and tracking systems, following Client guidelines and meeting funding agency requirements. Collect, organize, and prepare documentation on the Project.
 - a. If requested, one hard copy of files will be kept in the Project field office.

- b. Electronic documentation will be stored in a Project Website, using Autodesk Construction Cloud, managed and hosted by the Consultant. The Client will be provided with licenses for their and the construction contractor's use of the website during the Project. Consultant will provide one training session for Client and construction contractor users of the Autodesk Construction Cloud Document Management System, and ongoing support, as needed.
 - c. The Project website will transition to "read-only" access upon expiration of the Agreement, or upon project completion and transfer of final records, whichever occurs first. Transference of final records will include a digital copy of the files stored in the Project website. Access to the website will expire 60 days after transference of final records.
15. Project Closeout. If requested, prepare or assist with preparation of Certificate Letters of Substantial, Physical, and Final Completion for Client approval and signature, to include punch list. Prepare final pay estimate for Client approval and processing.
 16. Final Records. Compile and convey final Project records, transferring to the Client for its archiving at final acceptance of the Project. Should Consultant's work end prior to full completion of the Project, its records will be transferred to the Client prior to departure from the Project. Records will consist of hard copy originals and electronic records on electronic storage medium.

Deliverables

- *Schedule Review Comments*
- *Meeting Agendas and Notes*
- *Submittal Log*
- *RFI Log*
- *Change Order(s)*
- *Progress Pay Requests*
- *Certificate Letters of Completion*
- *Final records – hard copy (as requested) and electronic*

D. Construction Phase Services – Field

1. Observe the technical conduct of the construction, including providing day-to-day contact with the construction contractor, Client, utilities, and other stakeholders, and monitor for adherence to the Contract Documents. The Consultant's personnel will act in accordance with Sections 1-05.1 and 1-05.2 of the WSDOT/APWA Standard Specifications.
2. Observe material, workmanship, and construction areas for compliance with the Contract Documents and applicable codes. Advise the Client of any non-conforming work observed during site visits.
3. Prepare Inspector Daily Reports (IDRs), recording the construction contractor's operations as actually observed by the Consultant; includes estimated quantities of work placed that day, contractor's equipment and crews, photos of work performed, and other pertinent information.
4. Interpret Construction Contract Documents, in coordination with Designer.
5. Evaluate and report to Client issues that may arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the construction contractor.
6. Establish communications with adjacent property owners. Respond to questions from property owners and the general public.
7. Coordinate with permit holders on the Project to monitor compliance with approved permits, if applicable.

8. Prepare field records, daily reports of force account worked, and other payment source documents to help facilitate administration of the Project in accordance with funding agency requirements.
9. Attend and actively participate in regular on-site meetings.
10. Take periodic digital photographs during the course of construction.
11. Punch List. Upon substantial completion of work, coordinate with the Client and affected agencies, to prepare a 'punch list' of items to be completed or corrected. Coordinate final inspection with those agencies.
12. Testing. Coordinate the work of the Field Representative(s) and testing laboratories in the observation and testing of materials used in the construction; evaluate results of testing; and inform Client and construction contractor of deficiencies.

Deliverables

- *IDRs with Project photos – submitted on a weekly basis*
- *Field Note Records and Daily Reports of Force Account Worked*
- *Additional Project photos not included in IDRs*
- *Punch List(s)*

E. Assumptions

1. Budget:

- a. Staffing levels are anticipated in accordance with the attached budget estimate. Consultant services are budgeted for a 2-month period, from May through June 2024. This is intended to span the originally planned construction duration of 25 contractor working days, plus time allotted for Project setup and closeout. 2 hours a week of overtime has been figured into the budget.
- b. Consultant will work up to the limitations of the authorized budget. If additional budget is needed to cover instances, including but not limited to the following, Client and Consultant will negotiate a Supplement to this Agreement:
 - i. The contractor's schedule requires inspection coverage of extra crews and shifts.
 - ii. The construction contract runs longer than the time period detailed above.
 - iii. Any added scope tasks.
 - iv. Adjustment of Consultant Indirect Cost Rate (ICR) percentage
- c. The work is anticipated to be performed during daytime hours. Should night work be necessary, a 15 percent differential for labor will be applied to all night shift hours worked by Consultant's employees.
- d. Budget assumes inspection staff will work primarily out of their Client provided vehicle.
- e. The budget allocations shown in Exhibit B are itemized to aid in Project tracking purposes only. The budget may be transferred between tasks or people, or between labor and expenses, provided the total contracted amount is not exceeded without prior authorization.
- f. The budget assumes that Consultant's standard forms, logs, and processes will be used on the Project SharePoint site. Any customization to meet specialized Client requirements will be Extra Work.
- g. Should Consultant's level of effort extend beyond the time period detailed in the attached Exhibit B - Estimate, and into a new year, labor rates will adjust annually on January 1.

2. Items and Services Client will provide:

- a. Meeting arrangements and facilities for preconstruction meetings. Prepare and distribute meeting notes), if any.
 - b. Periodic access to City office, including:
 - i. Access to combination printer/copier/scanner machine with these capabilities: 11x17 size, color, and of business quality
 - ii. utilities and sanitary facilities
 - c. Retain Engineer of Record for shop drawing review, RFIs, design changes, and final record drawings.
 - d. Coordination with and enforcement of utility franchise agreements and/or contracts and schedules for services related to this Project.
 - e. Verify that the required permits, bonds, and insurance have been obtained and submitted by the construction contractor. Obtain all permits not required to be provided by construction contractor.
 - f. Construction Survey. Provide project control survey and staking that is not already assigned to the construction contractor.
3. Scope:
- a. The Autodesk Construction Cloud tool being used on this Project is proprietary to the Consultant (KBA, Inc.), and may not be used by any other party or on any other project without the written permission and involvement of KBA, Inc.
 - b. Consultant will provide observation services for the days/hours that its' Inspector(s) personnel is/are on-site. The Inspector(s) will not be able to observe or report construction activities, or collect documentation, during the time they are not on-site.
 - c. The Consultant's monitoring of the construction contractor's activities is to ascertain whether or not they are performing the work in accordance with the Contract Documents; in case of noncompliance, Consultant will reject non-conforming work and pursue the other remedies in the interests of the Client, as detailed in the Contract Documents. The Consultant cannot guarantee the construction contractor's performance, and it is understood that Consultant shall assume no responsibility for proper construction means, methods, techniques, Project site safety, safety precautions or programs, or for the failure of any other entity to perform its work in accordance with laws, contracts, regulations, or Client's expectations.
 - d. Definitions and Roles. The use of the term "inspect" in relation to Consultant services is synonymous with "construction observation," and reference to the "Inspector" role is synonymous with "Field Representative," and means: performing on-site observations of the progress and quality of the Work and determining, in general, if the Work is being performed in conformance with the Contract Documents; and notifying the Client if Work does not conform to the Contract Documents or requires special inspection or testing. Where "Specialty Inspector" or "specialty inspection" is used, it refers to inspection by a Building Official or independent agent of the Building Official, or other licensed/certified inspector who provides a certified inspection report in accordance with an established standard.
 - e. Because of the prior use of the Project site, there is a possibility of the presence of toxic or hazardous materials. Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of toxic or hazardous materials, or for exposure of persons to toxic or hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), or other toxic substances. If the Consultant suspects the presence of hazardous materials, they will notify the Client immediately for resolution.

- f. Review of Shop Drawings, samples, and other submittals will be for general conformance with the design concept and general compliance with the requirements of the contract for construction. Such review will not relieve the Contractor from its responsibility for performance in accordance with the contract for construction, nor is such review a guarantee that the work covered by the shop drawings, samples and submittals is free of errors, inconsistencies or omissions.
- g. Any opinions of probable construction cost provided by the Consultant will be on the basis of experience and professional judgment. However, since Consultant has no control over competitive bidding or market conditions, the Consultant cannot and does not warrant that bids or ultimate construction costs will not vary from these opinions of probable construction costs.
- h. Quantity takeoffs and calculated quantities are for the purpose of comparing with Designer's and/or bidders' quantities and are not a guarantee of final quantities.
- i. Development of construction schedules and/or sequencing, and/or reviewing and commenting on contractor's schedules, is for the purpose of estimating number of days to complete a project, for identifying potential schedule and coordination challenges, and determining compliance with the construction contract. It is not a guarantee that a construction contractor will complete the Project in that sequence or timeline, as means and methods are the responsibility of the construction contractor.
- j. Consultant is not responsible for any costs, claims or judgments arising from or in any way connected with errors, omissions, conflicts or ambiguities in the Contract Documents prepared by others. The Consultant does not have responsibility for the professional quality or technical adequacy or accuracy of the design plans or specifications, nor for their timely completion by others.
- k. If Consultant provides Value Analysis or Value Engineering services, it is understood that any ideas, advice, or recommendations generated by the Consultant are made based only on the information presented to them, and need engineering analysis by the Designer to verify; Consultant is not responsible for the final design product.
- l. Client agrees to include a statement in the construction Bid Documents for this Project, requiring construction contractor to name KBA, Inc. as an additional insured via endorsement to the contractor's commercial general liability and automobile insurance policies.
- m. RCW 4.24.115 is applicable to Consultant's services provided under this Agreement.
- n. Consultant's insurance carrier provides coverage on ISO equivalent endorsement forms.
- o. Services provided by the Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances, in the same geographical area and time period.
- p. Nothing in the Agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other. Consultant makes no warranties, guarantees, express or implied, under this Agreement or otherwise in connection with Consultant's services.
- q. Client agrees that Consultant will not be held liable for the completeness, correctness, readability, or compatibility of any electronic media submitted to Client, after an acceptance period of 30 days after delivery of the electronic files, because data stored on electronic media can deteriorate undetected or can be modified without Consultant's knowledge.
- r. Consultant will not be liable for any damage to the field office premises or utilities provided by Client, unless caused by Consultant's own negligence.

II. OPTIONAL SERVICES

All services not detailed above, are considered Optional Services, which, along with any other Extra Work requested by the Client, will be performed only when a mutually negotiated Supplement to this Agreement is executed, specifying scope of services and budget.



Kent Des Moines Rd and 16th Ave S Pipe Replacement

City of Des Moines

KBA Job No. **B24-016-01**
 Cost + Net fee (on DSC Only)
 Prepared On: **2/12/2024**

| | APR 2024 | MAY 2024 | JUN 2024 | JUL 2024 | AUG 2024 |
|----------------------------|----------|----------|----------|----------|----------|
| Working Days / Month | 22 | 22 | 20 | 22 | 22 |
| Hours / Month | 176 | 176 | 160 | 176 | 176 |
| Overtime Utilization % | 11% | 12% | 12% | 12% | 12% |
| Regular + OT Hours / Month | 195 | 197 | 179 | 197 | 197 |

| Project Schedule | 01/01/23 to 12/31/26 | 25 Working Days |
|------------------|----------------------|-----------------|
| | | |

| KBA Hours | | Vehicle Type | Task | 2024 DSC Rate | Total Hours | APR 2024 | MAY 2024 | JUN 2024 | JUL 2024 | AUG 2024 |
|----------------------------|-----------------|--------------|----------------------------|---------------|-------------|----------|----------|----------|----------|----------|
| H | Paul Garrett | M3 | Manager III | None | 01.00 | \$ 95.40 | 1 | | 1 | |
| H | Cameron Bloomer | E5 | Engineer V | None | 01.00 | \$ 82.00 | 16 | 8 | 4 | 4 |
| H | Jean Peabody | A3 | Contract Administrator | None | 01.00 | \$ 38.00 | 8 | 3 | 2 | 3 |
| H | Erica Dougherty | E4 | Engineer IV | None | 03.00 | \$ 70.00 | 6 | 6 | | |
| F | TBD Inspector | T5 | Technical Representative V | Special SUV | 02.00 | \$ 69.00 | - | | | |
| H | TBD Inspector | T5 | Technical Representative V | None | 02.00 | \$ 69.00 | 298 | 40 | 170 | 88 |
| Subtotal - KBA Labor Hours | | | | | | 329 | - | 58 | 176 | 95 |

| Project Expenses - Task DE | | Rate (Tax Included) | Total Costs | APR 2024 | MAY 2024 | JUN 2024 | JUL 2024 | AUG 2024 |
|----------------------------|-------------------|-------------------------|-------------|----------|----------|----------|----------|----------|
| DE | KBA Field Vehicle | Hourly 4-Door SUV | \$ 7.82 | 1,188 | - | 313 | 688 | - |
| DE | KBA Field Vehicle | Monthly Special Use SUV | \$ 1,285.06 | 1,285 | - | 1,285 | 688 | - |
| Subtotal - Direct Expenses | | | | 2,473 | - | 313 | 1,285 | 688 |

| Subconsultants | | Task | Total Costs | APR 2024 | MAY 2024 | JUN 2024 | JUL 2024 | AUG 2024 |
|--------------------------------|--|--------------------------|-------------|----------|----------|----------|----------|----------|
| Staheli Trenchless | | Incls 2% Mark-up on Subs | 7,500 | - | 7,500 | - | - | - |
| Subtotal - Subconsultant Costs | | | | 7,500 | - | 7,500 | - | - |

| | | | | | | |
|---|------------------|------------|---------------|---------------|---------------|----------|
| Subtotal Fully Loaded Labor Cost | \$ 65,500 | - | 11,676 | 35,022 | 18,801 | - |
| Subtotal Direct Expenses | 2,661 | 375 | 313 | 1,285 | 688 | - |
| Subtotal Subconsultant Costs | 7,500 | - | 7,500 | - | - | - |
| ESTIMATED TOTAL | 75,660 | 375 | 19,489 | 36,307 | 19,489 | - |

| KBA STAFF | | | | 2024 | | |
|-----------------|-------|----------------------------|-------|----------|--------------|-------------------|
| Name | Class | Title / Role | Task | DSC | LOADED RATES | EFFECTIVE THROUGH |
| Paul Garrett | M3 | Manager III | 01.00 | \$ 95.40 | \$ 275.35 | 12/31/24 |
| Cameron Bloomer | E5 | Engineer V | 01.00 | \$ 82.00 | \$ 236.68 | 12/31/24 |
| Jean Peabody | A3 | Contract Administrator | 01.00 | \$ 38.00 | \$ 109.68 | 12/31/24 |
| Erica Dougherty | E4 | Engineer IV | 02.00 | \$ 70.00 | \$ 202.04 | 12/31/24 |
| TBD Inspector | T5 | Technical Representative V | 02.00 | \$ 69.00 | \$ 192.54 | 12/31/24 |
| TBD Inspector | T5 | Technical Representative V | 01.00 | \$ 69.00 | \$ 199.15 | 12/31/24 |



Formal Task Assignment Document

Project Number - 9DES010200W2

Work Task - Number 2

The general provisions and clauses of Agreement 2024-2025 On-Call General Civil Engineering Services shall be in full force and effect for this Task Assignment.

Location of Project: Kent Des Moines Rd at 16th Ave S as well as through downstream property (Parcel No. 1722049112). This task order will provide construction engineering services to support the City and their Construction Management Services Consultant during Construction of these storm drainage design improvements.

Project Title: KDM Pipe Replacement Construction Engineering Services

Maximum Amount Payable Per Task Assignment: \$14,721.33

Completion Date: December 31, 2024

Description of Work: See attached Scope of Work (Exhibit A) and Fee (Exhibit B)

Agency Project Manager Signature: _____ Date: _____

Oral Authorization Date: _____ Date: _____

Consultant Signature: _____ Date: _____

Agency Approving Authority: _____ Date: _____

EXHIBIT A

**City of Des Moines
KDM Pipe Replacement Construction Engineering Services
Project Number – 9DES010200W2
Work Task – Number 2**

**KPG Psomas, Inc.
Scope of Work
April 26, 2024**

Purpose

KPG Psomas will support the City and their Construction Management Services Consultant for the KDM Pipe Replacement project with Construction Engineering Services during construction.

The specific tasks to be performed as part of this scope of work include:

Task 1 Construction Engineering Services

Task 1.1: Consultant shall attend pre-con meeting and up to two (2) site visits.

Task 1.2: Consultant shall attend weekly progress meetings and two (2) monthly invoices. Assume (7) weeks of progress meetings.

Task 1.3: Consultant shall provide review of RFI's, bid item material submittals, and up to two (2) Field Work Directives for any changes, as needed during construction. Assume Construction Management Services Consultant shall review and approve standard bid item submittals and typical Div 1 traffic control, scheduling, and logistical submittals to support the project.

Task 1.4: Consultant shall prepare record drawings with adequate mark-ups provided by the Contractor for any changes made during construction.

Task 1 Assumptions:

- Construction Management Services Consultant will be responsible for sending over any construction documentation requiring review and coordination directly with Contractor.

Task 1 Deliverables:

- Prepare responses for up to six (6) RFI's.
- Prepare responses for up to ten (10) submittals.
- Prepare up to two (2) FWD revisions.
- Record Drawings: (11x17 PDF) electronic copy.



EXHIBIT B
PRIME CONSULTANT COST COMPUTATIONS

Client: City of Des Moines
 Project Name: KDM Pipe Replacement Construction Engineering Services
 KPG Psomas Inc. Project Number: 9DES010200W2
 Date: 4/26/2024

| Task No. | Task Description | Labor Hour Estimate | | | | | | | | | Total Hours and Labor Cost Computations by Task | | |
|---|---|---------------------|-----------------------|-------------------|--------------------|--------------------|------------------|--------------|--------------|------------------|---|---------------------|---------------------|
| | | Principal | Engineering Manager I | Senior Engineer I | Senior Engineer II | Project Engineer I | Business Manager | Senior Admin | Office Admin | Office Assistant | | | |
| | | | | | | | | | | | Hours | Totals | |
| | | \$103.00 | \$76.00 | \$67.00 | \$71.00 | \$58.00 | \$61.00 | \$48.00 | \$38.00 | \$34.00 | | | |
| Task 1 - Construction Engineering Services | | | | | | | | | | | | | |
| 1.1 | PreCon and Site Visits | | | | 10 | | | | | | 10 | \$ 710.00 | |
| 1.2 | Weekly Progress Meetings & Monthly Invoices | | | | 8 | | | | 2 | 3 | 13 | \$ 746.00 | |
| 1.3 | RFI and Submittal Reviews | | | | 24 | 8 | | | | | 32 | \$ 2,168.00 | |
| 1.4 | Record Drawings | | | | 4 | 16 | | | | | 20 | \$ 1,212.00 | |
| | Task Total | 0 | 0 | 0 | 46 | 24 | 0 | 0 | 2 | 3 | 75 | \$ 4,836.00 | |
| | Task Total | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | \$ - | |
| | Total Labor Hours and Fee | 0 | 0 | 0 | 46 | 24 | 0 | 0 | 2 | 3 | 75 | \$ 4,836.00 | |
| | | | | | | | | | | | ICR Overhead @ 171.93% = | | \$ 8,314.53 |
| | | | | | | | | | | | Fixed Fee @ 30% = | | \$ 1,450.80 |
| | | | | | | | | | | | Total KPG Psomas (DL + OH + Fixed Fee) = | | \$ 14,601.33 |
| Subconsultants | | | | | | | | | | | | | |
| | | | | | | | | | | | Subtotal | \$ - | |
| | | | | | | | | | | | Administrative Charge (5%) | \$ - | |
| | | | | | | | | | | | Total Subconsultant Expense | \$ - | |
| Reimbursable Direct Non-Salary Costs | | | | | | | | | | | | | |
| | | | | | | | | | | | Mileage at current IRS rate | \$ 120.00 | |
| | | | | | | | | | | | Reproduction Allowance | | |
| | | | | | | | | | | | Total Reimbursable Expense | \$ 120.00 | |
| | | | | | | | | | | | Management Reserve | \$ - | |
| | | | | | | | | | | | Total Estimated Budget | \$ 14,721.33 | |

Proposal

Kent Des Moines Rd / 16th Ave S Pipe Replacement Stormwater Improvement Project

TO: Honorable Mayor and City Council
City of Des Moines
21630 11th Avenue South
Des Moines, WA 98198

The undersigned Bidder hereby certifies that he has examined the site of all the proposed work under this Contract and that he has read and thoroughly understands the Plans, Specifications and other Contract Documents pertaining to this Contract, that he is fully aware of the construction problems and costs involved, and proposes to perform all work for the following stated prices.

The undersigned bidder hereby agrees to start construction within ten (10) days after the date stated in the Notice to Proceed, and to complete the contract within [25] working days thereafter. This period shall be known as the "Contract Time" for the purposes of the project.

The project is exempt from retail sales (sewer/water relocation) and use tax per WAC 458-20-171, commonly known as Rule 171. This rule exempts the sale of or charge made for labor and services rendered in respect to building, repairing or improving any street, place, road, highway, easement, right of way, bridge, tunnel or trestle which is owned by a municipal corporation that is used for foot or vehicle traffic. Bidders should note that only the labor and services costs are exempt from the sales tax. Tax for materials need to be included in their respective bid items.

All schedules on the Bid Proposal must be completed, or the bid shall be considered non-responsive. Basis for award shall be total Bid for all Schedules included in the Proposal.

The Owner will correct obvious mathematical errors in bid proposals.

Unit prices for all items, all extensions and the total amount of bid must be shown. All entries must be typed or entered in ink.

Show unit prices in figures. Where conflict occurs between the unit price and the total amount named for any item, the unit price shall prevail, and totals shall be corrected to conform thereto.



PROPOSAL

CITY OF Des Moines

THIS CERTIFIES THAT THE UNDERSIGNED HAS EXAMINED THE LOCATION OF

KDM - 16th Ave Pipe Replacement

AND THAT THE PLANS, SPECIFICATIONS AND CONTRACT GOVERNING THE WORK EMBRACED IN THIS IMPROVEMENTS, AND THE METHOD BY WHICH PAYMENT WILL BE MADE FOR SAID WORK IS UNDERSTOOD. THE UNDERSIGNED HEREBY PROPOSES TO UNDERTAKE AND COMPLETE THE WORK EMBRACED IN THIS IMPROVEMENT, OR AS MUCH THEREOF AS CAN BE COMPLETED WITH THE MONEY AVAILABLE IN ACCORDANCE WITH THE SAID PLANS, SPECIFICATIONS, AND THE FOLLOWING SCHEDULE OF RATES AND PRICES:

(NOTE: UNIT PRICES FOR ALL ITEMS, ALL EXTENSIONS, AND TOTAL AMOUNT OF BID SHALL BE SHOWN. ALL ENTRIES MUST BE TYPED OR ENTERED IN INK. SHOW PRICES IN FIGURES ONLY. FIGURES WRITTEN TO THE RIGHT OF A DOT SHALL BE INTERPRETED AS CENTS.)

BID SCHEDULE A

| Item No. | Spec. Section | Item Description | Estimated Quantity | Unit | Unit Price* | Amount |
|----------|---------------|--|--------------------|------|--------------|--------------|
| 1 | 1-04 | Minor Change | 1 | FA | \$ 10,000.00 | \$ 10,000.00 |
| 2 | 1-05 | Roadway Surveying | 1 | LS | \$ 5,000 | \$ 5,000 |
| 3 | 1-05 | Record Drawings (Minimum Bid \$1,500) | 1 | LS | \$ 1,500 | \$ 1,500 |
| 4 | 1-09 | Mobilization | 1 | LS | \$30,000 | \$30,000 |
| 5 | 1-10 | Project Temporary Traffic Control | 1 | LS | \$10,000 | \$10,000 |
| 6 | 1-10 | Portable Changeable Message Sign | 1056 | HR | \$ 2.00 | \$2,112 |
| 7 | 2-01 | Clearing and Grubbing | 1 | LS | \$40,000 | \$40,000 |
| 8 | 2-02 | Removal of Structure and Obstruction | 1 | LS | \$20,000 | \$20,000 |
| 9 | 2-03 | Unsuitable Foundation Excavation, Incl. Haul | 10 | CY | \$ 200 | \$2,000 |
| 10 | 2-09 | Shoring or Extra Excavation Class B | 1 | LS | \$2,000 | \$2,000 |
| 11 | 2-09 | Gravel Backfill for Drains | 23 | CY | \$ 220 | \$5,060 |
| 12 | 4-04 | Crushed Surfacing Top Course for Trench Backfill | 60 | CY | \$ 220 | \$13,200 |
| 13 | 4-04 | Crushed Surfacing Top Course | 50 | TON | \$ 220 | \$11,000 |
| 14 | 5-04 | HMA Cl. 1/2" PG 58H-22 | 12 | TON | \$ 500 | \$6,000 |
| 15 | 7-04 | Perforated Underdrain Pipe 6 In. Diam. | 120 | LF | \$ 160 | \$19,200 |
| 16 | 7-04 | Storm Sewer Pipe 8 In. Diam. | 38 | LF | \$ 200 | \$7,600 |

CITY OF DESMOINES
KDM - 16TH AVE PIPE REPLACEMENT PROJECT

| Item No. | Spec. Section | Item Description | Estimated Quantity | Unit | Unit Price* | Amount |
|----------|---------------|---|--------------------|------|--------------|--------------|
| 17 | 7-04 | Storm Sewer Pipe 24 In. Diam. | 193 | LF | \$ 250 | \$48,250 |
| 18 | 7-05 | Debris Barrier | 1 | EA | \$ 5,000 | \$5,000 |
| 19 | 7-05 | Catch Basin Type 1 | 1 | EA | \$ 3,500 | \$3,500 |
| 20 | 7-05 | Catch Basin Type 2 48 In. Diam. | 2 | EA | \$10,000 | \$20,000 |
| 21 | 7-05 | Catch Basin Type 2 48 In. Diam. with Overflow Debris Cage | 1 | EA | \$15,000 | \$15,000 |
| 22 | 7-05 | New Pipe Connection to Existing Storm Drain Structure | 2 | EA | \$ 3,000 | \$ 6,000 |
| 23 | 7-06 | Furnish and Install 18" Diam. CIPP Liner | 42 | LF | \$ 500 | \$21,000 |
| 24 | 7-06 | Furnish and Install 24" Diam. CIPP Liner | 40 | LF | \$ 400 | \$16,000 |
| 25 | 7-10 | Temporary Stormwater Bypass System | 1 | LS | \$ 3,000 | \$3,000 |
| 26 | 8-01 | Erosion Control and Water Pollution Prevention | 1 | LS | \$ 1,000 | \$ 1,000 |
| 27 | 8-02 | Property Restoration | 1 | FA | \$ 10,000.00 | \$ 10,000.00 |
| 28 | 8-30 | Potholing | 3 | EA | \$ 1,000 | \$ 3,000 |
| 29 | 8-30 | Resolution of Utility Conflicts | 1 | FA | \$ 10,000.00 | \$ 10,000.00 |

TOTAL BID AMOUNT, SCHEDULE A* \$ 346,422.00

* All applicable sales tax shall be included in the unit and lump sum Bid price per Section 1-07.2(1) and WAC 458-20-171.

Proposal (Continued)

Total \$ 8346,422.00

Total Bid Price (in figures) \$ 346,422.00

Total Bid Price (in words) three hundred forty six thousand four hundred twenty two dollars

Attached hereto is the required Bid Security in the amount of \$ 5% of bid
() payable to the City of Des Moines which is equal to or more than five percent (5%) of the total bid price.

Signed [Signature] Jason Harkness

Title Managing Member

Name of Bidder

Registration or license, Division of Professional Licensing:

1. License Number HARKNCL888C2

2. Date exp. 2/24/2026

3. Contractor's Signature [Signature]

4. Title Managing Member

Address of Bidder: 45015 244th Ave SE, Enumclaw, WA 98022

Street City Zip

Telephone Number of Bidder 253-335-1449

Office Home



Email Contacts jason@harknessconstruction.com

sarah@harknessconstruction.com

elisabeth@harknessconstruction.com

Date of Bid 4/22/2024

Receipt is hereby acknowledged for the following Addenda:

| <u>Addendum No.</u> | <u>Date Received</u> | <u>Signature</u> |
|---------------------|----------------------|--|
| 1 | 4/18/2024 |  |
| 2 | 4/18/2024 |  |
| | | |
| | | |

The bidder acknowledges that bids must be submitted for all Bid Schedules. Partial Bids shall not be considered.

Bid proposal to be submitted in a sealed envelope marked "Bid Enclosed" for Kent Des Moines Rd / 16th Ave S Pipe Replacement Stormwater Improvement Project

Form of a Bid Bond

BID BOND DEPOSIT

Herewith find deposit in the form of a _____ (state whether certified check, cashier's check, bid bond, or postal money order)

for the amount of _____, which amount is not less than five percent (5%) of the total bid, including sales tax.

Signature _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, Harkness Construction, LLC, as Principal, and United Fire & Casualty Company, as Surety, are held and firmly bound unto the City of Des Moines, as Oblige, in the penal sum of Five Percent (5%) of the Total Bid, Including Sales Tax dollars (\$ 5%) for the payment of which the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

The Condition of this obligation is such that if the Oblige shall make award to the Principal for the **Kent Des Moines Rd / 16th Ave S Pipe Replacement Stormwater Improvement Project**, according to the terms of the proposal or bid made by the Principal therefore and the Principal shall duly make and enter into a contract with the Oblige in accordance with the terms of said proposal or bid and award and shall give bond for the faithful performance thereof, with Surety or Sureties approved by the Oblige; or, if the Principal shall in case of failure so to do, pay and forfeit to the Oblige the penal amount of the deposit specified in the call for bids; then this obligation shall be null and void; otherwise it shall be and remain in full force and effect and the Surety shall forthwith pay and forfeit to the Oblige, as penalty and liquidated damages, the amount of this bond.

SIGNED, SEALED AND DATED THIS 22nd DAY OF April, 2024.
Harkness Construction, LLC

Jason Harkness, Managing Member
Principal

Nicholas Fredrickson
Surety Nicholas Fredrickson, Attorney-in-Fact for United Fire & Casualty Company



Received return of deposit in the sum of _____

Date _____

Signature _____



UNITED FIRE & CASUALTY COMPANY, CEDAR RAPIDS, IA
 UNITED FIRE & INDEMNITY COMPANY, WEBSTER, TX
 FINANCIAL PACIFIC INSURANCE COMPANY, LOS ANGELES, CA
 CERTIFIED COPY OF POWER OF ATTORNEY
 (original on file at Home Office of Company – See Certification)

Inquiries: Surety Department
118 Second Ave SE
Cedar Rapids, IA 52401

KNOW ALL PERSONS BY THESE PRESENTS, That United Fire & Casualty Company, a corporation duly organized and existing under the laws of the State of Iowa; United Fire & Indemnity Company, a corporation duly organized and existing under the laws of the State of Texas; and Financial Pacific Insurance Company, a corporation duly organized and existing under the laws of the State of California (herein collectively called the Companies), and having their corporate headquarters in Cedar Rapids, State of Iowa, does make, constitute and appoint

NICHOLAS FREDRICKSON, DEREK SABO, ANDREW KERSLAKE, GUY P. ARMFIELD, ROGER KALTENBACH, ELIZABETH R. HAHN, SCOTT MCGILVRAY, ALEC GUMPFER, CHARLA M. BOADLE, DEANNA M. FRENCH, JANA M. ROY, KATELYN COOPER, RONALD J. LANGE, SCOTT FISHER, SCOTT GARCIA, SUSAN B. LARSON, MINDEE L. RANKIN, FRANCIS WIRT, JOHN N. BUSTARD, ROLAND R. EUGENIO, SHIRLEY J. PACE, LAUREN ZAKARIAN, EACH INDIVIDUALLY

their true and lawful Attorney(s)-in-Fact with power and authority hereby conferred to sign, seal and execute in its behalf all lawful bonds, undertakings and other obligatory instruments of similar nature provided that no single obligation shall exceed \$50,000,000.00 and to bind the Companies thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Companies and all of the acts of said Attorney, pursuant to the authority hereby given and hereby ratified and confirmed.

The Authority hereby granted is continuous and shall remain in full force and effect until revoked by United Fire & Casualty Company, United Fire & Indemnity Company, and Financial Pacific Insurance Company.

This Power of Attorney is made and executed pursuant to and by authority of the following bylaw adopted by the Boards of Directors of United Fire & Casualty Company, United Fire & Indemnity Company, and Financial Pacific Insurance Company.

“Article VI – Surety Bonds and Undertakings”

Section 2, Appointment of Attorney-in-Fact. “The President or any Vice President, or any other officer of the Companies may, from time to time, appoint by written certificates attorneys-in-fact to act in behalf of the Companies in the execution of policies of insurance, bonds, undertakings and other obligatory instruments of like nature. The signature of any officer authorized hereby, and the Corporate seal, may be affixed by facsimile to any power of attorney or special power of attorney or certification of either authorized hereby; such signature and seal, when so used, being adopted by the Companies as the original signature of such officer and the original seal of the Companies, to be valid and binding upon the Companies with the same force and effect as though manually affixed. Such attorneys-in-fact, subject to the limitations set forth in their respective certificates of authority shall have full power to bind the Companies by their signature and execution of any such instruments and to attach the seal the Companies thereto. The President or any Vice President, the Board of Directors or any other officer of the Companies may at any time revoke all power and authority previously given to any attorney-in-fact.

IN WITNESS WHEREOF, the COMPANIES have each caused these presents to be signed by its vice president and its corporate seal to be hereto affixed this 3rd day of August, 2021



UNITED FIRE & CASUALTY COMPANY
 UNITED FIRE & INDEMNITY COMPANY
 FINANCIAL PACIFIC INSURANCE COMPANY

By: *Kyanna M. Saylor*
 Vice President

State of Iowa, County of Linn, ss:

On 3rd day of August, 2021, before me personally came Kyanna M. Saylor to me known, who being by me duly sworn, did depose and say; that she resides in Cedar Rapids, State of Iowa; that she is a Vice President of United Fire & Casualty Company, a Vice President of United Fire & Indemnity Company, and a Vice President of Financial Pacific Insurance Company the corporations described in and which executed the above instrument; that she knows the seal of said corporations; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporations and that she signed her name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporations.



Patti Waddell
 Notary Public
 My commission expires: 10/26/2025

I, Mary A. Bertsch, Assistant Secretary of United Fire & Casualty Company and Assistant Secretary of United Fire & Indemnity Company, and Assistant Secretary of Financial Pacific Insurance Company, do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the bylaws and resolutions of said Corporations as set forth in said Power of Attorney, with the ORIGINALS ON FILE IN THE HOME OFFICE OF SAID CORPORATIONS, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

In testimony whereof I have hereunto subscribed my name and affixed the corporate seal of the said Corporations
 this 22 day of APRIL, 2024.



By: *Mary A. Bertsch*
 Assistant Secretary,
 UF&C & UF&I & FPIC

BPOA0049 1217

Statement of Bidder's Qualifications

Each bidder submitting a proposal on work included in these Plans and Specifications shall prepare and submit as part of this bid the following schedule:

1. **Name of bidder:**
Harkness Construction LLC
2. **Business address and telephone number:**
45015 244th Ave SE, Enumclaw, WA 98022
253-335-1449
3. **How many years has said bidder been engaged in the contracting business under present firm name:**
12
4. **Contracts now in hand (gross amount):**
\$ 2,720,749.50
5. **General character of work performed by said company:**
Excavation, underground utility work, and carpentry
6. **List of more important projects constructed by said company, including approximate costs and dates:**

| | | | | |
|---------------------------------------|--------------|--------------------------|--------------------|--------------|
| 2023. Morrill Meadows Park Renovation | 1,599,753.00 | City of Kent | Brian Higgins | 253-856-5113 |
| 2022 Transmission Mains 1&2 | 1,020,972.00 | Alderwood Water | Phil Thornlund | 425-471-7985 |
| 2021. 30th ave Sewer. | 570,672.00 | Seattle Public Utilities | Stephanie Heigland | 206-423-2605 |
| 2022. Stormwater Swale. | 339,515.00 | City of Tacoma | Dawn Dejarlais | 339,515.00 |
7. **List of company's major equipment:**
Cat 305 Excavator
Cat IT28 Loader

CAT M313 Excavator

Volvo ECR145CL Hydraulic Excavator

Peterbilt Hooklift Dump Truck with extra boxes.

8. Bank references:

Key Bank Enumclaw 1212 Cole St., Enumclaw, WA Checking and Savings

9. Dept. of Labor and Industries' firm number:

155,861-01

10. Dept. of Revenue registration number:

45-4353163

Name of Bidder Harkness Construction LLC

By Jason Harkness

Title Managing member

Date 4/22/2024


Certification of Non-Segregated Facilities

The Bidder certifies that s/he does not maintain or provide for his/her employees any segregated facilities at any of her/his establishments, and that s/he does not permit her/his employees to perform their services at any locations under her/his control where segregated facilities are maintained. The undersigned certifies further that s/he will not maintain or provide for her/his employees any segregated facilities at any of her/his establishments, and that s/he will not permit her/his employees to perform their services at any location under her/his control where segregated facilities are maintained. The undersigned agrees that a breach of this certification will be in violation of the Equal Opportunity clause set forth in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.

The undersigned agrees that, except where s/he has obtained identical certification from subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that s/he will obtain identical certifications from subcontractors and that s/he will retain such certifications in her/his files.

Date: 4/22/2024

Signature: 

Name/Title: Jason Harkness, Managing Member

Vendor Name: Harkness Construction LLC

Address: 45015 244th Ave SE

City/State/Zip: Enumclaw, WA 98022

Statement of Proposed Subcontractors and Material Suppliers

Subcontractors Name, Address,
and Telephone Number

Description of Work

Asphalt Patch Systems

HMB

SAK Construction

CIPD

Material Suppliers

Material (major items only)

H&D Fowler, Pipe/Structures

| |
|----------------------|
| Local Agency Name |
| Local Agency Address |

Local Agency Subcontractor List

Prepared in compliance with RCW 39.30.060 as amended

To Be Submitted with the Bid Proposal

Project Name Kent Des Moines Rd / 116th Ave S. Pipe Replacement

Failure to list subcontractors with whom the bidder, if awarded the contract, will directly subcontract for performance of the work of structural steel installation, rebar installation, heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW, and electrical, as described in Chapter 19.28 RCW or naming more than one subcontractor to perform the same work will result in your bid being non-responsive and therefore void.

Subcontractor(s) with whom the bidder will directly subcontract that are proposed to perform the work of structural steel installation, rebar installation, heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW, and electrical as described in Chapter 19.28 RCW must be listed below. The work to be performed is to be listed below the subcontractor(s) name.

To the extent the Project includes one or more categories of work referenced in RCW 39.30.060, and no subcontractor is listed below to perform such work, the bidder certifies that the work will either (i) be performed by the bidder itself, or (ii) be performed by a lower tier subcontractor who will not contract directly with the bidder.

Subcontractor Name Steel ~~Self~~, Rebar Self, Electric / AC / Plumbing - N/A
 Work to be performed _____

Subcontractor Name _____
 Work to be performed _____

Subcontractor Name _____
 Work to be performed _____

Subcontractor Name _____
 Work to be performed _____

Subcontractor Name _____
 Work to be performed _____

* Bidder's are notified that it is the opinion of the enforcement agency that PVC or metal conduit, junction boxes, etc, are considered electrical equipment and therefore considered part of electrical work, even if the installation is for future use and no wiring or electrical current is connected during the project.

Statement of Bidder Responsibility Criteria

I, by signing the proposal and this statement, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned persons(s), firm, association, or corporation meet all the bidder responsibility criteria for public works contracts under RCW 39.04.350.
2. That the undersigned persons(s), firm, association, or corporation meet all the bidder responsibility as identified in the Contract Documents.
3. That by signing the proposal and this form, I am deemed to have signed and to have agreed to the provisions of this statement.
4. That by signing the proposal and this form, if omissions are found the bidder will be deemed an unresponsive bidder or if awarded a public works project, the contract will be immediately terminated by the Contracting Agency.

Contract Title: Kent Des Moines Rd / 16th Ave S Pipe Replacement Stormwater Improvement Project

Bidder's Business Name: Harkness Construction LLC

Bidder's Name: Jason Harkness

Bidder's Signature:  _____

Bidders Title: Managing Member

Date: 4/22/2024

Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date April 4, 2024, the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Harkness Construction LLC
Bidder's Business Name


Signature of Authorized Official*

Jason Harkness
Printed Name

Managing Member

Title

4/22/2024 Enumclaw WA
Date City State

Check One:

Sole Proprietorship Partnership Joint Venture Corporation

State of Incorporation, or if not a corporation, State where business entity was formed:

WA

If a co-partnership, give firm name under which business is transacted:

** If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Hearing Examiner Appointment

FOR AGENDA OF: May 9, 2024

ATTACHMENTS:

1. Professional Services Agreement with Laminar Law, PLLC
2. Statement of Qualifications for Hearing Examiner Services

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: May 1, 2024

CLEARANCES:

- City Clerk _____
- Community Development *DEL*
- Courts _____
- Emergency Management _____
- Finance *ML*
- Human Resources _____
- Legal */s/MH*
- Marina _____
- Police _____
- Parks, Recreation & Senior Services _____
- Public Works _____

APPROVED BY CITY MANAGER

FOR SUBMITTAL: 

Purpose and Recommendation

The purpose of this Agenda Item is for the Council to confirm the appointment of Peregrin Sorter as the City’s Hearing Examiner and to approve the professional services agreement with the Laminar Law, PLLC to provide Hearing Examiner services to the City. The following motion will appear on the consent calendar:

Suggested Motion

Motion: I move to confirm the appointment of Peregrin Sorter as the City’s Hearing Examiner and to authorize the City Manager to sign the professional services agreement with the Laminar Law, PLLC substantially in the form as attached.”

Background

The purpose of the Hearing Examiner position is to interpret, analyze, and review administrative decisions and matters concerning land use regulation as provided in the Municipal Code. The Hearing Examiner is nominated by the City Manager and confirmed by the City Council by majority vote.

The qualifications for the office of Hearing Examiner are expertise in land use law and planning, and the training and experience necessary to conduct administrative or quasi-judicial hearings and issue decisions on administrative and land use planning and regulatory matters.

The Hearing Examiner conducts public hearings (where applicable) and renders final decisions on the following:

- (1) Type III land use actions as specified by chapter 18.20 DMMC, Land Use Review Procedures;
- (2) Appeals of administrative decisions as provided in City code; and
- (3) Such other matters as the City Council may from time to time refer.

Discussion

For over 15 years, the City contracted with Sound Law Center to provide Hearing Examiner services pursuant to the Municipal Code. When the firm declined to renew their contract in late 2023 due to retirements, the City contracted with the Law Offices of Alex Sidles, LLC for Hearing Examiner services. Through the contract with Sound Law Center, Alex Sidles had been providing Hearing Examiner services for the City. The contract with the Law Offices of Alex Sidles, PLLC allowed the City to provide consistency in Hearing Examiner services and continue to provide quality services for the City.

On April 1, Mr. Sidles gave notice to the City that he would be accepting an appointment by the Governor to serve on the Washington State Growth Management Hearings Board. This was a rare opportunity that reflected the high regard Mr. Sidles is held in and reflects the quality of the service he provided to the City. Knowing that Mr. Sidles intended to hold his last hearing for the City of Des Moines on May 15 to give him time to issue final decisions before joining the Board in June, staff sought out a suitable replacement to serve as the City's Hearing Examiner.

Like Alex Sidles, Peregrin Sorter was employed at Sound Law Center, LLC before forming his own firm to provide Hearing Examiner services. As chief legal writer for Sound Law, Mr. Sorter was responsible for drafting and reviewing hundreds of decisions produced by Sound Law. Prior to Sound Law, Mr. Sorter spent eight years as a staff attorney for the Washington State Court of Appeals, Division II, and as law clerk for Appellate Court Justices before that.

Peregrin Sorter is a licensed attorney in Washington State who has expertise in land use law as well as the training and experience necessary to conduct required hearings. Mr. Sidles recommended him without reservation and wrote "He'd be a perfect match for Des Moines."

Alternatives

Decline to approve the appointment. City staff would need to conduct additional research into finding a provider of these services.

Financial Impact

Generally the costs of these services are paid by the applicant who is seeking approval. As a result, the cost to the City is minimal. Pursuant to the Agreement, the rates are \$225 per hour for the Hearing Examiner. There are also flat rates for common matters.

Recommendation

City staff recommends confirming the appointment and approving the agreement.

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF DES MOINES
AND LAMINAR LAW, PLLC**

THIS AGREEMENT is made the ___ day of May, 2024, between the City of Des Moines, (hereinafter the “City”) and the Laminar Law, PLLC (hereinafter “Consultant” or “Hearing Examiner”).

WHEREAS, the Hearing Examiner is in the business of providing certain professional services specified herein, and

WHEREAS, the City desires to contract with the Hearing Examiner for the provision of such services and Consultant agrees to contract with the City for the same; and

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed between the parties as follow:

- I. **Description of Work.** Consultant shall perform works as described in Exhibit A, “Scope of Work” which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. Consultant shall not perform any additional services without the express permission of the City.
- II. **Duration.** This agreement shall be effective for a period commencing from the date of signature for one year following the date of signature, except as provided for in paragraph VI below. This agreement shall automatically extend on a month-by-month basis until a new agreement is executed between the parties.
- III. **Payment.**
 - a. The City shall pay the consultant for time and materials as set forth in Exhibit A for the services described in this Agreement.
 - b. Consultant shall submit a payment invoice to the City after such services have been performed, and the City shall make payment within thirty (30) days after the submittal of the approved invoice. Such invoice shall detail the work, and description of the tasks performed.
 - c. If the City objects to all or any portion of the invoice, it shall so notify Consultant of the same within ten (10) days from the date of receipt and shall pay that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion.
- IV. **Relationship of Parties.** The parties intend that the Consultant shall be an independent contractor, not an employee of the City. The Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder; no agent, employee, representative or subcontractor of Consultant shall be or shall be deemed to the employee, agent, representative or subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited

to, compensation, insurance and unemployment insurance, are available from the City to the Consultant or his/her employees, agents, representatives or subcontractors. Consultant will be solely and entirely responsible for his/her acts and for the acts of Consultants agents, employees, representatives and subcontractors during the performance of this Agreement.

V. **Discrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, Consultant, its subcontractors or any person acting on behalf of Consultant shall not, by reason of race, religion, color, sex, national origin or the presence of any sensory, mental, or physical handicap shall discriminate against any person who is qualified and available to perform the work to which the employment relates.

VI. **Termination.**

- a. Termination upon the City's Option. The City shall have the option to terminate this Agreement after 30 days upon delivery of written notice to the Consultant in accordance with the ordinances of the City.
- b. Termination upon the Consultant's Option. The Consultant shall have the option to terminate this Agreement after 30 days upon delivery of written notice to the City.
- c. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for all services satisfactorily performed by Consultant to the effective date of termination, as described in the final invoice to the City. The City Community Development Director shall make the final determination about what services have been satisfactorily performed which decision shall be final, binding and conclusive.

VII. **Indemnification.** Consultant hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, losses or suits including attorney's fees, awards or liabilities to any person, including claims by Consultant's own employees to which Consultant might otherwise be immune under Title 51 RCW, arising out of or in connection with the Consultant's negligent performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

In the event of liability for any reason described above which is caused by or results from the concurrent negligence of the Consultant (and his employees, agents and representatives) and the City (and its officers, officials, employees, agents or representatives), each party's liability shall only be to the extent of its negligence. Such indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

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. It is further specifically and expressly understood that the indemnification provided herein

constitutes Consultant's waiver of immunity under Title 51 RCW, solely for the purposes of indemnification. This waiver has been mutually negotiated by the parties.

- VIII. **Insurance.** The Consultant shall procure and maintain for the duration of the Agreement, professional liability insurance in the amount of \$2,000,000 per claim and \$2,000,000 in aggregate. The Consultant shall furnish proof of insurance to the City upon request.
- IX. **Assignment.** Any assignment of this Agreement by Consultant without the written consent of the City shall be void.
- X. **Modification.** No waiver, alteration or modification of any of the provision of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Consultant.
- XI. **Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below. Any written notice hereunder shall become effective as 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 Agreement or such other address as may be hereafter specified in writing; or any notice hereunder shall become effective upon confirmation by the recipient of notice by email.

Notices should be sent to:

| | |
|---|---|
| Peregrin Sorter Laminar Law, PLLC 1919 N. Union Ave. Tacoma, Washington 98406 (206) 658-3784 peregrin@laminarlaw.com | Laura Techico Planning and Development Services Manager 21630 11 th Ave S. Des Moines, WA 98198 (206) 870-6595 ltechico@desmoineswa.gov |
|---|---|

- XII. **Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreement or options, and the same shall be and remain in full force and effect.
- XIII. **Resolutions of Disputes.** Should any dispute, misunderstanding, or conflict arise as to the terms of this contract, the matter shall be referred to the City Manager, whose decision shall be final. Any appeal from the decision of the City Manager shall be to the King County Superior Court. This agreement shall be governed by and construed in accord with the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

Dated this ____ day of May, 2024:

LAW OFFICES OF LAMINAR LAW, PLLC

CITY OF DES MOINES

By _____
Peregrin Sorter, Attorney

By _____
Tim George, City Manager

Approved to form, City Attorney

DRAFT

**EXHIBIT A
SERVICES AGREEMENT**

A. The services provided by Laminar Law, PLLC (Consultant) will consist of the following.

The Hearing Examiner shall provide those services and fulfill those duties as identified in the City's ordinances relating to the Hearing Examiner, and carry out such other responsibilities as may be agreed to between the City and the Hearing Examiner. Those services, duties and responsibilities include preparing and/or updating Rules of Procedure as deemed necessary; preparing for land use hearings by reviewing files and applicable laws; conducting site views of properties that are the topic of a land use hearing; conducting hearing on appeals; and preparing a written decision including findings and conclusions on all appeals heard. The Hearing Examiner shall also be available to present to the City staff and/or Council training sessions on land use law as requested, at the specified Hearing Examiner hourly rate, or as otherwise agreed to by the parties. In addition, and upon request by the City, the Hearing Examiner agrees to produce an annual report detailing matters heard by the Hearing Examiner and, potentially, recommendations for improvements to the Hearing Examiner process and/or the municipal code, and will not invoice more than \$1,500 for said report.

B. The City agrees to pay the Laminar Law, PLLC on a time and materials basis for services performed at the hourly rates, as specified below:

| | |
|------------------|----------|
| Hearing Examiner | \$225.00 |
|------------------|----------|

Hourly rates shall include all costs, and shall not be invoiced separately for mileage, phone calls, copies and other costs incurred by the Laminar Law, PLLC when providing services.

The Hearing Officers provided to the City shall have more than four years of experience as a lawyer, and have heard and decided at least one dozen land use cases. The Hearing Officers available to the City will be Peregrin Sorter as primary Hearing Officer, with [insert name(s)] available on a pro-tem basis.

As an alternative to time and materials compensation, the City agrees to pay the Consultant an agreed fixed rate for certain services. The services to which the flat rate may apply are those of a typical application (that the City does not consider 'extraordinary'), and may include the following:

1. Single family residence: variances, reasonable use exceptions, and conditional use permits (CUPs) = \$1,750.
2. Nonresidential or multifamily: variances and conditional use permits; special use permits; and shoreline substantial development permits = \$3,000.

3. Consolidated hearings on permit applications, not including any appeals; preliminary subdivisions; shoreline variances; and shoreline conditional use permits = \$3,850

Administrative appeals, including SEPA appeals, are entirely unpredictable as to the time involved in resolving them, and shall be compensated at an hourly rate.

DRAFT



**STATEMENT OF QUALIFICATIONS
FOR HEARING EXAMINER SERVICES**

To Review Team:

We propose that attorney Peregrin K. Sorter (WSBA #40961) of Laminar Law, PLLC, be selected to serve as the City of Des Moines Hearing Examiner to provide land use application hearings, administrative appeal hearings, and other quasi-judicial hearings at the City's request. We believe that Mr. Sorter's expertise in land use law and his demonstrated ability to produce timely decisions that are clear, thorough, and drafted efficiently to provide cost savings to the jurisdictions he serves will benefit the City of Des Moines and its residents.

Attached please find background information on Laminar Law, a summary of Mr. Sorter's experience and qualifications, a discussion of Mr. Sorter's approach to the Hearing Examiner process, fee proposal information, Mr. Sorter's resume, and a list of professional references. Examples of recent land use decisions issued by Mr. Sorter are available upon request.

Thank you for considering Laminar Law to provide hearing examiner services for the City of Des Moines. We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Peregrin Sorter", is written over a horizontal line.

Peregrin K. Sorter, Managing Attorney of Laminar Law

Laminar Law, PLLC
1919 N. Union Avenue Tacoma, WA 98406
Phone: 206 658-3784 (Cell)
Email: peregrin@laminarlaw.com
UBI Number: 605 164 033
Federal EIN Number: 93-3236461

QUALIFICATIONS AND EXPERIENCE

Introduction to Laminar Law and Chief Hearing Examiner Peregrin Sorter

Laminar Law, PLLC is a hearing examiner services company committed to providing high-quality land use hearing examiner services to a select number of jurisdictions in Western Washington. We believe that limiting the number of jurisdictions we serve ensures that our hearing examiners and support staff are readily available to schedule requested hearings, knowledgeable about the local planning policies and regulations governing our decisions, and able to efficiently produce decisions that are clear, thorough, and timely issued. Peregrin Sorter, founding member and Chief Hearing Examiner for Laminar Law, would serve the City of Des Moines as its Hearing Examiner, with support provided by additional Laminar Law members as needed.

Prior to founding Laminar Law in early 2023, Mr. Sorter served as a managing attorney, chief legal writer, and pro tem hearing examiner for Sound Law Center (SLC). As chief legal writer for SLC, Mr. Sorter was responsible for drafting and reviewing hundreds of decisions produced by SLC. These prior decisions serve as an example of the high-quality land use decisions that the City, applicants, and members of the public can expect from Laminar Law.

Mr. Sorter currently serves as the Hearing Examiner for the Cities of Woodinville, Port Angeles, Sequim, SeaTac, Arlington, and Ocean Shores. He has also served as a pro tem Hearing Examiner in jurisdictions that include Hunts Point and Yarrow Point. In addition, Mr. Sorter has served as the Hearing Examiner addressing ethics complaints in the City of Mercer Island.

Mr. Sorter also has over 10 years of experience as a staff attorney for Division II of the Washington State Court of Appeals, where he assisted judges in deciding appeals and drafting appellate opinions. Through that experience, Mr. Sorter gained valuable insight into what makes a hearing examiner decision withstand judicial scrutiny on appeal and has shaped his practice of producing timely, concise, and legally sound decisions, as well as his demeanor as a judicial officer.

Mr. Sorter graduated in 2008 from Rutgers School of Law, with high honors, where he received the law school's top writing award and was honored to teach Constitutional Law to high school students as a Marshall Brennan Fellow. Mr. Sorter currently volunteers as Board President for Banchemo Disability Partners (BDP), a nonprofit organization providing residential support services for clients with developmental disabilities and mental illnesses.

As BDP President, Mr. Sorter oversaw the organization's adoption of a diversity, equity, and inclusion statement. Laminar Law is similarly committed to diversity, equity, and inclusion, and Mr. Sorter incorporates these values in his role as a Hearing Examiner, particularly in his interactions with members of the public who participate at hearings. Mr. Sorter understands that applicants and members of the public come to hearings with different backgrounds and levels of knowledge and/or information about the process, and he strives to create an atmosphere that is welcoming and informative for all hearing participants. Laminar Law is certified as a Minority Business Enterprise from the Washington State Office of Minority and Women's Business Enterprises.

Supporting Attorneys

Neil Savage

Neil Savage serves as Laminar Law's legal editor. Mr. Savage reviews all decisions prior to delivery to ensure consistency and readability. We believe that the services of a legal editor are vital for ensuring that our written decisions reflect the professionalism and neutrality that are embodied in the entire hearing examiner process. Mr. Savage graduated from Lewis and Clark Law School in 1989 and works as a freelance editor and indexer for legal publishers across the country.

APPROACH TO HEARING PROCESS

Laminar Law prides itself on conducting hearings that are respectful and efficient while welcoming members of the public to express their concerns. Mr. Sorter facilitates this process by creating an atmosphere that is courteous to witnesses and acknowledges their opinions. Mr. Sorter believes that a good result from the hearing process is that, regardless of the ultimate outcome of his decision, all interested parties feel that their concerns were heard and addressed.

Hearing Preparation

Mr. Sorter begins this process by reviewing the entire record prior to the hearing so that he is familiar with the law governing his decision and any potential issues that may arise at the hearing. He then prepares questions designed to streamline the hearing process by ensuring both that he has a thorough understanding of the proposal and that issues raised by members of the public are heard and addressed. For example, if the record contains several public comments raising concerns about tree removal associated with a project, Mr. Sorter may ask City staff to discuss tree removal and replacement requirements of the municipal code. Similarly, if members of the public raise concerns about a project's traffic impacts, Mr. Sorter's questions may be focused on level-of-service and traffic impact fee requirements. He has found that addressing the laws and regulations governing issues raised by members of the public prior to their opportunity to testify helps to focus public testimony on issues relevant to the decision and thereby facilitates an orderly and efficient hearing process.

Specific Hearing Formats

For application hearings, Mr. Sorter generally adheres to the following format:

1. Mr. Sorter provides introductory remarks that explain the application, applicable laws, and the process for the hearing. Providing this initial explanation helps lay the groundwork for how the hearing will proceed and provides applicants and the public with confidence in the Hearing Examiner.
2. City staff provide an overview of the proposal and any City recommendations.
3. The Applicant and any witnesses for the Applicant are given the opportunity to provide additional information.
4. Members of the public are invited to provide comments on the application.
5. The Applicant and City staff may respond to public comments.
6. Mr. Sorter closes the hearings, thanks all present for attending, and explains that a decision shall be issued within 10 business days of the record closing.

For administrative appeal hearings, Mr. Sorter generally adheres to the following format:

1. Mr. Sorter provides introductory remarks that explain the appeal, applicable laws, and the process for the appeal hearing.
2. Mr. Sorter addresses any motions raised by the Appellant, the City, and/or the Applicant
3. The Appellant presents testimony of witnesses, and the City and Applicant are provided with the opportunity to cross-examine those witnesses.
4. The City presents testimony of witnesses, and the Appellant and Applicant are provided with the opportunity to cross-examine those witnesses.
5. The Applicant presents testimony of witnesses, and the Appellant and City are provided with the opportunity to cross-examine those witnesses.
6. If requested, Mr. Sorter allows closing remarks from each party. Alternatively, he may allow for the submission of written closing remarks from each party.
7. Mr. Sorter closes the hearing, thanks all present for attending, and explains that a decision shall be issued within the time specified under the municipal code.

Decision

Mr. Sorter's greatest asset to the jurisdictions he serves is his ability to consistently produce decisions in an efficient manner to provide significant cost savings, while ensuring that those decisions are easily understood by applicants and members of the public. His decisions also include detailed legal analyses to provide guidance to City staff and potential applicants on future land use matters. Mr. Sorter's decisions are reviewed by Laminar Law's legal editor prior to being issued to confirm that they reflect the professionalism and neutrality that is embodied in the entire hearing process.

TYPICAL TIMELINE FOR COMPLETING TASKS

Mr. Sorter understands the budgetary concerns of local jurisdictions and that a proposed hourly rate provides little guidance when evaluating a proposal absent information about the typical timeline for conducting a hearing and issuing a decision. Accordingly, in addition to offering a flat fee rate for specific decision types (discussed further below), the following provides an estimated number of hours to complete each task involved in the hearing process:

- Preparation for Hearing:
 - Single-family residential or small commercial projects (typically 30 minutes to 1 hour)
 - Large commercial, residential, or mixed-use development projects; multi-permit projects; or projects with extensive technical reports or community opposition (typically 1.5 to 2.5 hours)
- Hearing:
 - Single-family residential or small commercial projects (typically 30 minutes)
 - Large commercial, residential, or mixed-use development projects; multi-permit projects; or projects with extensive technical reports or community opposition (typically 45 minutes to 1.5 hours)

- Decision Drafting:
 - Single-family residential or small commercial projects (typically 4 to 6 hours)
 - Large commercial, residential, or mixed-use development projects; multi-permit projects; or projects with extensive technical reports or community opposition (typically 6 to 12 hours)
- Decision Editing:
 - Single-family residential or small commercial projects (typically 30 minutes to 1 hour)
 - Large commercial, residential, or mixed-use development projects; multi-permit projects; or projects with extensive technical reports or community opposition (typically 1 to 2.5 hours)

Total time:

- Single-family residential or small commercial projects (typically 5.5 to 8 hours)
- Large commercial, residential, or mixed-use development projects; multi-permit projects; or projects with extensive technical reports or community opposition (typically 9.25 to 18.5 hours)

FEE PROPOSAL

Our typical contract rate for all legal work associated with hearing examiner services is **\$225/hour**. Laminar Law does not charge for travel time or materials. As an alternative, the City may consider implementing a flat-fee billing structure based on application types to provide cost consistency and predictability.

Should the City of Des Moines elect to implement a flat-fee approach, we propose the following structure for typical land use decisions and are willing to further discuss these fees and application types to meet the City’s specific needs:

| \$1,750 | \$3,000 | \$3,850 |
|---|--|---|
| Single-Family Residential Variances | Nonresidential Variances and Conditional Use Permits | Consolidated hearings on permit applications, not including any appeals |
| Single-Family Residential Conditional Use Permits | Multifamily Variances and Conditional Use Permits | Preliminary Subdivisions |
| Single-Family Reasonable Use Exceptions | Special Use Permits | Shoreline Variances |
| | Shoreline Substantial Development Permits | Shoreline Conditional Use Permits |

Due to the variety of issues that may be raised in administrative and code enforcement appeals, Laminar Law typically charges an hourly rate for these matters but is willing to discuss implementing a flat-rate approach if that is the City’s preference.

PEREGRIN SORTER

1919 N. Union Ave. | Tacoma, Washington 98406 | (206) 658-3784 | peregrin@laminarlaw.com

Experience and qualifications

Washington State Bar Association member in good standing (admitted 2008).

WSBA number: 40961

Laminar Law, PLLC

Founder, Managing Attorney, Hearing Examiner

Tacoma, WA

March 2023–Present

Founded Laminar Law, PLLC, to provide land use hearing examiner services to local governments in Washington State. Responsibilities include presiding over, and issuing decisions for, land use application hearings and administrative appeals.

Sound Law Center, LLC

Managing Attorney, Chief Legal Writer

Seattle and Tacoma, WA

January 2020–February 2023

Served as managing attorney and Chief Legal Writer for Sound Law Center.

Responsibilities included overseeing all business matters related to the operation of Sound Law Center, drafting and editing decisions issued by hearing examiners, and supervising contract legal writers and pro tem hearing examiners.

Washington State Court of Appeals, Division II

Staff Attorney

Tacoma, WA

August 2012–December 2020

Assisted the Court in resolving direct appeals and personal restraint petitions by reviewing record, researching applicable law, and drafting prehearing memoranda and opinions. Screen notices of appeal for compliance with appellate rules, consolidation with other pending cases, and disposition track. Made recommendations for disposition of all types of motions and draft orders and rulings for panels.

Law Clerk for the Honorable Marywave Van Deren

August 2011–July 2012

Law Clerk for the Honorable Christine Quinn-Brintnall

August 2008–July 2010

Reviewed appellate briefs and trial court records, researched applicable law, and drafted bench memoranda. Assisted judges in drafting and editing an average of three court opinions per month. Performed technical source citation checks on opinions in accordance with Washington Court standards.

Banchero Disability Partners

Board Member, President

Seattle and Shoreline, WA

November 2008–Present

On a volunteer basis, responsible for the functions of an agency that provides 24-hour case management services to clients with developmental disabilities and mental illnesses, including policy administration, public and community relations, finance, personnel and program planning and evaluation.

Independent Living Advocate

September 1999–August 2005

Provided direct support and services to adults with developmental disabilities in their homes and community.

Nielson, Broman & Koch PLLC. **Seattle, WA**
Indigent Criminal and Parental Dependency Appeals Attorney August 2010–July 2011
Contracted with law firm to represent clients appealing from criminal convictions and parental dependency/termination orders. Reviewed trial record, drafted briefs, and presented oral argument in all three divisions of the Court of Appeals.

Disability Rights New Jersey **Trenton, NJ**
Legal Intern Summer 2007
Worked with the Director of Litigation on two high-impact systemic litigation cases. Conducted fact investigations at all New Jersey Psychiatric Hospitals.

Disability Rights Washington **Seattle, WA**
Legal Intern Summer 2006
Screened potential clients and provided self-help information and referral services. Handled all prisoner correspondence, requests for information, and referrals.

Education

Rutgers University School of Law – Camden, NJ
J.D. magna cum laude, May 2008
Blaine E. Caphart Award for Excellence in Legal Writing, 2008
Pro Bono Publico Award, 2008
Marshall-Brennan Fellow, Fall 2007–Spring 2008
Research Assistant for Professor Sarah Ricks, Fall 2007–Spring 2008

University of Washington – Seattle, WA
B.S. in Psychology, June 2004

Professional References:

Marshall Read
Lead Planner
City of Ocean Shores
360-940-7489 (Office)
360-580-4465 (Cell)
mread@osgov.com

Charisse Deschenes
Deputy City Manager/Director of Community and Economic Development
City of Sequim
360-681-3432 (Office)
360-912-1761 (Cell)
cdeschenes@sequimwa.gov

Ben Braudrick
Planning Supervisor
City of Port Angeles
360-417-4804 (Office)
360-406-0654 (Cell)

Ted Hunter
Founder, Sound Law Center
206-419-2269
tph@soundlawcenter.com

Andrew Reeves
Founder, Trebucket Legal Consulting
253-393-3594
Andrew.tlclaw@gmail.com

Alex Sidles
Law Office of Alex Sidles, PLLC
206-518-8611
alex@sidleslaw.com

Hon. Judge Lisa Worswick (Ret.)
Former Judge at Division II of the Washington State Court of Appeals
Pierce County Superior Court
Pierce County District Court
253-691-7050
lworswick@yahoo.com

AGENDA ITEM

BUSINESS OF THE CITY COUNCIL
City of Des Moines, WA

SUBJECT: Draft Ordinance 24-023 amending the animal code.

FOR AGENDA OF: May 9, 2024

ATTACHMENTS:

- 1. Draft Ordinance no. 24-023

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: May 1, 2024

CLEARANCES:

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

APPROVED BY CITY MANAGER

FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is for the City Council to consider proposed changes to the animal code which are intended to increase public safety and provide for more effective enforcement of the code as intended.

Suggested Motion

Motion 1: "I move to enact Draft Ordinance 24-023, adopting amendments to the City's animal code."

Background

The City of Des Moines first enacted an animal code in 1980 in order to protect public health and safety, prevent injury to property, and prevent cruelty to animals. In order to accomplish this purpose, the animal code provides for licensing dogs and cats; kennels, pet shops, veterinary hospitals, and grooming parlors; to curtail nuisance animal behavior; to prevent cruelty to animals; and to prevent injury to humans or animals from known vicious or aggressive dogs.

The current version of the City's animal code, enacted in 2014 and codified at Title 8 DMMC, prohibits and punishes certain nuisance conduct by domestic animals, such as running at large, chasing automobiles, and approaching or attacking a person in a vicious manner. The code also provides a procedure for dogs to be declared "dangerous" or "potentially dangerous". Dogs are declared to be dangerous or potentially dangerous after they have bitten or attacked humans or other domestic animals without provocation, inflicting injuries or death to the victim. Dogs that have been declared potentially dangerous and subsequently bite or attack humans or domestic animals are considered dangerous dogs. The animal code requires abatement of such violations by the owner or keeper to prevent further dangerous incidents through confinement, restraint, and insurance requirements. When violations occur or abatement is not successful in preventing further situations, the code allows the City to curtail non-compliance by impoundment of the animal, removal of the animal from the City, euthanasia, and/or civil and criminal citations. These code provisions are essential to public safety.

Due process requires that any enforcement action taken by the City provide an animal owner with notice and the opportunity to contest the action. While we believe that due process is provided by our code, an animal law attorney has recently challenged that understanding. In addition, some attorneys in other cases have raised challenges in our court alleging that certain definitions and violations are too vague. While the City has largely been successful in thwarting the challenges, there is always a concern that vague or ambiguous language can be exploited to frustrate the intent of the law. When violations are not upheld by the Court, the City is prevented from ensuring public safety as was intended when the Animal Code was adopted.

Discussion

The Draft Ordinance proposes a number of changes to the Animal Code, beginning with the definition section:

- Include a contracted animal control officer in the definition of animal control authority.
- Clarify and simplify the definition of "dangerous dog"; and removes the requirement that the City prove that a bite or attack was "aggressive."
- Clarify the definition of "domesticated animals" to include "domestic animals" and make the language easier to understand.
- Clarify and simplify the definition of "potentially dangerous dog" so that it is easier for both officers and citizens to understand what actions would cause a dog to be declared potentially dangerous.
- Clarify the definition of "provocation" to make it easier for an officer to know whether a dog acted with or without provocation when determining if there is probable cause to declare the dog dangerous or potentially dangerous.

- Clarify and simplify the definition of “vicious” by including “vicious propensities” in the definition and making the terms easier for both officers and citizens to understand what actions qualify as vicious.

Other proposed amendments change the section on nuisance behaviors:

- Clarify and simplify the list of violations that are prohibited and punishable under the code by labeling them public nuisances so as to match language used elsewhere in the code.
- Consolidate the sections relating to vicious behavior into one, more succinct section, enabling officers to better decide whether an animals actions would qualify it as an animal with vicious propensities and enforce abatement.
- Give more specificity to what qualifies as an animal making unreasonable noise so that officers are better able to determine whether noise(s) are punishable under the code.
- Relabel an animal declared a public nuisance as a nuisance animal for simplicity and clarity, and change language requiring “convictions” to “committed” violations to comport with the legal language of civil infractions.

The appeal section in DMMC chapter 8.04 is amended to address concerns that due process is not fully provided for:

- Add language that makes the appeal process applicable to any section of the animal code that does not already provide for one.
- For the purposes of due process arguments that might be made by attorneys, allow an appeal to be filed up to 10 days after notice of the infraction, rather than 48 hrs.
- Lay out the legal burden of proof for appeals of notices of infractions.

The dangerous and potentially dangerous dog sections of the animal code are updated:

- Allow probable cause for a dangerous or potentially dangerous dog declaration to be made upon a complainant’s oral statement, not just their written statement.
- Allow additional legal methods of providing notice of the declaration for a dangerous or potentially dangerous dog, to wit posting the notice at the owner or keeper’s property or by leaving it with a person of suitable age at the property.
- Prevent legal issues on appeal by elucidating when service of a declaration is deemed completed.
- Allow police officers, in addition to animal control officers, to enforce immediate impoundment when a dangerous dog subsequently bites a person or domestic animal; allow officers to kill such a dog if it is uncatchable for impoundment.
- Clarify and simplify the section that provides for a defense to a dangerous/potentially dangerous dog declaration when the victim was unlawfully trespassing on the owner or keeper’s property, or was provoking or abusing the dog.

Other changes to enable enforcement of the code as intended:

- Simplify the language on late fees for pet licenses.

- Add veterinary hospitals to the list of establishments who must comport with chapter licensing requirements and allows an appeal denial or revocation of their license.
- Add that a designee of the Chief of Police, in addition to the Chief himself, may enforce any other legal or equitable relief to abate violations of the animal code.
- Grant immunity to police officers, in addition to animal control officers, for their actions taken pursuant to enforcing the code.

The intent of the draft ordinance is to simplify the code to give proper notice to animal owners of conduct that is subject to punishment, to enable law enforcement and animal control to better enforce the provisions of the code, and to close obvious loopholes that would allow owners to sidestep liability for their animal's conduct when it endangers others or that threatens to public safety.

Alternatives

The City Council may:

1. Enact the proposed Draft Ordinance as written.
2. Enact the proposed Draft Ordinance with modifications
3. Decline to enact the proposed Draft Ordinance.

Financial Impact

This Draft Ordinance will likely have negligible financial impact.

Recommendation

Staff recommends that the City Council enact Draft Ordinance 24-023 as written.

CITY ATTORNEY'S FIRST DRAFT

DRAFT ORDINANCE NO. 24-023

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to animals, updating the Animal Code, and amending DMMC 8.04.020, 8.04.030, 8.04.140, 8.04.210, 8.04.250, 8.04.260, 8.04.270, 8.16.030, 8.16.040, 8.16.050, 8.16.140, 8.16.150, 8.16.160, and 8.16.190.

WHEREAS, pursuant to the provisions of chapter 16.08 RCW and the general police powers granted to the City pursuant to chapter 35A.13 RCW, optional code cities are authorized to enact ordinances regulating animals to protect the public health, safety, and welfare, and

WHEREAS, the City Council has previously enacted animal regulations, codified in Title 8 DMMC, and

WHEREAS, approximately ten years have elapsed since the animal code has been updated, and

WHEREAS, in the time since the code was last updated, a number of legal challenges have been raised to the code as currently written, and

WHEREAS, the City Council finds that certain amendments to the Animal Code are warranted to better reflect the intent of the code and to protect the health, safety, and welfare of the public as well as the animals residing in Des Moines, and

WHEREAS, the City Council finds that it is in the best interest of the public health, safety, and general welfare to adopt the amendments to the City's Animal Code contained in this ordinance; now therefore,

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

Sec. 1. DMMC 8.04.020 and section 5 of Ordinance No. 1599 are each amended to read as follows:

Definitions. As used in this Title, unless the context or subject matter clearly requires otherwise, the words or

phrases defined in this section shall have the indicated meanings.

"Abatement" means the termination of any violation by reasonable and lawful means determined by the City Manager or the City Manager's designee in order that an owner or keeper or a person presumed to be an owner or keeper shall comply with this Title.

...

"Animal control authority" means the animal control division of the Police Department, or contracted animal control agency, acting alone or in concert with King County animal control division for enforcement of the animal control laws of the City, county, and state, and the shelter and welfare of animals.

...

"Dangerous dog" means a dog that ~~according to the records of the appropriate authority~~:

(1) Has inflicted severe injury on a human being without provocation on public or private property; or

(2) Has killed a domestic animal, or other animal protected under federal, state, or local rules, without provocation while off the owner's or keeper's property; or

(3) Has been previously found declared to be potentially dangerous, the owner or keeper having received notice of such declaration, and the dog ~~again aggressively~~ subsequently bites, attacks, or endangers the safety of human beings or domestic animals without provocation.

"Domestic" or "Domesticated animals" means those ~~domestic beasts~~ animals such as any dog, cat, rabbit, horse, mule, donkey, bovine animal, lamb, goat, sheep, hog, or other animal including fowl made to be domestic.

...

"Potentially dangerous dog" means:

(1) A dog that ~~when unprovoked~~:

(a) ~~Inflicts~~ Has inflicted one or more bites on a human being or a domestic animal or other animal protected under federal, state, or local rules, either on public or private property without provocation; or

(b) ~~Chases~~ Has chased or ~~approaches~~ approached a person upon a street or a public grounds in a menacing fashion or apparent attitude of attack without provocation, or a dog with a known propensity, tendency, or disposition to attack without provocation, to cause severe injury, or to cause injury or otherwise threaten the safety of humans, domestic animals, or other animals protected under federal, state, or local rules; or

(c) Has entered upon another person's property without the permission of that person and chased or approached a person in a menacing fashion or apparent attitude of attack without provocation; or

(2) A dog that has displayed the propensity, tendency, or disposition to attack without provocation, or to cause injury or otherwise threaten the safety of humans, domestic animals, or other animals protected under federal, state, or local rules; or

(3) An offspring, older than eight weeks, later born to a dog found to be a dangerous dog.

...

"Provocation" means a threatening or aggressive act that would reasonably incite a dog of stable temperament to react in self-defense, includes including taunting, teasing, or willfully causing undue pain, and/or unlawful entry upon or into the property of the owner or keeper. "Provocation" does not include actions to defend oneself, other humans, animals, or property. "Provocation" does not include the mere act of approaching a dog or the owner or keeper's property without further harmful action or unlawful trespass.

...

"~~Vicious animals~~" or "Vicious propensities" means ~~an animal other than a "dangerous dog" or "potentially dangerous dog" displaying~~to display the characteristics or propensity to do an act that might endanger the safety of a person, animal, or property of another, including but not limited to attempting to bite a human or domestic animal or a disposition ~~to mischief~~of fierceness as might occasionally lead to attack on human beings or other animals without provocation whether in play or outbreak of untrained nature.

"Waterfowl" means a warm-blooded vertebrate of the class Aves, having a body covered with feathers and forelimbs modified into wings (birds) that have aquatic characteristics in their natural state, and includes without limitation, ducks, geese, seagulls, and the like.

Sec. 2. DMMC 8.04.030 and section 6 of Ordinance No. 1599 are each amended to read as follows:

Dog and cat licensing.

(1) It is unlawful to keep or harbor a dog or cat more than six months of age unless an annual license is procured for the dog or cat from the Des Moines Police Department. There is established a rebuttable presumption that the purchaser of such license is the owner of the animal identified in the license application.

...

(3) The annual license fees, including late penalties, are set by resolution of the City Council. A late penalty is charged on all licenses issued after March 1st of each year and an additional late penalty is charged on all licenses issued after May 1st of each year. A dog or cat acquired during the year shall be licensed within 30 days from the date of its acquisition, and in such cases the late penalties are charged only on licenses issued after such 30-day period and an additional late penalty is charged after 90 days ~~in which to comply with these licensing requirements~~from the date of acquisition if the animal remains unlicensed.

...

(12) It is unlawful for a person to refuse to show or exhibit at a reasonable time to an officer a dog in such person's possession or custody of a license tag issued.

Sec. 3. DMMC 8.04.140 and section 17 of Ordinance No. 1599 are each amended to read as follows:

Denial of license - Appeal. No applicant shall be issued a kennel, pet shop, shelter, veterinary hospital, or grooming parlor license that has had such license revoked or refusal to renew and until such applicant meets all applicable requirements established by this chapter. A decision to revoke, refusal to renew, or denial of a license under this chapter may be appealed to the Hearing Examiner. Such appeal shall be brought within 10 days of such decision and in accordance with the Hearing Examiner Code.

Sec. 4. DMMC 8.04.210 and section 24 of Ordinance No. 1599 are each amended to read as follows:

~~Violations to be abated~~**Public nuisances - Animals.** ~~For the purposes of this chapter, the following are violations of this chapter and are abated as provided in this chapter~~The owner or keeper of any animal shall not allow such animal to be or become a public nuisance, do any act deemed to be a public nuisance, or otherwise violate this chapter. The following are declared to be a public nuisance and are a violation of this chapter:

(1) A public nuisance relating to animal control known at common law or in equity jurisprudence;

(2) A domesticated animal running at large;

(3) A domesticated animal, whether licensed or not, that runs at large in a park, or enters a public beach, pond, fountain, or stream therein, or upon a public playground or school ground, ~~except that. this~~This subsection shall not apply to a person using a trained seeing eye, guide, or service dog, to animal shows, exhibitions, or organized dog training classes

when at least 24 hours' advance notice has been given to the Chief of Police by such persons requesting to hold such animal shows, exhibitions, or dog training classes;

...

~~(7) A domesticated animal that habitually snaps, growls, snarls, jumps upon, or otherwise threatens persons lawfully using the public streets;~~

~~(8) An animal that has exhibited~~exhibits vicious propensities ~~and that constitutes a danger to the safety of persons, property, or other animals~~whether off its owner or keeper's premises or lawfully on such owner or keeper's premises that is not securely controlled by leash or confined or not in control of a person of suitable age and discretion to control or restrain such animal;

~~(9) An animal with vicious propensities when not on its owner or keeper's premises and not securely controlled by leash or confined or not in control of a person of suitable age and discretion to control or restrain such animal;~~

~~(10) A domesticated animal which howls, yelps, whines, barks, or makes other oral noises, in such a manner as to disturb person(s) or a neighborhood to an unreasonable degree, including but not limited to, making such noises unabated for fifteen minutes or more or during the hours of darkness;~~

~~(11) A domesticated animal that enters upon another person's property without the permission of that person;~~

~~(12) An animal staked, tethered, or kept on public property without prior written consent of the Chief of Police;~~

~~(13) Animals kept, harbored, or maintained and known to have a contagious disease unless under the treatment of licensed veterinarian;~~

~~(14) Animals running in packs;~~

~~(15) Domestic animals trespassing on private or public property so as to damage, destroy, or despoil any property.~~

Sec. 5. DMMC 8.04.250 and section 26 of Ordinance No. 1599 are each amended to read as follows:

Animal declared a public nuisance - Abatement. An animal that has been the subject of three ~~convictions of a committed~~ violations of this chapter occurring on separate dates in a period of 365 days or an animal that bites or attacks a person or persons without provocation twice within a five-year period is a public nuisance and shall not be kept within the City. The Chief of Police shall follow the procedures set out in DMMC 8.04.260 in order to abate such animal. After the completion of such abatement procedures, an animal subject to removal from the City as provided in this section that is found within the City shall be impounded and treated as an unredeemed animal with no right of redemption by its owner or keeper.

Sec. 6. DMMC 8.04.260 and section 27 of Ordinance No. 1599 are each amended to read as follows:

Abatement of nuisances - Procedure - Appeal.

The following procedure shall apply to the abatement of animals subject to removal, to animals not redeemable because subject to cruelty, and to kennels, pet shops, and shelters in violation of DMMC 8.04.040 through 8.04.120, and appeal of any other action taken under this Title for which no appeal process has been specified:

(1) Notice shall be directed to the owner or keeper of such an animal by the Chief of Police or the Chief's designee, stating the action to be taken, the basis for action, and the availability of an appeal, as provided in subsection (2) of this section. Such notice shall be served personally, or by postage paid certified mail, return receipt requested, or by posting at the last known residence or place of business of the owner or keeper. Such notice shall constitute a final order unless the owner or keeper files a written notice of appeal within ~~48 hours~~ 10 days of the receipt of the notice or posting of the notice.

(2) An appeal from the notice ~~of abatement of nuisance~~ shall be brought to the ~~Hearing Examiner~~ Des Moines Municipal

~~Court. Such appeal shall be brought within 10 days of such decision and in accordance with the Hearing Examiner Code, provided, however, that appeal from the decision of the Hearing Examiner shall be directly to King County Superior Court upon a writ of certiorari and within the time provided for appeal to Superior Court from a decision of the City Council under the Hearing Examiner Code. Failure to exhaust this administrative appeal process shall be a bar to further action in superior court. Any appeal taken from the decision of the Des Moines Municipal Court shall be in accordance with the Rules of Appeal for the Decisions of Courts of Limited Jurisdiction as presently constituted or as may be subsequently amended and designated.~~ During the pendency of such appeal the animal shall either be confined or, as an alternative, the owner shall post adequate monetary security to guarantee he will confine the animal. ~~The Hearing Examiner~~Des Moines Municipal Court shall have the discretion to order either alternative, and shall have discretion to revoke the recognizance should the owner violate any provision thereof. In the event the animal is confined during the appeal to Superior Court, the owner shall, as a condition of such appeal, post a cost bond in an amount equivalent to the cost of maintaining the animal during the pendency of the action in Superior Court. Such bond shall be posted either within 10 days of commencing the action or within 10 days of revocation of the recognizance, such as the case may be.

(3) If the Des Moines Municipal Court finds by a preponderance of the evidence that the action taken or proposed to be taken was justified, the order shall be upheld and the owner or keeper shall be responsible for all costs and fees as designated in this Title.

(4) If the Des Moines Municipal Court does not find by a preponderance of the evidence that the action taken by the City was justified, the order shall be rescinded.

(5) Failure to fully comply with a final order shall be a misdemeanor and, further, the Chief of Police or the Chief's designee shall be empowered to act to abate such nuisance or cruelty violation and the person failing to comply with such order shall become indebted to the City for all damages, costs,

and charges incurred in the removal of such animal. Such damages, costs, and charges shall become a civil debt against the person failing to comply and shall be collectible in the same manner as any other civil debt owing to the City.

(46) Whenever such a public nuisance constitutes or reasonably appears to constitute an imminent or continuing danger to the public, the Chief of Police or the Chief's designee shall have authority to summarily and without notice abate the same by reasonable means. If the subject animal can be safely impounded, the Chief of Police or the Chief's designee shall do so, and the owner or keeper thereof shall become indebted to the City for all damages, costs, and charges incurred during the process of abatement. If the animal cannot be safely impounded, the Chief of Police or the Chief's designee shall have authority to slay such animal. The expense of such abatement shall likewise become a civil debt against the owner or keeper of such animal. Such summary abatement shall not limit criminal prosecution for the original violation.

Sec. 7. DMMC 8.04.270 and section 28 of Ordinance No. 1599 are each amended to read as follows:

Additional enforcement. Notwithstanding the existence or use of any other remedy, the Chief of Police or the Chief's designee through the City Manager may seek legal or equitable relief to enjoin acts or practices and abate conditions that constitute a violation of this chapter or other regulation adopted in this chapter.

Sec. 8. DMMC 8.16.030 and section 41 of Ordinance No. 1599 are each amended to read as follows:

Findings and declaration - Probable cause. The animal control authority may find and declare an animal potentially dangerous or dangerous if it has probable cause to believe that the animal falls within the definition set forth in DMMC 8.04.020. For the purposes of this chapter, probable cause may include:

(1) The written complaint or oral statement of a citizen who is willing to testify that the animal has acted in a manner

which causes it to fall within the definition in DMMC 8.04.020;
or

(2) Dog bite reports filed with the animal control authority as required by this chapter or state law; or

(3) Actions of the dog witnessed by any animal control officer or law enforcement officer; or

(4) A verified report that the animal previously has been found to be either potentially dangerous or dangerous by any animal control authority; or

(5) Other substantial evidence admissible in a court of law.

Sec. 9. DMMC 8.16.040 and section 42 of Ordinance No. 1599 are each amended to read as follows:

Declaration - Service to owner in writing. The declaration shall be in writing, and shall be served on the owner or keeper in one of the following methods:

(1) Certified mail with return receipt requested to the owner's or keeper's last known address, if known; or

(2) Personally; or

(3) By leaving a copy of the notice at the house of the owner or keeper's usual abode with some person of suitable age and discretion then resident therein; or

(4) By posting a copy of the notice conspicuously on the owner or keeper's property if the animal control officer has a reasonable belief that the owner will return to the property within 48 hours. Service under this method shall be deemed complete 48 hours after the date of posting; or

(5) If the owner or keeper cannot be ~~located~~ served by ~~one~~ any of the first ~~two~~ four methods, by publication in a newspaper of general circulation. Service under this method shall be deemed completed 24 hours after the date of publication;

(46) The owner or keeper of any animal found to be a potentially dangerous or dangerous dog under this chapter shall be assessed all service costs expended under this section.

Sec. 10. DMMC 8.16.050 and section 43 of Ordinance No. 1599 are each amended to read as follows:

Declaration - Information required. The declaration set forth in DMMC 8.16.040 shall state at least:

- (1) A description of the animal;
- (2) The name and address of the owner or keeper of the animal, if known;
- (3) The whereabouts of the animal if it is not in the custody of the owner or keeper;
- (4) The facts upon which the declaration is based;
- (5) The availability of a hearing in case the person ~~objects to~~ wishes to appeal the declaration, if a request is made within five days;
- (6) The restrictions placed on the animal as a result of the declaration; and
- (7) The penalties for violation of the restrictions, including the possibility of destruction of the animal, and imprisonment or fining of the owner or keeper.

Sec. 11. DMMC 8.16.140 and section 52 of Ordinance No. 1599 are each amended to read as follows:

Immediate impoundment - Conditions warranting.

(1) Any dangerous dog shall and any potentially dangerous dog may be immediately impounded by an animal control authority if:

...

(2) In addition to such impound, the owner or keeper of such animal shall be deemed guilty of a criminal offense and assessed a civil penalty or shall be guilty of a gross misdemeanor in accordance with DMMC 8.16.200; provided, however, that no prosecution shall be commenced until five days have elapsed from the date such owner or keeper is notified by the animal control authority that such license or renewal for such potentially dangerous dog is required, or until any appeal brought under that section has been completed, whichever is later. The owner or keeper of any dog impounded under this subsection may redeem such dog from the animal control authority only upon proof of a valid special license and registration, proof that all required conditions under this chapter have been met, and payment of \$20.00 per day for each day such dog has been in the control of the animal control authority; provided, however, that in the event the owner or keeper has not redeemed such dog within 10-20 days of being notified of the impound, the dog shall be destroyed in an expeditious and humane manner and the owner or keeper shall be assessed an additional civil penalty in the amount of \$50.00 for the cost of destroying such dog.

Sec. 12. DMMC 8.16.150 and section 53 of Ordinance No. 1599 are each amended to read as follows:

Impoundment for biting. If a dog classified as a dangerous dog bites a person or another domestic animal, such dog shall be immediately impounded by the animal control authority or police authority, placed in quarantine for the ~~proper~~ length of time as set forth in DMMC 8.04.280(1), and thereafter destroyed in an expeditious and humane manner. Any such animal which is deemed uncatchable by the animal control authority or police authority may be killed by such official if no other reasonable means of capture is available or such animal continues to be a threat to persons or domestic animals. Reasonable means of capture may include the use of tranquilizers which, depending upon the animal's age, size, and physical condition, may cause death. The owner or keeper of any dangerous dog impounded and destroyed pursuant to this section shall be assessed, in addition to the actual costs of the quarantine, a civil penalty in the amount of \$20.00 per day for each day such dangerous dog is quarantined by the animal control authority and

in the amount of \$50.00 for the cost of destroying such dangerous dog.

Sec. 13. DMMC 8.16.160 and section 54 of Ordinance No. 1599 are each amended to read as follows:

Dogs exempted - Effect of trespass or tort. The requirements of this chapter related to potentially dangerous and dangerous dogs shall not apply to dogs registered for use by law enforcement officials for police work, whether or not such animal is maintained at its handler's residence, or to animals held in quarantine by a licensed veterinarian. Further, dogs shall not be declared potentially dangerous or dangerous if the threat, injury, or damage was sustained by a person who, at the time, was committing a ~~willful-malicious~~ intentional trespass or other intentional tort upon the premises occupied by the owner or keeper of the dog or was inside a fenced area upon the premises occupied by the owner or keeper of the dog without the express or implied consent of the owner or occupier of the property, or was tormentingprovoking, abusing, or assaulting the dog or has, in the past, been observed or reported to have ~~tormentedprovoked~~, abused, or assaulted the dog or was committing or attempting to commit a crime

Sec. 14. DMMC 8.16.190 and section 57 of Ordinance No. 1599 are each amended to read as follows:

Immunity. The City, the animal control authority, and any ~~animal-control~~ officer executing the responsibilities set forth in this chapter shall be immune from all civil liability for an action or actions taken pursuant to this chapter, or for failure to take action to enforce the provisions of this chapter. It is not the purpose or intent of this chapter to create on the part of the City, its officers, employees, agents, or volunteers a special duty or relationship toward a specific class of individuals. This chapter has been enacted for the safety and welfare of the public as a whole.

Sec. 15. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent

Ordinance No. _____
Page 14 of 14

jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

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

Sec. 16. Effective date. This Ordinance shall take effect and be in full thirty (30) days after its passage and approval in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2024 and signed in authentication thereof ____ 12th day of _____, 2024.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Published:

Effective Date: